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MOTION:

That the School Committee go on record supporting the California Teachers Association in their lawsuit, Friedrichs v. the California Teachers Association, which is about ensuring that all staff who benefit from the collective bargaining agreements pay the share of union dues used to cover the costs of collective bargaining.

Sometime in early 2016, the U.S. Supreme Court will hear arguments in *Friedrichs v. the California Teachers Association et al.*, a closely watched California-based lawsuit with major implications for the state's teachers unions and potentially all public-employee unions. The lawsuit challenges the authority of the CTA and other public-employee unions to collect mandatory fees, a main source of their income and, by extension, their power. Here's a crash course in the case.

#### **WHAT IS FRIEDRICHS V. CALIFORNIA TEACHERS ASSOCIATION?**

*Friedrichs* is a lawsuit brought by 10 California teachers and a teachers group, Christian Educators Association International, that the U.S. Supreme Court has agreed to hear. The plaintiffs want the court to overturn a four-decades-old court decision in *Abood v. Detroit Board of Education*. That ruling said states could require all employees represented exclusively by a public-employee union to pay "fair-share" or "agency" fees – an equal portion of the bargaining costs related to wages, benefits and working conditions. Even employees who aren't members must pay these fees, although if the plaintiffs prevail, dues and fees for members and non-members would no longer be mandatory. Dues that union members pay include an additional, voluntary amount that covers the union's costs of campaigning for candidates who back the union and lobbying for issues that a majority of members view as important.

#### **WHO WOULD IT AFFECT?**

Half of the states, including California, have adopted laws establishing mandatory "fair share" or "agency" fees employees pay to unions. The remaining 25 "right to work" states either prohibit collective bargaining by public workers or ban mandatory dues. Although the case directly involves the CTA, and, though not a defendant, the smaller California Federation of Teachers, a decision could affect all unions representing public workers, depending how narrowly or broadly the Supreme Court rules.

## **WHO IS FRIEDRICHS?**

Rebecca Friedrichs is the lead plaintiff, an outspoken opponent of her teachers union who agreed to let her name become identified with the case. Friedrichs has taught elementary school for 28 years, mostly in the Savanna School District in Anaheim. You can listen to her discuss the case here, read a Q&A with her here, and read a commentary by her in the Orange County Register here.

## **WHY IS FRIEDRICHS SUCH A BIG DEAL?**

A victory by the teachers who filed the suit could significantly sap the financial strength and undermine the bargaining and political clout of the CTA and other public-employee unions by making all union dues voluntary. Unions would have to persuade employees to voluntarily pay hundreds of dollars to a union that is legally obligated to represent both members and non-members.

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### **Lawsuit challenges teachers' compulsory dues**

About 29,000 teachers – slightly less than 10 percent of the CTA's members – pay fair-share fees. If many of the remaining 90 percent of teachers stopped paying dues, the loss would jeopardize CTA's ability to adequately serve its members as well as the tens of millions of dollars the CTA and other powerful unions spend campaigning for union-friendly school board members and legislators. Two years after legislators rescinded Wisconsin's mandatory fees statute, in 2011, a third of that state's teachers had stopped paying dues.

## **HOW MUCH OF DUES GOES TO POLITICKING?**

For California teachers, about \$600 of their average \$1,000 annual dues goes toward their fair-share fees; it is divided among their local union, the California Teachers Association and the National Education Association for their expertise and representation. The remaining money pays for lobbying and campaigning at the local, state and federal levels. Public-employee unions have been a key supporter of the Democratic Party in California and nationwide.

Courtesy of Greg Schneider ([www.gregschneider.com](http://www.gregschneider.com))

*Rebecca Friedrichs, lead plaintiff in Friedrichs v. California Teachers Association.*

## **WHO IS UNDERWRITING THE CASE?**

The Center for Individual Rights, a Washington, D.C.-based public interest law firm whose mission is "the defense of individual liberties against the increasingly aggressive and unchecked authority of federal and state governments." It has pursued lawsuits seeking to ban affirmative action and racial and gender preferences, including California's Proposition 209.

### **WHAT ARE THE ARGUMENTS FOR OVERTURNING MANDATORY FEES?**

Friedrichs and the other plaintiffs argue that agency fees violate their First Amendment rights, because bargaining with the state is no different from lobbying; it's all "inherently political." They say that the CTA doesn't represent their interests on bargaining issues covered by fair-share fees. Therefore, the state shouldn't force them to financially underwrite a union they disagree with. "Whether the union is negotiating for specific class sizes or pressing a local government to spend tax dollars on teacher pensions rather than on building parks, the union's negotiating positions embody political choices that are often controversial," states the Center for Individual Rights, which is representing the plaintiffs.

### **WHAT ARE THE ARGUMENTS OF THE DEFENDANTS, THE CTA AND THE STATE OF CALIFORNIA?**

They say the court struck the right balance in *Abood*, in concluding that the state as an employer is well served when there is a stable and orderly system to convey the views of workers. Since unions must represent members and non-members, it's appropriate to require all who benefit from negotiations to share the costs. The loss of money from "free-riders" – those who benefit without paying – would threaten a union's ability to effectively represent employees.

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Unions also argue that they represent the views of the majority and those who disagree have the ability to make their views known. The plaintiffs "are simply wrong in declaring that it 'does not make a First Amendment difference' whether speech is part of lobbying the Legislature to enact a law or of negotiating a contract with the public employer," the CTA said in a brief to the Supreme Court.

### **WHEN WILL THE CASE BE HEARD?**

The Supreme Court has not yet set a date for oral arguments, which means probably early next year with a decision no later than the end of June. Organizations and individuals supporting the plaintiffs have already filed two dozen amicus briefs.

### **WHO MIGHT BE THE DECIDING VOTE?**

In this case, it's not Justice Anthony Kennedy, who usually is the swing vote in 5-4 cases, but conservative Justice Antonin Scalia. In a related 1991 Supreme Court decision, he wrote that mandatory fees were a permissible solution to the problem of free-ridership. "Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them; or, looked at from the other end, where the state creates in the nonmembers a legal entitlement from the union, it may

compel them to pay the cost," he wrote. Circumstances and the arguments haven't changed much in the past 25 years, so Court watchers are wondering how Scalia would justify reversing his position.

#### **HOW DO CALIFORNIANS VIEW THE ISSUE?**

Voters defeated an initiative to turn California into a right-to-work state in 1958, the last time they voted directly on the issue. However, like a seven-year itch, individuals and business groups seeking to reduce the political power of unions have unsuccessfully funded "paycheck protection" initiatives – in 1998, 2005 and 2012. They would have banned automatic dues deductions for political purposes, and in the 2012 version, prohibited businesses and unions from making any campaign contributions to candidates. Friedrichs would go further by banning mandatory dues deductions for any purpose.

#### **OTHER THAN OVERTURN ABOOD, WHAT ELSE MIGHT THE COURT DO?**

Every fall, California teachers who don't want to join the union must fill out a form stating that; otherwise, the union automatically deducts the full union dues from their paychecks. Attorneys for the teachers argue the onus should be on the union to ask them to belong, and so, as a fallback position, have asked the court to require that unions ask employees to affirmatively opt in every year to pay agency fees, instead of having to opt out of automatic dues collection.

#### **HOW DID LOWER COURTS DECIDE?**

They didn't, really. Lawyers for the plaintiffs acknowledged that their lawsuit hinged on having the Supreme Court reverse its prior Abood decision and so asked lower courts to expedite their rulings so they could quickly appeal to the Supreme Court. The federal district and 9th Circuit Court of Appeal did, without hearing full evidence and oral arguments. California Attorney General Kamala Harris argued the lack of a record showing the teachers were harmed was one reason the Supreme Court should not have taken the case.

### **Going Deeper**

- Coverage of Friedrichs v. CTA, past rulings, motions and briefs on SCOTUSblog
- The financial impact on public employee unions of eliminating fair-share dues, Economic Policy Institute, October 2015
- "Scalia may be critical vote in Friedrichs," Professor Catherine Fisk, June 2015
- EdSource Today coverage of the case

John Fensterwald covers education policy.

