SUPREME COURT OF THE UNITED STATES

Syllabus

Janus *v.* American Federation of State, County, and Municipal Employees,Council 31, et al.

No. 16–1466. Argued February 26, 2018—Decided June 27, 2018

Illinois law permits public employees to unionize. If a majority of the employees in a bargaining unit vote to be represented by a union, that union is designated as the exclusive representative of all the employees, even those who do not join. Only the union may engage in collective bargaining; individual employees may not be represented by another agent or negotiate directly with their employer. Nonmembers are required to pay what is generally called an "agency fee," *i.e.*, a percentage of the full union dues. Under *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209, 235–236, this fee may cover union expenditures attributable to those activities "germane" to the union's collective-bargaining activities (chargeable expenditures), but may not cover the union's political and ideological projects (nonchargeable expenditures). The union sets the agency fee annually and then sends nonmembers a notice explaining the basis for the fee and the breakdown of expenditures. Here it was 78.06% of full union dues.

Petitioner Mark Janus is a state employee whose unit is represented by a public-sector union (Union), one of the respondents. He refused to join the Union because he opposes many of its positions, including those taken in collective bargaining. Illinois' Governor, similarly opposed to many of these positions, filed suit challenging the constitutionality of the state law authorizing agency fees. The state attorney general, another respondent, intervened to defend the law, while Janus moved to intervene on the Governor's side. The District Court dismissed the Governor's challenge for lack of standing, but it simultaneously allowed Janus to file his own complaint challenging the constitutionality of agency fees. The District Court granted respondents' motion to dismiss on the ground that the claim was foreclosed by *Abood*. The Seventh Circuit affirmed.

Held:

1. The District Court had jurisdiction over petitioner's suit. Petitioner was undisputedly injured in fact by Illinois' agency-fee scheme and his injuries can be redressed by a favorable court decision. For jurisdictional purposes, the court permissibly treated his amended complaint in intervention as the operative complaint in a new lawsuit. *United States ex rel. Texas Portland Cement Co.* v. *McCord*, 233 U. S. 157, distinguished. Pp. 6–7.

2. The State's extraction of agency fees from nonconsenting public-sector employees violates the First Amendment. *Abood* erred in concluding otherwise, and *stare decisis* cannot support it. *Abood* is therefore overruled. Pp. 7–47.

(a) *Abood*'s holding is inconsistent with standard First Amendment principles. Pp. 7–18.

(1) Forcing free and independent individuals to endorse ideas they find objectionable raises serious First Amendment concerns. *E.g.*, *West Virginia Bd. of Ed.* v. *Barnette*, 319 U. S. 624, 633. That includes compelling a person to subsidize the speech of other private speakers. *E.g.*, *Knox* v. *Service Employees*, 567 U. S. 298, 309. In *Knox* and *Harris* v. *Quinn*, 573 U. S. ___, the Court applied an "exacting" scrutiny standard in judging the constitutionality of agency fees rather than the more traditional strict scrutiny. Even under the more permissive standard, Illinois' scheme cannot survive. Pp. 7–11.

(2) Neither of *Abood*'s two justifications for agency fees passes muster under this standard. First, agency fees cannot be upheld on the ground that they promote an interest in "labor peace." The *Abood* Court's fears of conflict and disruption if employees were represented by more than one union have proved to be unfounded: Exclusive representation of all the employees in a unit and the exaction of agency fees are not inextricably linked. To the contrary, in the Federal Government and the 28 States with laws prohibiting agency fees, millions of public employees are represented by unions that effectively serve as the exclusive representatives of all the employees. 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.

Second, avoiding "the risk of 'free riders,' " *Abood*, *supra*, at 224, is not a compelling state interest. Free-rider "arguments . . . are generally insufficient to overcome First Amendment objections," *Knox*,*supra*, at 311, and the statutory requirement that unions represent members and nonmembers alike does not justify different treatment. As is evident in non-agency-fee jurisdictions, unions are quite willing to represent nonmembers in the absence of agency fees. And their duty of fair representation is a necessary concomitant of the authority that a union seeks when it chooses to be the exclusive representative. In any event, States can avoid free riders through less restrictive means than the imposition of agency fees. Pp. 11–18.

(b) Respondents' alternative justifications for *Abood* are similarly unavailing. Pp. 18–26.

(1) The Union claims that *Abood* is supported by the First Amendment's original meaning. But neither founding-era evidence nor dictum in *Connick* v. *Myers*, 461 U. S. 138, 143, supports the view that the First Amendment was originally understood to allow States to force public employees to subsidize a private third party. If anything, the opposite is true. Pp. 18–22.

(2) Nor does *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, provide a basis for *Abood*. *Abood* was not based on *Pickering*, and for good reasons. First, *Pickering*'s framework was developed for use in cases involving "one employee's speech and its impact on that employee's public responsibilities," *United States* v. *Treasury Employees*, 513 U. S. 454, 467, while *Abood* and other agency-fee cases involve a blanket requirement that all employees subsidize private speech with which they may not agree. Second, *Pickering*'s framework was designed to determine whether a public employee's speech interferes with the effective operation of a government office, not what happens when the government compels speech or speech subsidies in support of third parties. Third, the categorization schemes of *Pickering* and *Abood* do not line up. For example, under *Abood*, nonmembers cannot be charged for speech that concerns political or ideological issues; but under *Pickering*, an employee's free speech interests on such issues could be overcome if outweighed by the employer's interests. Pp. 22–26.

(c) Even under some form of *Pickering*, Illinois' agency-fee arrangement would not survive. Pp. 26–33.

(1) Respondents compare union speech in collective bargaining and grievance proceedings to speech "pursuant to [an employee's] official duties," *Garcetti* v. *Ceballos*, 547 U. S. 410, 421, which the State may require of its employees. But in those situations, the employee's words are really the words of the employer, whereas here the union is speaking on behalf of the employees. *Garcetti* therefore does not apply. Pp. 26–27.

(2) Nor does the union speech at issue cover only matters of private concern, which the State may also generally regulate under *Pickering*. To the contrary, union speech covers critically important and public matters such as the State's budget crisis, taxes, and collective bargaining issues related to education, child welfare, healthcare, and minority rights. Pp. 27–31.

(3) The government's proffered interests must therefore justify the heavy burden of agency fees on nonmembers' First Amendment interests. They do not. The state interests asserted in *Abood*—promoting "labor peace" and avoiding free riders—clearly do not, as explained earlier. And the new interests asserted in *Harris* and here—bargaining with an adequately funded agent and improving the efficiency of the work force—do not suffice either.

Experience shows that unions can be effective even without agency fees. Pp. 31–33.

(d) *Stare decisis* does not require retention of *Abood*. An analysis of several important factors that should be taken into account in deciding whether to overrule a past decision supports this conclusion. Pp. 33–47.

(1) *Abood* was poorly reasoned, and those arguing for retaining it have recast its reasoning, which further undermines its *stare decisis* effect, *e.g.*, *Citizens United* v. *Federal Election Comm'n*, 558 U. S. 310, 363. *Abood* relied on *Railway Employes* v. *Hanson*, 351 U. S. 225, and *Machinists* v. *Street*, 367 U. S. 740, both of which involved private-sector collective-bargaining agreements where the government merely authorized agency fees. *Abood* did not appreciate the very different First Amendment question that arises when a State *requires* its employees to pay agency fees. *Abood* also judged the constitutionality of public-sector agency fees using *Hanson*'s deferential standard, which is inappropriate in deciding free speech issues. Nor did *Abood* take into account the difference between the effects of agency fees in public- and private-sector collective bargaining, anticipate administrative problems with classifying union expenses as chargeable or nonchargeable, foresee practical problems faced by nonmembers wishing to challenge those decisions, or understand the inherently political nature of public-sector bargaining. Pp. 35–38.

(2) *Abood*'s lack of workability also weighs against it. Its line between chargeable and nonchargeable expenditures has proved to be impossible to draw with precision, as even respondents recognize. See, *e.g.*, *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 519. What is more, a nonmember objecting to union chargeability determinations will have much trouble determining the accuracy of the union's reported expenditures, which are often expressed in extremely broad and vague terms. Pp. 38–41.

(3) 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. *United States* v. *Gaudin*, 515 U. S. 506, 521. *Abood* relied on an assumption that "the principle of exclusive representation in the public sector is dependent on a union or agency shop," *Harris*, 573 U. S., at ___–___, but experience has shown otherwise. It was also decided when public-sector unionism was a relatively new phenomenon. Today, however, public-sector union membership has surpassed that in the private sector, and that ascendency corresponds with a parallel increase in public spending. *Abood* is also an anomaly in the Court's First Amendment jurisprudence, where exacting scrutiny, if not a more demanding standard, generally applies. Overruling *Abood* will also end the oddity of allowing public employers to compel union support (which is

not supported by any tradition) but not to compel party support (which is supported by tradition), see, *e.g.*, *Elrod* v. *Burns*, 427 U. S. 347. Pp. 42–44.

(4) Reliance on *Abood* does not carry decisive weight. The uncertain status of *Abood*, known to unions for years; the lack of clarity it provides; the short-term nature of collective-bargaining agreements; and the ability of unions to protect themselves if an agency-fee provision was crucial to its bargain undermine the force of reliance. Pp. 44–47.

3. For these reasons, States and public-sector unions may no longer extract agency fees from nonconsenting employees. The First Amendment is violated when money is taken from nonconsenting employees for a public-sector union; employees must choose to support the union before anything is taken from them. Accordingly, 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. Pp. 48–49.

851 F. 3d 746, reversed and remanded.

Alito, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Thomas, and, Gorsuch, JJ., joined. Sotomayor, J., filed a dissenting opinion. Kagan, J., filed a dissenting opinion, in which Ginsburg, Breyer, and Sotomayor, JJ., joined.

Justice Alito delivered the opinion of the Court.

Under Illinois law, public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities. We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.

We upheld a similar law in *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977), and we recognize the importance of following precedent unless there are strong reasons for not doing so. But there are very strong reasons in this case. Fundamental free speech rights are at stake. *Abood* was poorly reasoned. It has led to practical problems and abuse. It is inconsistent with other First Amendment cases and has been undermined by more recent decisions. Developments since *Abood* was handed down have shed new light on the issue of agency fees, and no reliance interests on the part of public-sector unions are sufficient to justify the perpetuation of the free speech violations that *Abood* has countenanced for the past 41 years. *Abood* is therefore overruled.

B

In *Abood*, the main defense of the agency-fee arrangement was that it served the State's interest in "labor peace," 431 U. S., at 224. By "labor peace," the *Abood* Court meant avoidance of the conflict and disruption that it envisioned would occur if the employees in a unit were represented by more than one union. In such a situation, the Court predicted, "inter-union rivalries" would foster "dissension within the work force," and the employer could face "conflicting demands from different unions." *Id.*, at 220–221. Confusion would ensue if the employer entered into and attempted to "enforce two or more agreements specifying different terms and conditions of employment." *Id.*, at 220. And a settlement with one union would be "subject to attack from [a] rival labor organizatio[n]." *Id.*, at 221.

We assume that "labor peace," in this sense of the term, is a compelling state interest, but *Abood* cited no evidence that the pandemonium it imagined would result if agency fees were not allowed, and it is now clear that *Abood*'s fears were unfounded. The *Abood* Court assumed that designation of a union as the exclusive representative of all the employees in a unit and the exaction of agency fees are inextricably linked, but that is simply not true. *Harris*, *supra*, at ___ (slip op., at 31).

The federal employment experience is illustrative. Under federal law, a union chosen by majority vote is designated as the exclusive representative of all the employees, but federal law does not permit agency fees. See 5 U. S. C. §§7102, 7111(a), 7114(a). Nevertheless, nearly a million federal employees—about 27% of the federal work force—are union members.[1] The situation in the Postal Service is similar. Although permitted to choose an exclusive representative, Postal Service employees are not required to pay an agency fee, 39 U. S. C. §§1203(a), 1209(c), and about 400,000 are union members.[2] Likewise, millions of public employees in the 28 States that have laws generally prohibiting agency fees are represented by unions that serve as the exclusive representatives of all the employees.[3] Whatever may have been the case 41 years ago when *Abood* was handed down, it is now undeniable that "labor peace" can readily be achieved "through means significantly less restrictive of associational freedoms" than the assessment of agency fees. *Harris*, *supra*, at ___ (slip op., at 30) (internal quotation marks omitted).

C

In addition to the promotion of "labor peace," *Abood* cited "the risk of 'free riders' " as justification for agency fees, 431 U. S., at 224. Respondents and some of their *amici* endorse this reasoning, contending that agency fees are needed to prevent nonmembers from enjoying the benefits of union

representation without shouldering the costs. Brief for Union Respondent 34–36; Brief for State Respondents 41–45; see, *e.g.*, Brief for International Brotherhood of Teamsters as *Amicus Curiae* 3–5.

Petitioner strenuously objects to this free-rider label. He argues that he is not a free rider on a bus headed for a destination that he wishes to reach but is more like a person shanghaied for an unwanted voyage.

Whichever description fits the majority of public employees who would not subsidize a union if given the option, avoiding free riders is not a compelling interest. As we have noted, "free-rider arguments . . . are generally insufficient to overcome First Amendment objections." *Knox*, 567 U. S., at 311. To hold otherwise across the board would have startling consequences. Many private groups speak out with the objective of obtaining government action that will have the effect of benefiting nonmembers. May all those who are thought to benefit from such efforts be compelled to subsidize this speech?

Suppose that a particular group lobbies or speaks out on behalf of what it thinks are the needs of senior citizens or veterans or physicians, to take just a few examples. Could the government require that all seniors, veterans, or doctors pay for that service even if they object? It has never been thought that this is permissible. "[P]rivate speech often furthers the interests of nonspeakers," but "that does not alone empower the state to compel the speech to be paid for." *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 556 (1991) (Scalia, J., concurring in judgment in part and dissenting in part). In simple terms, the First Amendment does not permit the government to compel a person to pay for another party's speech just because the government thinks that the speech furthers the interests of the person who does not want to pay.[4]

Those supporting agency fees contend that the situation here is different because unions are statutorily required to "represen[t] the interests of all public employees in the unit," whether or not they are union members. §315/6(d); see, *e.g.*, Brief for State Respondents 40–41, 45; *post*, at 7 (Kagan, J., dissenting). Why might this matter?

We can think of two possible arguments. It might be argued that a State has a compelling interest in requiring the payment of agency fees because (1) unions would otherwise be unwilling to represent nonmembers or (2) it would be fundamentally unfair to require unions to provide fair representation for nonmembers if nonmembers were not required to pay. Neither of these arguments is sound.

First, it is simply not true that unions will refuse to serve as the exclusive representative of all employees in the unit if they are not given agency fees. As noted, unions represent millions of public employees in jurisdictions that

do not permit agency fees. No union is ever compelled to seek that designation. On the contrary, designation as exclusive representative is avidly sought.[5] Why is this so?

Even without agency fees, designation as the exclusive representative confers many benefits. As noted, that status gives the union a privileged place in negotiations over wages, benefits, and working conditions. See §315/6(c). Not only is the union given the exclusive right to speak for all the employees in collective bargaining, but the employer is required by state law to listen to and to bargain in good faith with only that union. §315/7. Designation as exclusive representative thus "results in a tremendous increase in the power" of the union. *American Communications Assn.* v. *Douds*, 339 U. S. 382, 401 (1950).

In addition, a union designated as exclusive representative is often granted special privileges, such as obtaining information about employees, see §315/6(c), and having dues and fees deducted directly from employee wages, §§315/6(e)–(f). The collective-bargaining agreement in this case guarantees a long list of additional privileges. See App. 138–143.

These benefits greatly outweigh any extra burden imposed by the duty of providing fair representation for nonmembers. What this duty entails, in simple terms, is an obligation not to "act solely in the interests of [the union's] own members." Brief for State Respondents 41; see *Cintron* v. *AFSCME, Council 31*, No. S–CB–16–032, p. 1, 34 PERI ¶105 (ILRB Dec. 13, 2017) (union may not intentionally direct "animosity" toward nonmembers based on their "dissident union practices"); accord, *14 Penn Plaza LLC* v. *Pyett*, 556 U. S. 247, 271 (2009); *Vaca* v. *Sipes*, 386 U. S. 171, 177 (1967).

What does this mean when it comes to the negotiation of a contract? The union may not negotiate a collective-bargaining agreement that discriminates against nonmembers, see *Steele* v. *Louisville & Nashville R. Co.*, 323 U. S. 192, 202–203 (1944), but the union's bargaining latitude would be little different if state law simply prohibited public employers from entering into agreements that discriminate in that way. And for that matter, it is questionable whether the Constitution would permit a public-sector employer to adopt a collective-bargaining agreement that discriminates against nonmembers. See *id.*, at 198–199, 202 (analogizing a private-sector union's fair-representation duty to the duty "the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates"); cf. *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 69 (2006) (recognizing that government may not "impose penalties or withhold benefits based on membership in a disfavored group" where doing so "ma[kes] group membership less attractive"). To the extent that an employer would be barred from acceding to a discriminatory

agreement anyway, the union's duty not to ask for one is superfluous. It is noteworthy that neither respondents nor any of the 39 *amicus* briefs supporting them—nor the dissent—has explained why the duty of fair representation causes public-sector unions to incur significantly greater expenses than they would otherwise bear in negotiating collective-bargaining agreements.

What about the representation of nonmembers in grievance proceedings? Unions do not undertake this activity solely for the benefit of nonmembers—which is why Illinois law gives a public-sector union the right to send a representative to such proceedings even if the employee declines union representation. §315/6(b). Representation of nonmembers furthers the union's interest in keeping control of the administration of the collective-bargaining agreement, since the resolution of one employee's grievance can affect others. And when a union controls the grievance process, it may, as a practical matter, effectively subordinate "the interests of [an] individual employee . . . to the collective interests of all employees in the bargaining unit." *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36, 58, n. 19 (1974); see *Stahulak* v. *Chicago*, 184 Ill. 2d 176, 180–181, 703 N. E. 2d 44, 46–47 (1998); *Mahoney* v.*Chicago*, 293 Ill. App. 3d 69, 73–74, 687 N. E. 2d 132, 135–137 (1997) (union has " 'discretion to refuse to process' " a grievance, provided it does not act "arbitrar[ily]" or "in bad faith" (emphasis deleted)).

In any event, whatever unwanted burden is imposed by the representation of nonmembers in disciplinary matters can be eliminated "through means significantly less restrictive of associational freedoms" than the imposition of agency fees. *Harris*, 573 U. S., at ___ (slip op., at 30) (internal quotation marks omitted). Individual nonmembers could be required to pay for that service or could be denied union representation altogether.[6] Thus, agency fees cannot be sustained on the ground that unions would otherwise be unwilling to represent nonmembers.

Nor can such fees be justified on the ground that it would otherwise be unfair to require a union to bear the duty of fair representation. That duty is a necessary concomitant of the authority that a union seeks when it chooses to serve as the exclusive representative of all the employees in a unit. As explained, designating a union as the exclusive representative of nonmembers substantially restricts the nonmembers' rights. *Supra*, at 2–3. Protection of their interests is placed in the hands of the union, and if the union were free to disregard or even work against those interests, these employees would be wholly unprotected. That is why we said many years ago that serious "constitutional questions [would] arise" if the union were *not* subject to the duty to represent all employees fairly. *Steele*, *supra*, at 198.

In sum, we do not see any reason to treat the free-rider interest any differently in the agency-fee context than in any other First Amendment context. See *Knox*, 567 U. S., at 311, 321. We therefore hold that agency fees cannot be upheld on free-rider grounds.

VII

For these reasons, States and public-sector unions may no longer extract agency fees from nonconsenting employees. Under Illinois law, if a public-sector collective-bargaining agreement includes an agency-fee provision and the union certifies to the employer the amount of the fee, that amount is automatically deducted from the nonmember's wages. §315/6(e). No form of employee consent is required.

This procedure violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. *Johnson* v. *Zerbst*, 304 U. S. 458, 464 (1938); see also *Knox*, 567 U. S., at 312–313. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. *Curtis Publishing Co.* v. *Butts*, 388 U. S. 130, 145 (1967) (plurality opinion); see also *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U. S. 666, 680–682 (1999). Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

SUPREME COURT OF THE UNITED STATES

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No. 16–1466

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MARK JANUS, PETITIONER *v.* AMERICAN FEDER-ATION 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

[June 27, 2018]

Justice Kagan, with whom Justice Ginsburg, Justice Breyer, and Justice Sotomayor join, dissenting.

For over 40 years, *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977), struck a stable balance between public employees' First Amendment rights and government entities' interests in running their workforces as they thought proper. Under that decision, a government entity could require public employees to pay a fair share of the cost that a union incurs when negotiating on their behalf over terms of employment. But no part of that fair-share payment could go to any of the union's political or ideological activities.

That holding fit comfortably with this Court's general framework for evaluating claims that a condition of public employment violates the First Amendment. The Court's decisions have long made plain that government entities have substantial latitude to regulate their employees' speech—especially about terms of employment—in the interest of operating their workplaces effectively. *Abood* allowed governments to do just that. While protecting public employees' expression about non-workplace matters, the decision enabled a government to advance important managerial interests—by ensuring the presence of an exclusive employee representative to bargain with. Far from an "anomaly," *ante,* at 7, the *Abood* regime was a paradigmatic example of how the government can regulate speech in its capacity as an employer.

Not any longer. Today, the Court succeeds in its 6-year campaign to reverse *Abood*. See *Friedrichs* v. *California Teachers Assn.*, 578 U. S. ___ (2016) (*per curiam*); *Harris* v. *Quinn*, 573 U. S. ___ (2014); *Knox* v. *Service Employees*, 567 U. S. 298 (2012). Its decision will have large-scale consequences. Public employee unions will lose a secure source of financial support. State and local governments that thought fair-share provisions furthered their interests will need to find new ways of managing their workforces. Across the country, the relationships of public employees and employers will alter in both predictable and wholly unexpected ways.

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. More than 20 States have statutory schemes built on the decision. 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. I respectfully dissent.

A

Abood's reasoning about governmental interests has three connected parts. First, exclusive representation arrangements benefit some government entities because they can facilitate stable labor relations. In particular, such arrangements eliminate the potential for inter-union conflict and streamline the process of negotiating terms of employment. See 431 U. S., at 220–221. Second, the government may be unable to avail itself of those benefits unless the single union has a secure source of funding. The various tasks involved in representing employees cost money; if the union doesn't have enough, it can't be an effective employee representative and bargaining partner. See *id.*, at 221. And third, agency fees are often needed to ensure such stable funding. That is because without those fees, employees have every incentive to free ride on the union dues paid by others. See *id.*, at 222.

The majority does not take issue with the first point. See *ante,* at 33 (It is "not disputed that the State may require that a union serve as exclusive bargaining agent for its employees" in order to advance the State's "interests as an employer"). The majority claims that the second point never appears in *Abood*, but is willing to assume it for the sake of argument. See *ante,* at 31–32; but see *Abood*, 431 U. S., at 221 (The tasks of an exclusive representative "often entail expenditure of much time and money"). So the majority stakes everything on the third point—the conclusion that maintaining an effective system of exclusive representation often entails agency fees. *Ante*, at 12 (It "is simply not true" that exclusive representation and agency fees are "inextricably linked"); see *ante,* at 14.

But basic economic theory shows why a government would think that agency fees are necessary for exclusive representation to work. What ties the two together, as *Abood* recognized, is the likelihood of free-riding when fees are absent. Remember that once a union achieves exclusive-representation status, the law compels it to fairly represent all workers in the bargaining unit, whether or not they join or contribute to the union. See *supra,* at 4. Because of that legal duty, the union cannot give special advantages to its own members. And that in turn creates a collective action problem of nightmarish proportions. Everyone—not just those who oppose the union, but also those who back it—has an economic incentive to withhold dues; only altruism or loyalty—as *against* financial self-interest—can explain why an employee would pay the union for its services. And so emerged *Abood*'s rule allowing fair-share agreements: That rule ensured that a union would receive sufficient funds, despite its legally imposed disability, to effectively carry out its duties as exclusive representative of the government's employees.

The majority's initial response to this reasoning is simply to dismiss it. "[F]ree rider arguments," the majority pronounces, "are generally insufficient to overcome First Amendment objections." *Ante,* at 13 (quoting *Knox*, 567 U. S., at 311). "To hold otherwise," it continues, "would have startling consequences" because "[m]any private groups speak out" in ways that will "benefit[ ] nonmembers." *Ante,* at 13. But that disregards the defining characteristic of *this* free-rider argument—that unions, unlike those many other private groups, must serve members and non-members alike. Groups advocating for "senior citizens or veterans" (to use the majority's examples) have no legal duty to provide benefits to all those individuals: They can spur people to pay dues by conferring all kinds of special advantages on their dues-paying members. Unions are—by law—in a different position, as this Court has long recognized. See, *e.g., Machinists* v. *Street*, 367 U. S. 740, 762 (1961). Justice Scalia, responding to the same argument as the majority's, may have put the point best. In a way that is true of no other private group, the "law *requires* the union to carry" non-members—"indeed, requires the union to *go out of its way* to benefit [them], even at the expense of its other interests." *Lehnert* v. *Ferris Faculty Assn.*, 500 U. S. 507, 556 (1991) (opinion concurring in part and dissenting in part). That special feature was what justified *Abood*: "Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them." 500 U. S., at 556.

The majority's fallback argument purports to respond to the distinctive position of unions, but still misses *Abood*'s economic insight. Here, the majority delivers a four-page exegesis on why unions will seek to serve as an exclusive bargaining representative even "if they are not given agency fees." *Ante,*at 14; see *ante,* at 14–17. The gist of the account is that "designation as the exclusive representative confers many benefits," which outweigh the costs of providing services to non-members. *Ante,* at 15. But that response avoids the key question, which is whether unions without agency fees will be *able to* (not whether they will *want to*) carry on as an effective exclusive representative. And as to that question, the majority again fails to reckon with how economically rational actors behave—in public as well as private workplaces. Without a fair-share agreement, the class of union non-members spirals upward. Employees (including those who love the union) realize that they can get the same benefits even if they let their memberships expire. And as more and more stop paying dues, those left must take up the financial slack (and anyway, begin to feel like suckers)—so they too quit the union. See Ichniowski & Zax, Right-to-Work Laws, Free Riders, and Unionization in the Local Public Sector, 9 J. Labor Economics 255, 257 (1991).[1] And when the vicious cycle finally ends, chances are that the union will lack the resources to effectively perform the responsibilities of an exclusive representative—or, in the worst case, to perform them at all.

The result is to frustrate the interests of every government entity that thinks a strong exclusive-representation scheme will promote stable labor relations.

Of course, not all public employers will share that view. Some would rather not bargain with an exclusive representative. Others would prefer that representative to be poorly funded—to serve more as a front than an effectual bargaining partner. But as reflected in the number of fair-share statutes and contracts across the Nation, see *supra,* at 2, many government entities think that effective exclusive representation makes for good labor relations—and recognize, just as *Abood* did, that representation of that kind often depends on agency fees. See, *e.g., Harris*, 573 U. S., at ___ (slip op., at 24) (Kagan, J., dissenting) (describing why Illinois thought that bargaining with an adequately funded exclusive representative of in-home caregivers would enable the State to better serve its dis-abled citizens). *Abood* respected that state interest; today's majority fails even to understand it. Little wonder that the majority's First Amendment analysis, which involves assessing the government's reasons for imposing agency fees, also comes up short.

IV

There is no sugarcoating today's opinion. The majority overthrows a decision entrenched in this Nation's law—and in its economic life—for over 40 years. As a result, it prevents the American people, acting through their state and local officials, from making important choices about workplace governance. And it does so by weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy.

Departures from *stare decisis* are supposed to be "exceptional action[s]" demanding "special justification," *Rumsey*, 467 U. S., at 212—but the majority offers nothing like that here. In contrast to the vigor of its attack on *Abood*, the majority's discussion of *stare decisis* barely limps to the finish line. And no wonder: The standard factors this Court considers when deciding to overrule a decision all cut one way. *Abood*'s legal underpinnings have not eroded over time: *Abood* is now, as it was when issued, consistent with this Court's First Amendment law. *Abood* provided a workable standard for courts to apply. And *Abood* has generated enormous reliance interests. 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.

Because, that is, it wanted to pick the winning side in what should be—and until now, has been—an energetic policy debate. Some state and local governments (and the constituents they serve) think that stable unions

promote healthy labor relations and thereby improve the provision of services to the public. Other state and local governments (and their constituents) think, to the contrary, that strong unions impose excessive costs and impair those services. Americans have debated the pros and cons for many decades—in large part, by deciding whether to use fair-share arrangements. Yesterday, 22 States were on one side, 28 on the other (ignoring a couple of in-betweeners). Today, that healthy—that democratic—debate ends. The majority has adjudged who should prevail. Indeed, the majority is bursting with pride over what it has accomplished: Now those 22 States, it crows, "can follow the model of the federal government and 28 other States." *Ante,* at 47, n. 27.

And maybe most alarming, the majority has chosen the winners by turning the First Amendment into a sword, and using it against workaday economic and regulatory policy. Today is not the first time the Court has wielded the First Amendment in such an aggressive way. See, *e.g., National Institute of Family and Life Advocates* v. *Becerra*, *ante,* p. ___ (invalidating a law requiring medical and counseling facilities to provide relevant information to users); *Sorrell* v. *IMS Health Inc.,* 564 U. S. 552 (2011) (striking down a law that restricted pharmacies from selling various data). And it threatens not to be the last. Speech is everywhere—a part of every human activity (employment, health care, securities trading, you name it). For that reason, almost all economic and regulatory policy affects or touches speech. So the majority's road runs long. And at every stop are black-robed rulers overriding citizens' choices. The First Amendment was meant for better things. It was meant not to undermine but to protect democratic governance—including over the role of public-sector unions.