IN THE SUPREME COURT OF THE UNITED STATES

No. 16-1466

MARK JANUS, PETITIONER

v.

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

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting petitioner. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

1. This case involves a First Amendment challenge to an Illinois statute that permits public employers to require public employees to pay agency fees -- which are "their proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and other conditions of employment" -- to the unions that represent them. 5 Ill. Comp. Stat. Ann. 315/6(a) (West 2013); see Harris v. Quinn, 134 S. Ct. 2618, 2625 (2014) (discussing this statute).

Petitioner is an Illinois public employee who chose not to join the union that represents his bargaining unit and who objects to paying agency fees. He intervened in a First Amendment challenge to the union's collection of compulsory agency fees. The district court and the court of appeals held that his claim was foreclosed by Abood v. Detroit Board of Education, 431 U.S. 209 (1977), which authorized the collection of mandatory agency fees by public-sector unions for "collective-bargaining, contract administration, and grievance-adjustment purposes," id. at 232.

The United States has filed a brief as amicus curiae supporting petitioner's contention that this Court should overrule Abood. The brief argues that requiring public employees to pay agency fees necessarily implicates speech on public-policy issues and can be justified only if the law satisfies "exacting First Amendment scrutiny." Harris, 134 S. Ct. at 2639 (quoting Knox v. Service Emps. Int'l Union, 567 U.S. 298, 310 (2012)). The brief

argues that the Illinois law at issue here does not satisfy the required level of First Amendment scrutiny, because the State could meet its objectives through "means significantly less restrictive of associational freedoms," ibid., as demonstrated by the fact that the federal government and many States do not allow public-sector unions to charge compulsory agency fees.

2. The United States has a substantial interest in the resolution of this case. The federal government is the nation's largest public employer, and the United States administers federal statutes that address the legality of agency fees in the private sector. See 29 U.S.C. 158(a)(3), 164(b); 45 U.S.C. 152 (Eleventh). The United States has accordingly participated in oral argument as amicus curiae in previous cases involving agency fees, including two recent cases in which this Court considered requests to overrule Abood. See Friedrichs v. California Teachers Ass'n, 136 S. Ct. 1083 (2016) (per curiam); Harris, 134 S. Ct. 2618; see also, e.g., Davenport v. Washington Educ. Ass'n, 551 U.S. 177 (2007). The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

JANUARY 2018