

Here's 9 Critical Facts About The Case That Could End Forced Union Dues

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January 10, 2016

The U.S. Supreme Court will hear from 10 teachers Monday in a case that could upend decades of labor law by granting public-sector workers the right to refuse to pay union dues.

Generations of lawmakers and legal experts have struggled with the question of whether unions can require mandatory payments. The Supreme Court ruled in the 1977 case *Abood v. Detroit Board of Education* that unions can collect dues so long as the mandatory payments are used solely on representation costs and not political activities. Workers are allowed to pay fees instead of full dues if they don't want to fund the political activities of the union.

Rebecca Friedrichs and the nine other teachers, however, don't want to make any payments to the California Teachers Association (CTA). They also assert the process to opt-out of paying full dues or partial fees should be an opt-in system instead. The Supreme Court agreed Jun. 30 to hear their case. Here are the nine most important facts about *Friedrichs v. California Teachers Association*.

The question before the court is whether the teachers have the right to disassociate from their union. To the teachers and their supporters, the case could mean the end of laws that restrict worker freedom. To opponents, though, unions are what give workers a voice and limiting their power will adversely impact their ability to fairly communicate and negotiate with their employers.

The teachers have argued mandatory union payments violate their constitutional right to free-speech. They said the union often engages in activities or takes a position they neither support nor wish to fund. The union disputes the argument by noting they are legally compelled to represent the teachers regardless of whether they pay dues. Therefore its only fair all workers should have to pitch into the cost of representation.

“The court also has implemented various procedural requirements to ensure that unions are properly reimbursed for chargeable costs,” the union stated in its brief to the court. “While protecting objecting non-members from having their funds used for purposes not germane to collective bargaining and contract administration.”

When a union gets voted in as the exclusive representative for a workplace, they are required by law to collectively bargain for all the workers. Unions often warn workers could just free-ride on those benefits were dues an option.

“The free-rider argument is bad for several reasons,” Jacob Huebert, senior attorney at the Liberty Justice Center, told The Daily Caller News Foundation. “These people don’t consider the union to be a benefit.”

The teachers are allowed to leave their union but are still required to pay the representation fees. If they leave, they lose their liability services and the ability to talk at union meetings.

2. Who Exactly Is Rebecca Friedrichs

It all started when Friedrichs, while teaching out of Buena Park, Calif., tried to leave her union. She felt it benefited its members at the expense of the students. Though she could leave and forfeit most union benefits, she was still forced to continue paying dues. She and a group of other teachers were left with no choice but to file a lawsuit in April of 2013.

“Many of the things the union bargained for made it harder for me,” Friedrichs recalled Thursday during a phone interview with reporters. “To the union, salary and seniority came before everything else.”

Her first encounter with the union culture was when she was an assistant teacher at the beginning of her career. At the time, she said she felt as though the teacher who worked in the classroom next to hers was abusive towards her students. The teacher, she said, couldn’t be fired because the union had implemented a seniority structure. Friedrichs eventually took a leadership position in the union but was still unable to change what she saw as a bad culture.

“I wanted to be there to speak common sense,” Friedrichs said. “But the response from union leadership was to ignore everything I tried to do.”

3. The Case Goes Far Beyond Just Teachers

A decision in favor of the teachers is likely to go beyond just schools. All government workers could be granted the right to stop funding union activities since the teachers are technically public-sector employees. Such a decision could be devastating to the labor movement which has already lost a lot of members in the private-sector.

“It’s an extremely important case,” Huebert said. “It certainly might be a landmark case, especially if they side with Friedrichs.”

Huebert adds the case should only impact public-sector workers and not private. The Supreme Court will decide on a wide variety of issues this session, from how sentencing hearings are conducted to whether colleges admission offices should consider race. NYU Law Professor Richard Epstein, though, says the Friedrichs case could very well be the most important.

“This is a case that attracted scrutiny on both sides,” Epstein told TheDCNF. “In some ways this is the most important case this session.”

The case seeks to reverse the decision in *Abood*, which has allowed public-sector unions to require mandatory payments for nearly three decades. *Abood* also dealt with teachers, but the decision set a precedent that impacted all public-sector employees.

4. Are Public Sector Unions Done For? Probably Not.

Unions have argued on numerous occasions the case is aimed at destroying the labor movement. Membership is likely to go down, but many workers are still likely to stay unionized. Former Supreme Court Clerk Carrie Severino notes the case will not take down public-sector unions.

“It’s not a victory that will take down the unions,” Severino, now chief counsel for Judicial Crisis Network, told TheDCNF. “It just gives people the right to choose.”

Federal employees already have the right to not fund unions, yet membership is still fairly high. In states that have passed right-to-work legislation, all workers are allowed the same privilege, yet it hasn’t destroyed the unions. The policy, which has passed in 25 states, outlaws mandatory union dues or fees as a condition of employment. Terry Pell, a lawyer representing the teachers, predicts the membership drop will be slight.

“A 10 percent drop in members won’t impact their ability to bargain,” Pell said during a Thursday call with reporters. “The 25 states show that.”

Pell said the biggest difference once right-to-work is passed is that the salaries of union leaders go down.

5. The Beneficial Burden Of Collective Bargaining

Collective bargaining is the burden put on unions when they become the exclusive representative for a workplace. It means they are required by law to benefit all the workers they represent. Collective bargaining already comes with a huge benefit often overlooked during the free-rider debate.

“When you have a union whose already in power to be the monopoly bargainer,” Severino said. “That’s already a huge benefit to unions.”

The Heritage Foundation notes in a fact sheet that the union claim is very misleading. Exclusive representation is not the only way a union can organize workers. Unions can choose to only represent dues paying workers by becoming a member-only organization. A member-only union, though, would not have monopoly rights and therefore other unions could try to organize the same workplace. It’s an option they tend to avoid.

6. Recent Cases Give Union Critics Hope

Supporters are optimistic the court will side with Friedrichs given recent decisions. In the 2015 case *Harris v. Quinn*, the court ruled Illinois state home healthcare workers could not be forced to pay union dues. The decision found a middle ground by only applying to the workers upon whom the case was centered.

The court was faced with the question of whether home healthcare providers were public-sector employees. State healthcare workers are required to fund the union which represents them. The Friedrichs case has a much broader scope. Teachers are already considered public employees, therefore a decision in their favor is much more likely to impact all government workers.

“The middle ground is essentially accepting the opt-in argument,” Epstein stated. “That’s why this case is so much more important than Harris.”

7. The Powerful Groups Behind The Case

The Center for Individual Rights (CIR) is a non-profit public interest firm representing Friedrichs and the other teachers involved in the case. Pell said they looked for teachers that were willing to join onto a lawsuit. For a case to be considered by the courts, the plaintiffs must have standing by proving in some way they have suffered damages.

“We were pleasantly surprised when there were so many teachers focused on this,” Pell said. “It came together much more quickly than other cases.”

Pell added that the response showed them many teachers were discontent with their union. The case has also attracted a lot of attention from outside groups and lawmakers. The National Right to Work Legal Defense Foundation, the Mackinac Center for Public Policy, the Cato Institute and the Goldwater Institute have all filed legal briefs in support of the teachers. The organizations are primarily conservative and libertarian leaning. Labor unions have condemned the lawsuit as being nothing more than a coordinated attack by the right.

Nevertheless Labor unions are some of the most powerful political entities and fighting them is not an easy task. The AFL-CIO, AFSCME and the Service Employees International Union among others have banned together against the teachers. Even local unions have spoken out about the case. Some of the most influential unions have also submitted legal briefs urging the justices to rule against the teachers.

8. Workers Would Still Be Able To Unionize

Union leaders have claimed the case is an attack on the rights of workers to collectively come together. The teachers in the case, though, counter the argument by noting its actually about giving workers a choice.

“The main thing you need to know is that this is an attack on working people’s freedom to come together and form unions, plain and simple,” the AFL-CIO noted. “These are the nurses who

make sure their patients have what they need to get well and the teachers who advocate for their students and class sizes.”

The case does not seek to prevent workers from organizing despite the union claim. A decision in favor of the teachers would be very unlikely to outlaw the right to unionize. Instead it would simply mean public-sector employees would have the right not to participate or fund their workplace union if they so choose.

“This case does not impact public employees and their right to join a union,” Pell added. “It impacts a union funding mechanism.”

Friedrichs notes unions would be compelled to do what’s best of their members if workers were free to leave.

9. How An Opt-In System Might Impact Unionization

CTA states the opt-out system is legal and fair. It allows workers the right to refrain from funding union political activities. If a worker doesn’t want their dues going to politics they can simply sign a form and mail it to the union. The teachers included as a secondary point to their lawsuit that an opt-in system would be fairer. Essentially public-sector workers would have to request to join a union instead of getting automatically enrolled.

“The right to opt out sufficiently protects both First Amendment guarantees and other core constitutional rights,” CTA noted in its brief to the court. “There is no justification for carving out a special exception based solely on petitioners’ animus toward statutorily recognized union activities.”

Critics contest opting out is not always easy for workers. Rules regarding membership are not the same in every union. Most unions only allow members to leave at certain points in the year. These opt-out windows are often not disclosed to members. Unions have also been known to ignore opt-out requests.

“They often don’t have good information on how to opt-out,” Huebert added. “And its often a difficult process.”