



Friedrichs Decision Is a Blow Against Educational Excellence

Jason Bedrick

March 29, 2016

Today, an evenly divided Supreme Court affirmed a lower court's decision in *Friedrichs v. California Teachers Association* to permit unions to continue charging nonmembers "agency fees" to cover collective-bargaining activities that the union supposedly engages in on their behalf. About half the states require agency fees from public-sector workers who choose not to join a union.

Not only do agency fees violate the First Amendment rights of workers by forcing them to financially support inherently political activities with which they may disagree (as my Cato Institute colleague Ilya Shapiro and Jayme Weber explained), but the unions often negotiate contracts that work *against* the best interests of the workers whose money they're taking. For example, union-supported "last-in, first-out" rules and seniority pay (as opposed to merit pay) work against talented, young teachers. Moreover, a teacher might prefer higher pay to tenure protections, or greater flexibility over rigid scheduling rules meant to "protect" them from supposedly capricious principals.

Even worse, collective bargaining can come at the expense of students, as Ilya Shapiro and I recently explained:

When schools lack high-quality math teachers because the union contract requires they be paid the same amount as gym teachers, kids lose out. And when that contract has "last in, first out" (LIFO) rules that force a district to lay off a talented young teacher before a low-performing teacher with seniority, students suffer.

Last year, a judge in California struck down such tenure and LIFO rules after finding "compelling" evidence that making it hard to fire low-performing teachers had a negative impact on students, especially low-income and minority students. The judge pointed to research by Harvard professor Thomas Kane showing that Los Angeles Unified School District students who were taught by an English teacher in the bottom 5 percent of competence lose the equivalent of 9.5 months of learning in a single year relative to students with average teachers.

“Indeed,” the judge concluded, “it shocks the conscience.”

Sadly, the deleterious effects of collectively bargained tenure rules can be serious and long-lasting. In a 2012 study of more than 2.5 million students, Harvard professors Raj Chetty and John Friedman and Columbia professor Jonah Rockoff found that students who had just a single year in a classroom with a teacher in the bottom 5 percent of effectiveness lose approximately \$50,000 in potential lifetime earnings relative to students assigned to average teachers.

And in a just released study, professor Michael F. Lovenheim and doctoral student Alexander Willén of Cornell found that laws forcing school districts to negotiate with unions had a modest but statistically significant negative impact on students’ future employment and earnings. Adults who had been subject to duty-to-bargain laws while attending grade school worked a half-hour less per week and earned \$795 less per year. The aggregate national effect is an annual loss of about \$196 billion.

But for Justice Scalia’s untimely death, the *Friedrichs* plaintiffs would have won. Instead, half the states are stuck with a system that violates the rights of workers and reduces the quality of children’s education, at least for the foreseeable future.

Jason Bedrick is a policy analyst with the Cato Institute’s Center for Educational Freedom. He previously served as a legislator in the New Hampshire House of Representatives and was an education policy research fellow at the Josiah Bartlett Center for Public Policy.