2015

Section 1: Moot Court: Friedrichs v. California Teachers Association

Institute of Bill of Rights Law at The College of William & Mary School of Law

I. Moot Court

In This Section:

Friedrichs v. California Teachers Association

14-915

Ruling Below: *Friedrichs v. Cal. Teachers Ass'n*, 2013 U.S. Dist. LEXIS 188995 (C.D. Cal. Dec. 5, 2013)

California law requires every teacher working in most of its public schools to financially contribute to the local teachers' union and that union's state and national affiliates in order to subsidize expenses the union claims are germane to collective bargaining. California law also requires public school teachers to subsidize expenditures unrelated to collective bargaining unless a teacher affirmatively objects and then renews his or her opposition in writing every year.

The Plaintiff, Rebecca Friedrichs, a public school teacher in Orange County, California, objected to paying her "agency fee" union dues to the California Teachers Association (CTA) and filed suit. The District Court for the Central District of California ruled in favor of the CTA stating that the 1977 case *Abood v. Detroit Board of Education* requires that California teachers unaffiliated with the teacher's union must nevertheless pay union dues. The Ninth Circuit affirmed.

Question Presented: (1) Whether *Abood v. Detroit Board of Education* should be overruled and public-sector "agency shop" arrangements invalidated under the First Amendment; and (2) whether it violates the First Amendment to require that public employees affirmatively object to subsidizing nonchargeable speech by public-sector unions, rather than requiring that employees affirmatively consent to subsidizing such speech.

Rebecca FRIEDRICHS, et al.
v.
CALIFORNIA TEACHERS ASSOCIATION, et al.

United States District Court for the Central District of California

Decided on December 5, 2013

[Excerpt; some citations and footnotes omitted]

I. Background

Under California law, a union is allowed to become the exclusive bargaining representative for public school employees in a bargaining unit such as a public school district by submitting proof that a majority of employees in the unit wish to be represented by the union. Once a union becomes the exclusive bargaining representative within a district, it may establish an "agency-shop" arrangement with that district, whereby all

employees "shall, as a condition of continued employment, be required either to join the recognized employee organization or pay the fair share service fee." This "agency fee" is usually the same amount as the union dues.

California law limits the use of agency fees to activities "germane" to collective bargaining. Each year, unions must estimate the portion of expenses that do not fall into this category for the coming year, based on the non-chargeable portion of a recent year's fee. After the union has made this determination, it must send a notice to all non-members setting forth both the agency fee and the non-chargeable portions of the fee. If non-members do not wish to pay the non-chargeable portions of the fee—i.e., the portions of the fee going to activities not "germane" to collective bargaining—they must notify the union after receipt of the notice. Non-members who provide this notification receive a rebate or fee-reduction for that year.

Plaintiffs are (1) public school teachers who have resigned their union membership and object to paying the non-chargeable portion of their agency fee each year, and (2) the Christian Educators Association International, a non-profit religious organization "specifically serving Christians working in public schools." Defendants are (1) local unions for the districts in which the individual plaintiffs are employed as teachers and the superintendents of those local unions, (2) the National Education Association, and (3) the California Teachers Association.

Plaintiffs claim that "[b]y requiring Plaintiffs to make any financial contributions in support of any union, California's agency shop arrangement violates their rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution," and that "[b]y requiring Plaintiffs to undergo 'opt out' procedures to avoid making financial contributions in support of 'non-chargeable' union expenditures, California's agency-shop arrangement violates their rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution."

Plaintiffs move for judgment on the pleadings, but in Defendants' favor. Although Plaintiffs are not clear on whether they are asking the Court to grant or deny their Motion, Plaintiffs are clear that they are asking the Court to enter judgment in favor of Defendants. Accordingly, the Court construes the Motion such that granting the Motion would allow judgment to be entered and submitted in favor of Defendants.

II. Legal Standard

"After the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Motions for judgment on the pleadings are governed by the same standards applicable to Rule 12(b)(6) motions to dismiss. The Court "must accept all factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party." "Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgement as a matter of law."

III. Discussion

Plaintiffs urge the Court to enter judgment on the pleadings in favor of Defendants, contending that Plaintiffs' claims are "presently foreclosed by" *Abood v. Detroit Board of Education* and *Mitchell v. Los Angeles Unified School District*. In *Abood* the Supreme Court upheld the constitutional validity of compelling employees to support a particular collective bargaining representative and rejected the notion that the only funds from nonunion members that a union constitutionally could use for political or ideological causes were those funds that the nonunion members affirmatively consented to pay. The *Mitchell* court, following *Abood*, held that the First Amendment did not require an "opt in" procedure for nonunion members to pay fees equal to the full amount of union dues under an agency shop arrangement. The parties do not dispute that *Abood* and *Mitchell* foreclose Plaintiffs' claims, and the Court agrees that these decisions are controlling. Accordingly, the Court grants Plaintiffs' Motion and enters judgment on the pleadings in favor of Defendants.

IV. Conclusion

For the foregoing reasons, Plaintiffs' Motion for Judgment on the Pleadings is GRANTED. Judgment is entered in favor of Defendants. Plaintiffs' Motion for Preliminary Injunction is VACATED as moot.

“Supreme Court Takes up Major Case on Public Sector Union Fees”

Reuters
Lawrence Hurley
June 30, 2015

The U.S. Supreme Court on Tuesday agreed to take up a case that could weaken public sector unions, a challenge by 10 nonunion public school teachers who say California's requirement that they pay the equivalent of union dues violates their free speech rights.

The teachers have asked the court to upend a decades-old practice allowing public-sector unions to collect fees from workers who do not want union representation so long as the money is not spent on political activities.

The case comes as some Republican politicians, most notably Wisconsin Governor Scott Walker, have taken aim at public and private sector unions, which generally align themselves with Democrats. In 2011, Walker signed a law that limited collective bargaining rights for state workers. Walker, a likely 2016 presidential candidate, then prevailed in a union-backed 2012 recall election.

Unions, including the California Teachers Association, had urged the court not to hear the case, as did California Attorney General Kamala Harris, a Democrat.

"We are disappointed that ... the Supreme Court has chosen to take a case that threatens the fundamental promise of America - that if you work hard and play by the rules you should be able to provide for your family and live a decent life," the unions said in a statement.

The case targeting various teachers' unions offers the justices a chance to overturn a significant labor law precedent from 1977. In the case Abood v. Detroit Board of Education, the high court held that such payments to unions by nonmembers did not violate the U.S. Constitution's First Amendment free-speech guarantee because nonmembers otherwise would benefit from collective bargaining at no cost.

Members of the Supreme Court's conservative wing, including Justice Samuel Alito, have criticized the precedent.

The case could affect 7 million public-sector employees covered by collective bargaining agreements in more than 20 states, according to the Cato Institute, a libertarian think tank that filed a brief urging the court to hear the case.

'DECIDE FOR THEMSELVES'

The Center for Individual Rights, the nonprofit law firm representing the plaintiffs, welcomed the court taking the case.

"This case is about the right of individuals to decide for themselves whether to join and pay dues to an organization that purports to speak on their behalf. We are seeking the end of compulsory union dues across the nation on

the basis of the free speech rights guaranteed by the First Amendment," said Terry Pell, the group's president.

Under California's "agency-shop" system, public school teachers who do not join the union must pay a fee equal to union dues. Nonmembers can then seek a refund of the portion the union spent on lobbying and activities unrelated to collective bargaining or contract administration.

The conservative-leaning Supreme Court has signaled dissatisfaction with the Abood ruling.

In a 5-4 ruling in a 2012 case, Alito said Abood and subsequent cases "have substantially impinged upon the First Amendment rights of non-members" of public-sector unions.

Last year, the court declined to extend the Abood precedent to Illinois home-health workers. The 5-4 ruling stated that state-paid, in-home care workers cannot be compelled to pay union dues, but the court stopped short of blocking organized labor from collecting such fees from other public employees.

The 10 teachers, including lead plaintiff Rebecca Friedrichs, sued the unions in 2013 saying the "agency-shop" system violated their free speech rights. The teachers appealed to the Supreme Court after the 9th U.S. Circuit Court of Appeals ruled in favor of the unions in November 2014.

The court will hear arguments and issue a ruling in its next term, which starts in October and ends in June 2016.

The case is *Friedrichs et al, v. California Teachers Association, et al*, U.S. Supreme Court, No. 14-915.

“Supreme Court Ruling Could Give Strength to Teacher Suit”

U.S. News & World Report
Allie Bidwell
July 1, 2014

While a narrow Supreme Court ruling directly impacted just a relative handful of people, it elicited an outcry of a perceived war against workers and cast doubt on a long-standing precedent that could have troubling implications for teachers unions down the road.

In *Harris v. Quinn*, the court ruled 5-4 that Illinois could not force eight part-time home health care workers to contribute to union bargaining fees, and that doing so would be a violation of their First Amendment rights. Part of the issue hinged on how broadly a 1977 case on forced union dues extends. That case, *Abood v. Detroit Board of Education*, allows unions to require nonmembers to pay fees for collective bargaining, as long as the dues are not used for ideological or political purposes.

In the end, the justices refused to extend the precedent to the situation in Illinois, claiming the health care workers are "quite different from full-fledged public employees." But in the majority opinion, Justice Samuel Alito said the analysis that led to a decision in *Abood* is "questionable on several grounds." Collective bargaining issues, he wrote, are inherently political in the public sector.

"In the private sector, the line is easier to see. Collective bargaining concerns the union’s dealings with the employer; political advocacy and lobbying are directed at the government," Alito wrote. "But in the public sector, both collective bargaining and political advocacy and lobbying are directed at the government."

That sort of questioning previews the debates likely to take place in a wider-ranging case (*Friedrichs v. California Teachers Association*), in which a group of teachers is challenging several California teachers unions on the grounds that state laws requiring public employees to pay union dues – regardless of whether they support the union – are unconstitutional. The case, first filed in April 2013 and now before the U.S. Court of Appeals for the Ninth Circuit, seeks to overturn the 1977 *Abood* ruling.

Terry Pell, president of the Center for Individual Rights, which is representing the 10 California teachers, tells U.S. News his organization plans to petition the circuit court "in a few days" for expedited consideration so the case can move to the Supreme Court. The group could get a decision from the appellate court "certainly by the end of the year" and a possible hearing from the Supreme Court in the next term, Pell says.

"We’re not attacking collective bargaining. … That’s not at issue," Pell says. "All we’re saying is individual teachers get to decide whether to pay dues to that organization. You can have collective bargaining and you can

have a strong union, but you don’t have to have compulsory dues."

California teachers union dues can cost as much as $1,000 annually, according to the plaintiffs. While nonmember teachers can choose to opt out of the 30 to 40 percent of the dues explicitly devoted to lobbying, they must pay the remaining hundreds devoted to collective bargaining.

"Surely the state's interest in preventing 'free-riding' is diminished when the cost of the ride far exceeds its benefits," the Center for Individual Rights said in a brief submitted in the Supreme Court's *Harris* case.

Pell says the California case raises a broader question of forced compulsory dues and that the new Supreme Court decision makes it likely the justices would rule against unions.

"We're quite optimistic and hopeful that when our case gets to the court, we'll get a landmark decision," Pell says. "That would be huge."

If the precedent were to be overturned in the Supreme Court, it would be a big change for public unions, says Michael Brickman, national policy director for the Thomas B. Fordham Institute. Public employee unions, he says, rely on mandates that workers will join the union, or at least pay into "the coffers of the union, whether they want to or not."

"You've seen in some states where there’s been a removal or change to this mandate that a significant percentage of public workers don’t want to join the union and would rather represent themselves," Brickman says. "It will be certainly a case that both public employee unions and advocates for freedom for employees will be watching very closely."

After Wisconsin Gov. Scott Walker signed legislation in 2011 that limited collective bargaining, prohibited employers from collecting union dues and did not require members to pay dues, two major teachers unions in the state lost thousands of their members. The Milwaukee Journal-Sentinel reported the Wisconsin Education Association Council, a National Education Association (NEA) affiliate, had lost about one-third of its 98,000 members, and membership in the American Federation of Teachers' (AFT) Wisconsin affiliate decreased by 60 percent from its peak of 16,000 members.

Michigan and Indiana have passed similar laws limiting fee collection by public labor unions.

Teachers unions see compulsory fee collection as an issue of fairness: Whether nonunion members should "reap the wages, benefits and protections negotiated in a collectively bargained contract without needing to pay their fair share," as the California Teachers Association put it in a statement following the *Harris* ruling.

"Agency fees are a common-sense, straightforward way to ensure fairness and protect equity and individual rights," NEA President Dennis Van Roekel said in a statement. "Every educator who enjoys the benefits and protections of a negotiated

contract should, in fairness, contribute to maintaining the contract."

But it's not the first time the *Abood* precedent has been challenged. In a 2012 Supreme Court case, the justices ruled that unions' anti-free-riding argument would be "generally insufficient to overcome First Amendment objections."

Both national teachers unions – the NEA and the AFT – still pledged to continue their efforts following the Monday ruling. In a video message provided to Blue Nation Review, AFT President Randi Weingarten said the Supreme Court decision would "embolden" the union.

The Illinois AFT affiliate said the Monday ruling should make members "fight harder."

"Union members understand that what harms one of us harms us all," the group said in a statement. "It is more important than ever before that we organize in our workplaces to push back against these corporate attacks and fight for our ability to stand up for our schools and our communities. By strengthening our unions, we will ensure our voice is heard."

"The End of Public-Employee Unions?"

The Atlantic
Garrett Epps
February 20, 2015

Constitutional scholars sometimes like to commend courts for what they call "the passive virtues"—a reluctance to become involved in constitutional dispute, a reticence to announce new rules, a preference for standing by earlier decisions ("stare decisis").

Judges, too, like to cite what they call "the canon of constitutional avoidance," a set of rules designed to avoid unnecessary constitutional decisions. In Federalist 78, Alexander Hamilton promised that the new union's courts would have "have neither force nor will, but merely judgment."

The truth is that since at least *Marbury v. Madison*, Courts and Justices have hinted, signaled, begged, and reached out to litigants to bring them issues where one or more justice thinks the law needs to change. On the current Court, few of the Justices have signaled quite as vigorously as Justice Samuel Alito. Alito, a man of firm likes and dislikes, has twice questioned the constitutionality of public-employee contracts. Neither case, however, presented the chance to invalidate them.

Now his moment may have come. In response to Alito's hints, the issue has landed squarely in the Court's inbox in the form of a petition for review in a suit against the California Teachers Association. If Alito gets his desired result, it will deal a long-lasting blow to union power—and, perhaps by coincidence, the Democratic Party.

Here's the issue: Even in union states, public employees cannot be required to join a union. Such a requirement, the Court has said, would violate their First Amendment rights, because that would be the government requiring them to speak and associate against their will. However, state governments can sign agreements with unions designating the union as the official bargaining agent for all employees, members or not. The union then must represent both members and non-members—and representation costs money, in the form of lawyers, economists, researchers, and so forth. Non-members are thus potentially "free riders" who get a service paid for by their fellow workers.

In response, a compromise developed called the "agency-fee" or "fair-share" payment. Requiring objectors to pay for political activities or lobbying would be "compelled political speech," and violate the First Amendment. However, under the "fair share" system, non-members are charged a fee that excludes these political activities and is designated to cover only the chargeable costs of actual representation—negotiating contracts, administering benefit programs, and helping employees with grievances.

The "fair share" fee is Alito's current target. In a 1977 case called *Abood v. Detroit Board*

of Education, the Burger Court said the fees do not violate the First Amendment: "Public employees are not basically different from private employees," the Court said. "[O]n the whole, they have the same sort of skills, the same needs, and seek the same advantages." The subjects of collective bargaining are the same in either case. Wages and working conditions in the public sector have a political quality, but in their essence were more like the issues that private employers and their workers must negotiate. A state could decide that "exclusive representation" would make for a more orderly workplace; it could also decide to disallow "free riders." Neither decision violated the First Amendment. "A public employee who believes that a union representing him is urging a course that is unwise as a matter of public policy is not barred from expressing his viewpoint," the Court said. "Besides voting in accordance with his convictions, every public employee is largely free to express his views, in public or private orally or in writing."

Abood has become the basis for scores of public-employee contracts, and the Court has reaffirmed it at least four times over the past 30 years. But in 2011, a group of service workers in California challenged a union "special assessment" designed to fund an emergency campaign against certain anti-union measures proposed by then-Governor Arnold Schwarzenegger. The case was decided within the *Abood* framework; but in his majority opinion, Alito signaled his dislike of the entire line of cases. "[F]ree-rider arguments ... are generally insufficient to overcome First Amendment objections," he wrote. Agency fee agreements thus represent a First Amendment "anomaly—one that we have found to be justified by the interest in furthering 'labor peace.' But it is an anomaly nevertheless."

Anti-union groups hastened to explore this possible opening, and in the 2014 case of *Harris v. Quinn*, the Court faced a new challenge to "fair-share" payments by a group of home-health workers funded by a federal-state program. Though the workers were hired and supervised by the clients whose homes they worked in, the Illinois legislature voted to allow them to vote for a bargaining agent, and they chose the Service Employees International Union. Plaintiffs objected to the fees, and asked the Court to overturn *Abood* once and for all. In the end, however, the majority chose not to overturn *Abood*; instead, it reasoned that the home-health care workers were not "full-fledged" state employees, and thus the state had no need for "labor peace," as it might at a school or a government office.

But beyond that, Alito's majority opinion suggested that a majority was sick and tired of this *Abood* nonsense, and might be grateful if someone—anyone—would bring them a case that would drive a stake through its heart. The essence of the argument is that all expenses of public-employee bargaining are "political," because public-employee benefits, salaries, and pensions are paid for by taxpayers. Thus there is no "ordinary" collective bargaining, and financing any union dealings with government—even, say, a message saying, "Our union member X was discharged in violation of the contract"—is

forcing objectors to pay for "ideological speech."

In a sharp dissent, Justice Elena Kagan warned that "[t]he *Abood* rule is deeply entrenched, and is the foundation for not tens or hundreds, but thousands of contracts between unions and governments across the Nation. Our precedent about precedent, fairly understood and applied, makes it impossible for this Court to reverse that decision."

Nonetheless, a hopeful anti-union group—the Center for Individual Rights, represented by right-wing powerhouse lawyer Michael Carvin—is pressing another opportunity upon the Court. "This case is an excellent vehicle for reconsidering *Abood*," the cert petition notes; indeed so, because public-school teachers are unquestionably "full-fledged" state employees, and the petitioners can't win if *Abood* is good law.

This issue has an overwhelmingly partisan valence. For good or ill, public-employee unions are part of the base of the Democratic Party, and Justice Alito has made very clear that he sees the "fair-share" issue through a partisan lens. (At oral argument in Harris, he interrupted the Solicitor General's argument to suggest that what was really going on here was a crude Democratic power play: "I thought the situation was that Governor Blagojevich got a huge campaign contribution from the union and virtually, as soon as he got into office, he took out his pen and signed an executive order that had the effect of putting—what was it, $3.6 million into the union coffers?") An end to fair-share payments will mean a reduction in the strength of the unions, both in collective bargaining and as political actors. Many present members will continue to join the union even without the "fair share" payments. As new workers enter the workforce, though, many will make a cold judgment: Why should I pay the union to do something for me it's obligated to do anyway? Alito's opinion in Harris suggested that if unions are so all-fired great, employees will pay without being required to; Kagan tartly asked, "Does the majority think that public employees are immune from basic principles of economics?" If those laws apply, union membership will drop.

The Roberts Court does not always reach conservative results; but when the two parties have dogs in a fight, the majority finds itself mightily tempted to find that the GOP's preferred outcome is also the law. Overturning *Abood* would, as Kagan noted, be a radical step. The temptation must be great, and even if the Court declines this chance, others will come.

"Why an Upcoming Supreme Court Case Has Teachers Unions Feeling Very, Very Nervous"

Slate
Laura Moser
July 8, 2015

Late last month, the Supreme Court agreed to hear a case that could deliver a fatal blow to the financial health of already-imperiled public-employee unions. In *Friedrichs v. California Teachers Association*, Rebecca Friedrichs, a public school teacher in Orange County, along with nine other teachers and the Christian Educators Association, filed a suit objecting to the agency, or "fair share," fees they're required to pay to the CTA.

As it currently stands, California teachers cannot be forced to join the CTA, which the Supreme Court has ruled would violate the freedom of association guaranteed by the First Amendment. But even those teachers who decline union membership must still pay a fee to cover the cost of "collective bargaining, contract administration, and grievance adjustment purposes," a compromise established in 1977 by a unanimous Supreme Court ruling in the similar-looking *Abood v. Detroit Board of Education.*

The idea is that because all public employees benefit from their union's negotiations for, say, higher wages and better working conditions, they should all pay for it, regardless of how they feel about the union philosophically or politically. The non-union teachers still pay "forced dues" of about $850, or two-thirds the cost of a full union membership. The other third goes to the lobbying arm of the union, which tends to favor Democratic candidates overwhelmingly.

Over the past few years, Justice Samuel Alito has strongly signaled that he'd like to see *Abood* overturned, and the right-wing Center for Individual Rights seems to have hand-crafted this latest case to his specifications. The problem with forced dues, the CIR argues, is that you can't so cleanly separate the overt political lobbying from the union's other functions:

> Requiring teachers to pay these "agency fees" assumes that collective bargaining is non-political. But bargaining with local governments is inherently political. 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.

Friedrichs and her co-plaintiffs—represented by the same lawyer who brought the most recent challenge to Obamacare—are arguing that the fair-share requirement is a violation of their First Amendment rights, since they're being forced to fund causes they may not support, everything from tenure protections to gun control. (A side issue is that the small

minority of nonmembers—in California, less than 10 percent of the state's roughly 300,000 teachers—miss out on some major frills, like life and disability insurance and a vote in union elections.)

So what's at stake here for education? If the court finds that teachers no longer have to pay the fair-share fees, as many worried unions fear that it will, the union (and other public-sector unions like it all over the country) will lose a great deal of its negotiating leverage and potentially wither into insignificance, especially since many current union members may decide to stop paying dues. After all, the cost difference between a full membership and a fair-share fee is relatively minor, and the difference between a full membership and zero is not.

If the court sides with the plaintiffs, California will become a right-to-work state for teachers. That usually translates to diminished job security, fewer benefits, and lower wages. Forty-three kids in your second-grade classroom? Too bad. Out of school supplies and it's only October? Buy them yourself.

It's Scott Walker's version of manifest destiny, basically.

"High Court May Deal Unions Serious Blow"

Politico
Brian Mahoney
June 30, 2015

The Supreme Court will have an opportunity next term to deal public sector unions a serious financial blow.

The court agreed Tuesday to hear *Friedrichs v. California Teachers Association*, a case brought by 10 non-union California teachers who say that forcing them to pay "fair share fees" to a union — even if only for the purpose of collective bargaining — compels them to support an organization they oppose politically, in violation of their free speech rights.

The case is a blockbuster for both the court and the labor movement. Just days after the Supreme Court cheered unions and the rest of the liberal coalition by sanctioning gay marriage and the Affordable Care Act, the court chose to reconsider a privilege that public sector unions have enjoyed as a matter of settled law for four decades. The result may undermine drastically that same coalition.

An adverse ruling in *Friedrichs* could in effect require public unions to operate in all 50 states as they do in 25 so-called right-to-work states that forbid unions from collecting dues or their equivalent from non-members, even as those unions bargain collectively for members and non-members alike.

"We strongly support right-to-work," James Sherk, a fellow at the conservative Heritage Foundation, said Tuesday. "We believe that workers ought to decide how to spend their money, and they ought not be forced to financially support interest groups whose agenda they don't support or, even if they do support it, if they'd rather spend their money on their own family or their other needs, we strongly support that."

Public sector unions for workers like teachers, firemen, and police are among the strongest labor organizations in the country, having grown in recent decades even as membership in private-sector unions dwindled. Although the percentage of private sector employees who belong to unions is now a somewhat pitiful 6 percent — down from a historic high of nearly 40 percent in the early 1950s — the proportion of public sector workers who belong to unions is a robust 35.7 percent, according to 2014 statistics released by the Labor Department in January. Powerful public employee unions like the National Education Association and the American Federation of State, County, and Municipal Employees spend millions of dollars on political campaigns each cycle.

California is not a right-to-work state, which means that under current law public employees who choose not to join a union must pay fair share fees to cover collective bargaining costs. Since those non-members will benefit from whatever contract the union negotiates, labor groups and Democrats argue, they must pay fees to avoid becoming economic free riders. That presumption is

shared by the National Labor Relations Act, except in instances when individual states opt to go right-to-work.

It's hard to quantify the amount of union money potentially at risk. The three-million-member NEA has about 90,000 non-members who pay so-called agency fees for bargaining costs, according to the union's 2014 Labor Department disclosure. Losing those 90,000 wouldn't crush the union. But a decision freeing members from paying dues could tempt many others to leave it.

Public sector unions feared this day. Twice, Associate Justice Samuel Alito has stated in opinions of recent years that *Abood v. Detroit Board of Ed.*, the 1977 case that established the constitutionality of fair share fees, was shaky. In a 2014 opinion in *Harris v. Quinn*, Alito said that precedent was "questionable on several grounds."

"Overturning *Abood* would be a huge setback for organized labor," said Richard Kahlenberg of the liberal Century Foundation. "I think this is a way to try to crush the remaining small vibrant element of the trade union movement."

Abood allowed unions to charge such fair-share fees "insofar as the service charges are applied to collective-bargaining, contract administration and grievance-adjustment purposes." But the plaintiffs in Friedrichs argue that collective bargaining itself is inherently political. "Public sector bargaining is core political speech materially indistinguishable from lobbying," their petition to the court said.

"This case is about the right of individuals to decide for themselves whether to join and pay dues to an organization that purports to speak on their behalf," the conservative Center for Individual Rights, which is representing the plaintiffs, said in a statement Tuesday. "We are seeking the end of compulsory union dues across the nation on the basis of the free speech rights guaranteed by the First Amendment."

NEA President Lily Eskelsen García, AFT President Randi Weingarten, CTA President Eric C. Heins, AFSCME President Lee Saunders and SEIU President Mary Kay Henry issued a joint statement condemning the court's consideration of the case.

"We are disappointed that at a time when big corporations and the wealthy few are rewriting the rules in their favor, knocking American families and our entire economy off-balance, the Supreme Court has chosen to take a case that threatens the fundamental promise of America — that if you work hard and play by the rules you should be able to provide for your family and live a decent life," they said.

The case will likely cause acrimony within a Supreme Court already sharply divided by recent rulings. In a dissent in last year's *Harris v. Quinn* decision, Associate Justice Elena Kagan said she was pleased the court had not agreed to overrule *Abood*, calling such a step a "radical request."

Kagan said the court was smart to let the democratic process play out in the states. "All across the country and continuing to the present day, citizens have engaged in passionate argument about the issue and have

made disparate policy choices," she said. "The petitioners in this case asked this Court to end that discussion for the entire public sector, by overruling *Abood* and thus imposing a right-to-work regime for all government employees."

But it's clear the court disagrees on just what issues it should let the states and citizens decide. Kagan's language in her dissent last year was similar to that offered by Chief Justice John Roberts in last week's gay marriage case. "Supporters of same-sex marriage have achieved considerable success persuading their fellow citizens — through the democratic process — to adopt their view," Roberts said. "That ends today."