

In the Supreme Court of the United States

MARK JANUS,
PETITIONER,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND
MUNICIPAL EMPLOYEES, COUNCIL 31, ET AL.,
RESPONDENTS.

**On Writ of Certiorari to the United States Court of Appeals
for the Seventh Circuit**

JOINT MOTION OF RESPONDENTS FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, respondents American Federation of State, County, and Municipal Employees, Council 31 (“AFSCME”) and respondents Lisa Madigan and Michael Hoffman (“State respondents”) respectfully move for divided argument in this case. Each respondent requests 15 minutes of argument time, with counsel for the State respondents to appear first and counsel for AFSCME to appear second. This division of argument time will ensure that both sets of respondents have their interests fully represented and their arguments fully conveyed by counsel, and that the Court receives a full understanding of the interests and perspectives of all respondents. Petitioner has informed respondents’ counsel that he has no objection to this motion.

1. This case presents the question whether *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), which holds that the First Amendment permits a

public employer and an exclusive representative to enter into an agreement providing for employees to pay a fee to cover their proportionate share of the costs of collective bargaining, contract administration, and grievance resolution, but not to support a union's political or ideological speech, should be overruled.

2. AFSCME was a named defendant in the complaint filed in the district court, receives the agency fees challenged by petitioner, and participates directly in the collective bargaining activities that are supported by those fees. Illinois Attorney General Lisa Madigan intervened in the district court proceedings as a defendant on behalf of the People of the State of Illinois. Petitioner later filed a second amended complaint against AFSCME, Attorney General Madigan, and state respondent Michael Hoffman, the Acting Director of the Illinois Department of Central Management Services.

The respondents have distinct interests and perspectives concerning the question presented. As a union, AFSCME seeks to advance its interests in continued access to fair and adequate funding through agency fees. As an employer, the State seeks to advance its interest in ensuring that this Court adheres to its consistent solicitude for the prerogatives of States when they act not as sovereigns to regulate their citizens but as employers to manage their personnel. Each set of respondents has been represented by separate counsel throughout this case and continues to be so represented.

3. When both state government parties and private parties appear on the same side of a case, this Court regularly hears oral argument from both. *See, e.g.,*

Masterpiece Cake Shop, Ltd., et al. v. Colorado Civil Rights Commission, et al., 138 S. Ct. 466 (2017) (mem.); *Wittman v. Personhuballah*, 136 S. Ct. 1241 (2016) (mem.); *Friedrichs v. California Teachers Ass’n*, 136 S. Ct. 566 (2015) (mem.); *Harris v. Ariz. Indep. Redistricting Comm’n*, 136 S. Ct. 533 (2015) (mem.); *Utility Air Regulatory Group v. EPA*, 135 S. Ct. 1541 (2015) (mem.); *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 884 (2014) (mem.). See also *Gill v. Whitford*, 138 S. Ct. 52 (2017) (mem.) (granting divided argument motion of Wisconsin State Senate and Wisconsin State Assembly); *Murr v. Wisconsin*, 137 S. Ct. 266 (2016) (mem.) (granting divided argument motions of respondents Wisconsin and St. Croix County). Granting divided argument recognizes the distinct sovereign interests of a government in representing itself as well as the interests of private parties. For instance, in *Friedrichs*, which also involved the question whether *Abod* should be overruled, this Court granted three-way divided argument between the State of California, a union, and the United States, which at that time supported preserving *Abod*. Similarly, in *Masterpiece Cakeshop*, both the State and private respondents were permitted to argue in defense of Colorado’s public accommodations law against a First Amendment challenge. Divided argument is similarly justified here.

Counsel for each set of respondents will be in the best position to expand upon the arguments presented in their separate merits briefs as to the constitutionality of Illinois’s law authorizing the assessment of agency fees and the harms that overruling *Abod* would cause. Division of the argument is therefore likely to materially assist the Court in its consideration of the case.

4. In light of the United States' *amicus* filing, petitioner and the United States are likely to seek divided argument as well.

For these reasons, respondents jointly request that the Court divide oral argument time equally between them, with counsel for the State respondents presenting argument first and counsel for AFSCME presenting second.

Respectfully submitted,

/s/ David L. Franklin

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