

# A FAIR SHARE

**The unions are right to be nervous. If the Supreme Court rules in favor of Mark Janus this spring, more than five million public employees in Minnesota and 21 other states won't be forced to pay 'fair-share' union fees to keep their jobs.**

**Could it restore civility to Minnesota's politics and classrooms?**

**BY  
KIM CROCKETT**

**C**ongress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The ancient Romans worshiped a god named Janus, the god of beginnings and transitions. He was usually depicted as having two faces, not because he was perceived as deceitful, but because the Romans imagined he could see the past and the future. Janus was also thought to preside over the beginning and the end of conflict, so he was invoked at the start of war and as peace returned.

It is entirely fitting then that a man named Mark Janus would have the honor of bringing the most consequential case before the U.S. Supreme Court in decades, *Janus v. AFSCME*.

Janus, a social worker employed by the State of Illinois, is asking the Supreme Court to look back at a decision made by the Court in 1977 (*Abood v. Detroit Board of Education*) that upheld legislation forcing public-sector employees to

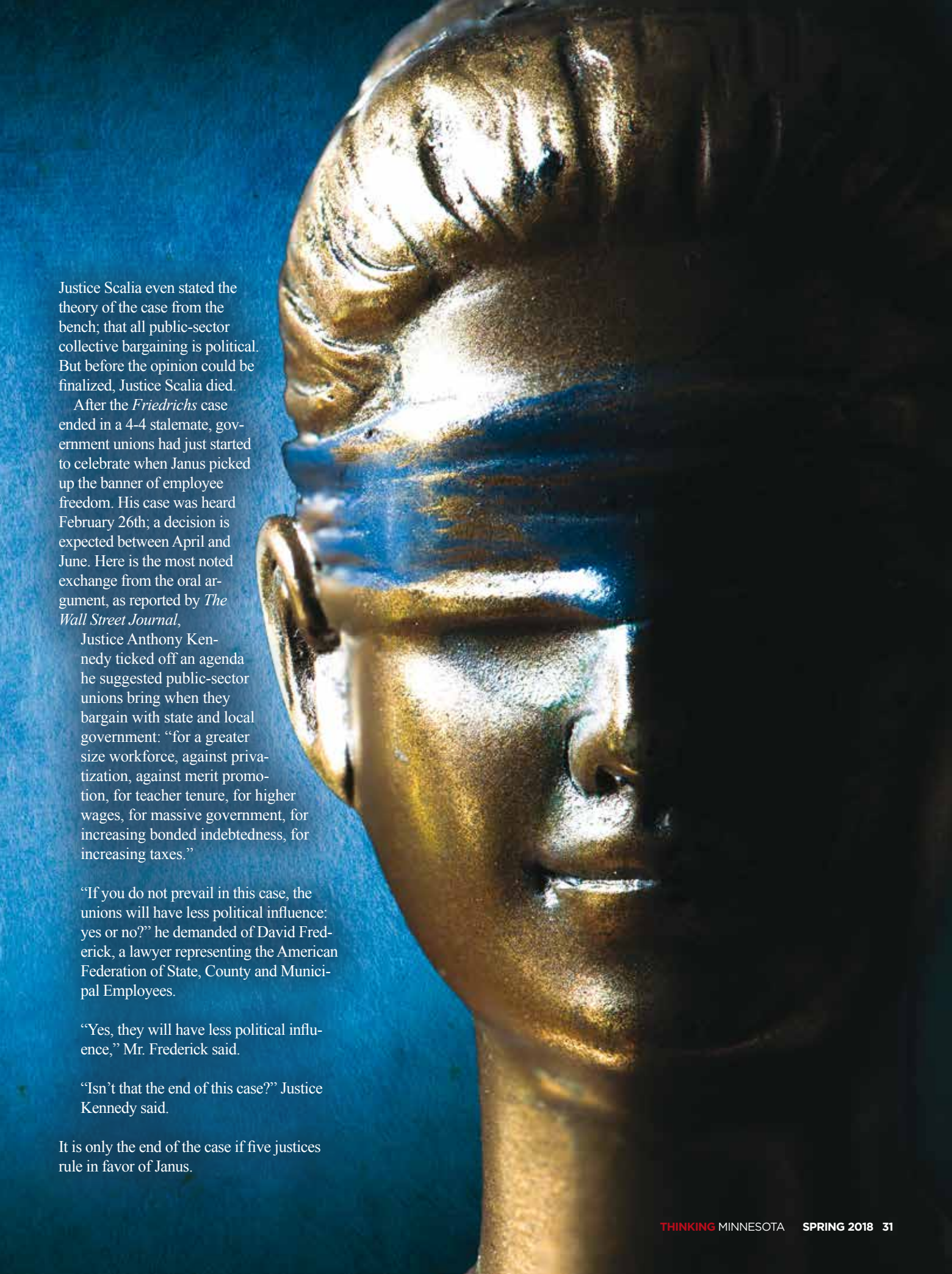
pay "agency" or so-called "fair-share" fees to government unions.

The Court in 1977 recognized that forced fair-share fees were an "impingement upon associational freedom" but it justified downgrading the civil rights of public employees in the name of "labor peace." The decision was made in the wake of decades of labor unrest.

If Janus is successful, more than 5 million public employees in Minnesota and 21 other states will no longer be forced to pay fair-share fees to a union to keep their jobs. Right-to-work will once again govern the public sector. (The case does not impact private-sector unions.) Wouldn't it be ironic if the *Janus* case ushers in a new era of political discourse, if not labor peace?

The legal argument is simple and compelling: all public-sector collective bargaining is political because it directly affects the cost, size and nature of government. As you will read below, the teachers' union, Education Minnesota, makes the case for overruling *Abood*.

If the *Janus* case sounds familiar it is because the same argument was made in 2016 by Rebecca Friedrichs, a California school teacher (*Friedrichs v. California Teachers Association*). After oral argument, court observers from all sides, including government unions, agreed that she had won a 5-4 majority decision.



Justice Scalia even stated the theory of the case from the bench; that all public-sector collective bargaining is political. But before the opinion could be finalized, Justice Scalia died.

After the *Friedrichs* case ended in a 4-4 stalemate, government unions had just started to celebrate when Janus picked up the banner of employee freedom. His case was heard February 26th; a decision is expected between April and June. Here is the most noted exchange from the oral argument, as reported by *The Wall Street Journal*,

Justice Anthony Kennedy ticked off an agenda he suggested public-sector unions bring when they bargain with state and local government: “for a greater size workforce, against privatization, against merit promotion, for teacher tenure, for higher wages, for massive government, for increasing bonded indebtedness, for increasing taxes.”

“If you do not prevail in this case, the unions will have less political influence: yes or no?” he demanded of David Frederick, a lawyer representing the American Federation of State, County and Municipal Employees.

“Yes, they will have less political influence,” Mr. Frederick said.

“Isn’t that the end of this case?” Justice Kennedy said.

It is only the end of the case if five justices rule in favor of Janus.

The Center has reviewed state and federal disclosure documents from Education Minnesota, limited as they are, to report to teachers how union expenditures and activities prove the theory in the *Janus* case: that everything this union does is political. This spring we will launch a project, EducatedTeachersMN, to inform and empower teachers across the state to evaluate the union's performance, and decide for themselves, whether the union is doing a good job. Here are some of our findings.

### Are "Fair-Share" Fees Really Fair?

The so-called "fair-share" fees, sanctioned by the Court in *Abood*, are only supposed to cover the cost of "collective bargaining." The fees, however, are set by unions with little or no oversight from the state. Not surprisingly, fees in Minnesota are nearly the same as full union dues (about 85 percent). After a careful and repeated examination of union documents, the Center was unable to comprehend how Education Minnesota could justify charging almost full dues to "fair-share" fee payers.

To calculate fair-share fees, the union is supposed to report "chargeable" and "non-chargeable" union activities to teachers who "opt out" of union membership. This is called a "Hudson" statement. Yet, look at what Education Minnesota reported spending \$763,176 on as "chargeable" activities:



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- Conducted the Minority Leadership Training Program and Women's Leadership Training Program.
- Provided diversity, social justice, LGBTQ, bullying, sexual harassment, cultural competency, and ELL training to assist Association, leaders, and members.
- Coordinated the engagement of Human and Civil Rights State Coordinators to support greater connection to the human and civil rights and social economic justice work occurring at the national, state, and local level.

If this is what passes for "collective bargaining" it is no wonder that many of our K-12 schools, like Edina and St. Paul, are marked by increasing chaos, violence and achievement gaps. And that teachers, unhappy with their work environment and compensation, are leaving the profession at increasing rates. According to the

Minnesota Department of Education, 15 percent of teachers leave after the first year of teaching, and 32 percent are gone within five years.

Rebecca Friedrichs and other teachers argue that the profession of teaching and the K-12 educational system have been harmed by pervasive leftism and

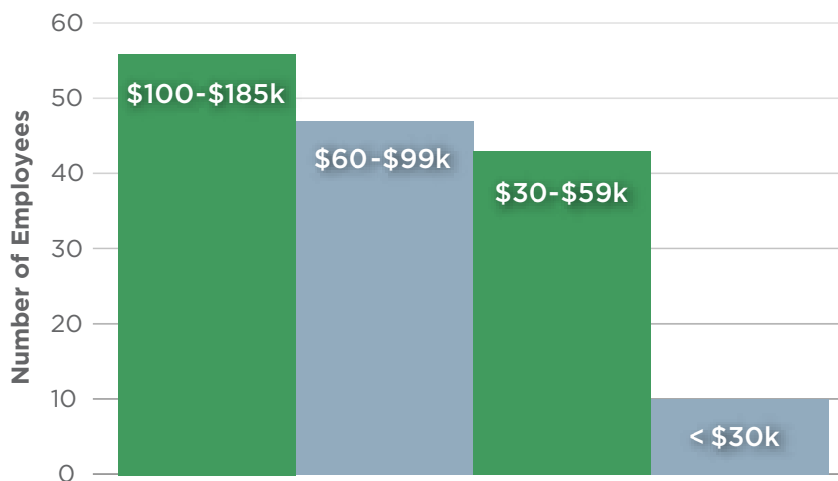
**[Mark] Janus, a social worker employed by the State of Illinois, is asking the Court to look back at a decision made by the Supreme Court in 1977 (*Abood v. Detroit Board of Education*) that upheld legislation forcing public-sector employees to pay "agency" or so-called "fair-share" fees to government unions.**

its obsession with identity politics, so aggressively espoused by the teachers' union. Here is more union spending data to prove it.

**Union Spending: The Union as an Enterprise and Powerful Political Player.** Education Minnesota files disclosure forms with information about its revenues. Unfortunately, these disclosure forms provide very limited and often confusing data about how the revenues are spent.

According to California Policy Cen-

**FIGURE 1: 2016 SALARY RANGES FOR 156 EDUCATION MINNESOTA EMPLOYEES**



ter’s union expert Ed Ring, “In general, public-sector unions have very few reporting requirements when it comes to disclosing their financial positions to their members and to the public... Under state law, the financial reporting requirements of the public-sector unions are more scant than under federal law. In fact, they are almost non-existent.”

The data that is available supports the conclusion, however, that the entire enterprise of Education Minnesota is devoted to the preservation of the union, its power and the advancement of a distinctly leftist political agenda.

Education Minnesota collected about \$57 million in dues or fees (between \$800 and \$1,400 per teacher) in 2015-2016 and reported total disbursements of \$60,356,998 with only \$2.7 million going toward “Representational Activities” as

defined by Education Minnesota.

The data about the union as an enterprise should be of special interest to teachers.

Education Minnesota’s federal financial report detailed the salaries of 156 employees, from the president Denise Specht who earned \$184,000, to dozens of employees paid \$90,000 to \$180,000 and dozens of operatives who earn much more than teachers in the classroom. Education Minnesota spent approximately \$21 million on salaries and benefits for its own employees in 2016.

The union also reported spending \$1.3 million on “Political Activities and Lobbying” but detail was only provided for \$534,691 of those disbursements. Two notable transactions include: \$25,000 to Women Winning—a women’s advocacy organization “more dedicated than ever”

following Hillary Clinton’s defeat to “electing pro-choice women to all levels of public office”—and \$20,000 to Minnesota Voice—a nonprofit devoted to getting out the vote among the “under-represented” and grassroots “democracy.”

**The PAC and the Foundation.** Education Minnesota uses its membership card to collect revenue for a political action committee (PAC), currently a charge of \$25.00 a year. The union card also authorizes the payment of \$5.00 a year toward the Education Minnesota Foundation for Excellence in Teaching and Learning, an educational non-profit.

If a teacher does not wish to contribute to the PAC or foundation, he or she must request a refund every year. In other words, teachers must “opt out” annually. This default in favor of funding the PAC

## How Does Education Minnesota Spend its PAC Money?



**\$1,021,772**

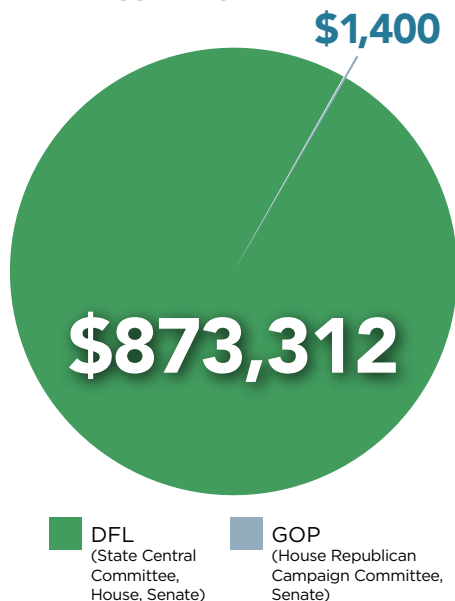
and the foundation makes it unlikely that teachers will do the annual paperwork required to save \$30.00.

Here are the instructions:

Members desiring a refund from either the PAC or the foundation must mail, email or hand deliver a signed original refund request form specifying the member's refund request within 30 days of submitting this membership application form. Members can request the form by calling 800-652-9073.

**How is PAC Money Spent?** DFL political affiliates, such as the DFL House Caucus and DFL Senate Districts, received \$873,000 in contributions (cash and in-kind donations) compared to \$1,400 that went to the House Republican Campaign Committee and the GOP

**FIGURE 2:**  
2016 CONTRIBUTIONS TO  
POLITICAL PARTIES BY EDUCATION  
MINNESOTA PAC



Senate Victory fund. (See Figure 2)

The PAC also disbursed over \$1 million to political committees and political funds. These organizations and funds align with left-wing ideologies and overwhelmingly support Democratic or DFL candidates. (See illustration on page 33)

What would happen if instead of obsessing over race, gender and other

identity politics, and working so hard to divide us, Education Minnesota focused on supporting teachers as professionals so all children, no matter their zip code, learn to read, write and do arithmetic?

**Teachers All Over Minnesota in 2016 were “With Her” Whether They “Felt the Bern” or “Wanted to Make America Great Again.”** While the teaching profession as a group leans “liberal,” teachers in Minnesota are split

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between the GOP and the DFL, and some are “independent.”

But even if all teachers were Democrats, and fully embraced the same political ideology as Education Minnesota, is it proper for the state to facilitate and collect the payment of forced union dues that are spent in support of the union’s political activities?

Wouldn’t it be more appropriate for teachers, and other public employees, to make a voluntary donation to the party and candidates of their choice in a transaction entirely separate from the collection of union dues? After all, within the DFL, there are hotly contested races and policy debates. Why are teachers forced to support the candidate or issue that the union prefers, in effect spending against and undermining their own political preferences?

Teachers, for example, who supported presidential candidate Bernie Sanders in 2016 were forced to support Hillary

Clinton and the DNC. And teachers who supported a Republican candidate were forced to support Clinton and the DNC.

**How has Education Minnesota Responded to Janus?** In the summer of 2017, Education Minnesota increased union dues by \$14. The union told members the increase would be used, in anticipation of *Janus*, to get all teachers to sign an auto-renewal union card. The union is not confident that when given a choice, teachers will remain in the union, so it plans to trap them.

Here is what the link on the front page of Education Minnesota’s website says:

Renew your membership. Show your commitment to our union. We’re asking all active members to show administration, students, communities and each other that we are committed to working together to improve public education.

But here is the fine print of the union card; the font is so small, that it is difficult to read:

I agree to submit dues to Education Minnesota and hereby request and voluntarily authorize my employer to deduct from my wages.... This authorization shall remain in effect and *shall be automatically renewed from year to year, irrespective of my membership in the union, unless I revoke it by submitting written notice to both my employer and the local union during the seven-day period that begins on September 24 and ends on September....* (Emphasis added)

If Janus wins, even if a teacher “opts out” during that narrow seven-day window, the union is expected to argue that he or she will have to do it again the following year. And every year after that.

That is why several *amicus* briefs, including the Friedrichs’ *amicus* brief, cited Education Minnesota’s “renewal card” as an example of how unions plan to undermine a decision in favor of Janus. *The Wall Street Journal* editors noted, “Rebecca Friedrichs argues persuasively that the Court should require that governments receive affirmative

consent to deduct union dues. Otherwise, governments may concoct bureaucratic obstacles to workers who want to opt out of unions...”

**An Opportunity for Unions to Change.** What would happen if instead of treating teachers as captives, Education Minnesota treated teachers as valued clients or potential customers? What would happen if Education Minnesota could no longer take its revenues for granted, or get dues collected by the state?

We can look to our neighbors in Michigan and Wisconsin for a range of answers.

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In states like Michigan that have recently passed right-to-work laws, about 25 percent of teachers stopped paying dues, according to the Mackinac Center. Wisconsin, which saw a more dramatic change, adopted right-to-work, but it went even further by limiting the scope of bargaining and ending the collection of dues for the unions (Act 10).

According to the MacIver Institute, “Before the passage of Act 10, the state’s largest teachers’ union had almost 100,000 members. As of 2015, the union stood at just 36,074 active members. WEAC [Wisconsin Education Association Council] also suffered the largest revenue decline among all state teachers’ unions in 2014-15. During just that time, the union’s revenue dropped

## ‘FOR KIDS & COUNTRY’

**Rebecca Friedrichs may have lost last year’s court battle over fair-share, but she maintains her fervor for the ongoing battle.**

**Win or lose,** Rebecca Friedrichs is looking to the future with a new movement called “For Kids & Country” ([www.ForKidsAndCountry.com](http://www.ForKidsAndCountry.com)). She is deploying her decades of experience as an educator to tell the country about how the teachers’ union has pulled our schools, and our nation, down. “For Kids & Country” tells the stories of teachers, parents and students bullied by teachers’ unions across the country.

Says Friedrichs: “As a teacher, I have been forced for decades to fund a union whose policies and political agenda undermine the sacred ‘Education Triangle’—the relationship between teachers and the children and parents we’re hired to serve—thus damaging American schools. I hope the Court will end the practice of forced unionism by restoring First Amendment rights to Americans like me so the Education Triangle can be restored, and unions can learn to serve the needs of employees instead of serving themselves.”

more than \$3 million. Symbolizing its sharp decline as a political powerhouse propped up by coercive dues money, the union even put its lavish 51,000-square-foot headquarters up for sale in 2016.”

According to the United Federation of Teachers, a union affiliate, “The labor movement’s footprint in Wisconsin has shrunk. Last year, less than half of Wisconsin’s 464 school districts had certified teachers’ unions, the Wisconsin Employment Relations Commission reported. Statewide, only 9 percent of Wisconsin workers were unionized in 2016, down from 14.1 percent in 2011.”

MacIver reports that overall public-sector union membership, however, is up. “While union membership is now confined to those workers who actually want to be in a union, the number of state and local government workers in Wisconsin has increased by 10,000 between 2013 and 2016, according to the Census Bureau. So claims by people like [AFSCME President Lee] Saunders that letting workers opt out of a union will decimate public services simply aren’t true.”

**Conclusion.** The *Abood* decision allows states to treat public employees as second-class citizens, and sanctioned

a massive transfer of wealth from the paychecks of teachers, cops and social workers, into the coffers of government unions. These affiliated unions quickly became the most formidable and well-funded political machine in the country.

That machine has corrupted the electoral and legislative process from local school board elections to the presidency of the United States; government unions, for almost half a century, are a major player in determining who runs for office and who wins. In effect, they elect who they will be bargaining with, and sit on both sides of the table. Is it any wonder that Americans are frustrated with our government and the tenor of politics today?

All because the Court refused to admit in 1977 that public-sector bargaining is political.

If the Court rules for *Janus*, the case will mark the beginning of a new era in Minnesota, where public employee support is not taken for granted. It will not mark the end of conflict between left and right, or the end of public unions, but over time, the most divisive forces on the left, that fuel so much division and chaos, will have a lot less money to do so. ★