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Mandatory union dues trample First Amendment

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On Jan. 11, the Supreme Court hears what may well be the most important case of the term. In *Friedrichs v. California Teachers Association*, 10 teachers have challenged a state requirement that they support political causes with which they disagree and that hurt their students.

At issue is a kind of law that exists in 25 states which forces public-sector workers either to join a union or pay an amount that covers the cost of the union's collective bargaining. For California teachers, that means annual dues of about $1,000 or "agency fees" of about two-thirds that amount.

Nonmembers' dues aren't supposed to fund union political activities like lobbying and election campaigns. As the Supreme Court ruled in *Abood v. Detroit Board of Education* (1977), states can't force workers "to contribute to the support of an ideological cause [they] may oppose as a condition of holding a job."

But in the public-sector context, collective bargaining is an inherently political activity, meant to influence government policies in various ways that go beyond the mundane terms-of-employment issues at play in the private sector. Should teachers be paid based on seniority or merit? Should education budgets expand even if that means higher taxes? How many teachers should the city hire?

These are all questions that naturally come up during the negotiation of teachers' contracts, but they also obviously implicate serious matters of public policy. As the Supreme Court put it in *Harris v. Quinn* (2014) – which rejected the forced unionization of publicly funded home health care aides – "core issues such as wages, pensions and benefits are important political issues."

Moreover, even if collective bargaining weren't inherently political, it's easy to see how workers could object to the supposed "benefits" negotiated on their behalf. For example, a teacher might prefer higher pay to tenure protections, or a defined-contribution pension plan – such as a 401(k) – to one that has defined benefits.

Collective bargaining also can come at the expense of students. 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 several days 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.

Collective bargaining can be an important means of protecting workers, but in the public sector, union power shouldn't trump the public interest. President Franklin D. Roosevelt understood these dynamics, which is why he opposed the formation of public-sector unions in the first place. "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service," he wrote in 1937 to the president of the National Federation of Federal Employees.

And so, when the justices take their seats for their first hearing of 2016, they should consider whether agency-shop rules really merit an exemption from the First Amendment protections for speech and association. A decision to stop states from forcing their employees to fund policies they oppose would benefit teachers and students alike.

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