High court rules against unions in dues case; USCCB had backed labor

WASHINGTON — By a 5-4 majority, the Supreme Court declared June 27 that one of its rulings from 1977 was "wrongly decided" and overruled it, in a case on whether public-sector unions could continue to make nonmembers pay fair-share fees not related to the unions' lobbying and political efforts.

As a result, said the court majority, "neither an agency fee nor any other form of payment to a public-sector union may be deducted from an employee, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay."

The justices split along their customary ideological lines, with Chief Justice John Roberts and Justices Samuel Alito, Anthony Kennedy, Clarence Thomas and Neil Gorsuch in the majority and with Justices Elena Kagan, Sonia Sotomayor, Stephen Breyer and Ruth Bader Ginsburg in the minority.

The case is Janus v. AFSCME. Mark Janus is an Illinois state employee who contended the union unconstitutionally made him pay fair-share fees, also known as agency fees, and used the money to take positions with which he disagreed, essentially compelling speech from him. The 1977 case the court overruled was Abood v. Detroit Board of Education, in which the court allowed for the payment of such fees.

"The majority has overruled Abood for no exceptional or special reason, but because it never liked the decision. It has overruled Abood because it wanted to," Kagan said in her dissent. "Because, that is, it wanted to pick the winning side in what should be — and until now, has been — an energetic policy debate."

Kagan's point was shared by the U.S. Conference of Catholic Bishops in an amicus brief it filed in the case this year.

The USCCB brief cited the prominent Supreme Court decisions of Roe v. Wade on abortion, and Obergfell v. Hodges on same-sex marriage, as reason to deny Janus

relief; Janus' position had lost at the Illinois Supreme Court.

The high court "should leave constitutional space for the public policy position supported for so long by so many bishops and bishop-led institutions, rather than declare still another such position outside the bounds of what policymakers are permitted to implement by law," it said. "By its decision in this case, the court should not only preserve that room for debate as to the public-sector context now, but avoid any threats to it in the private-sector context in the future."

"Forcing free and independent individuals to endorse ideas they find objectionable raises serious First Amendment concerns," said the majority opinion written by Alito. "Whatever may have been the case 41 years ago when Abood was decided, it is thus now undeniable that 'labor peace' can readily be achieved through less restrictive means than the assessment of agency fees."

"Abood did not appreciate the very different First Amendment question that arises when a state requires its employees to pay agency fees," the court said. "Developments since Abood, both factual and legal, have 'eroded' the decision's 'underpinnings' and left it an outlier among the court's First Amendment cases."

Kagan, though, rejected the majority's conclusions.

"Rarely if ever has the court overruled a decision — let alone one of this import — with so little regard for the usual principles of 'stare decisis.' There are no special justifications for reversing Abood. It has proved workable. No recent developments have eroded its underpinnings. And it is deeply entrenched, in both the law and the real world," she said.

"Stare decisis" is the principle by which judges are bound to precedents. Alito's majority opinion said, "Abood was poorly reasoned, and those arguing for retaining it have recast its reasoning, which further undermines its 'stare decisis' effect."

"More than 20 states have statutory schemes built on the decision," it continued. "Those laws underpin thousands of ongoing contracts involving millions of employees. Reliance interests do not come any stronger than those surrounding Abood. And likewise, judicial disruption does not get any greater than what the court

does today."

Kagan said, "Ignoring our repeated validation of Abood" — she cited six precedents — "the majority claims it has become 'an outlier among our First Amendment cases.' That claim fails most spectacularly."

She added, "Reviewing those decisions not a decade ago, this court — unanimously — called the Abood rule 'a general First Amendment principle.'"