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Who's Behind Friedrichs?

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As the current term of the U.S. Supreme Court opens this autumn, looming on the docket is *Friedrichs v. California Teachers Association*, a case designed to decimate public-sector unions. While it may not come to that—even the most knowledgeable Court-watchers are unsure how the justices will rule—the stakes are high. A decision is expected before the term ends in June.

The case was, in effect, invited by Justice Samuel Alito, who penned the majority opinion in *Harris v. Quinn*, a 2014 case in which the court ruled against the union representing home-care workers in Illinois. In *Harris*, as Harold Meyerson wrote **here**, Alito devoted half of his opinion to considering the constitutionality of public-sector unions' right to collect "fair share" fees from those who have opted out of union membership. These fees cover the worker's share of the resources the union spent on negotiating a contract, representing workers in grievance procedures, and other services that benefit the entire workforce. They are lower than the dues assessed the union's members, whose payments also cover the cost of their union's political activities.

The right of unions to collect fair share fees was settled by the court's unanimous decision in 1977's *Abood v. Detroit Board of Education*. In her dissenting opinion in *Harris*, Justice Elena Kagan noted that the fair-share issues Alito brought up were not even before the court in *Harris*. Alito's questioning of the *Abood* precedent, however, signaled an inclination by the conservative majority to revisit it.

Alito's invitation to reconsider *Abood* helped ensure that *Friedrichs* tore through the legal system at high speed. But the real force propelling *Friedrichs*' gallop through the courts was the Center for Individual Rights (CIR), the right-wing pro-bono law group that is representing teacher Rebecca Friedrichs and her fellow plaintiffs: At each stage in the legal process, CIR attorneys asked the courts to rule against their own clients, with the apparent interest of moving the case up to the Supreme Court as quickly as possible.

"It just seems really nefarious," says Frank Deale, a professor at the CUNY School of Law. "In fact, it's collusive, in a way. You're setting up this false scenario, this false conflict, in order to get a Supreme Court ruling. The Center for Individual Rights didn't even make an argument [in the lower-court filings]. They asked for the court to rule for the defendant, and then they got rewarded for it."

In addition to Rebecca Friedrichs, the plaintiffs include nine other California schoolteachers, who have all opted out of union membership. They're bringing suit against the California

Teachers Association in a bid to relieve themselves of having to pay their fair share, via agency fees, for the services the union is required by law to provide to them, including contract negotiation and adjudication of grievances. But the Court's ultimate decision could reach further than the issue of agency fees, in ways that could threaten the very existence of unions. A narrow ruling, of course, could have a lesser effect.

Should the *Friedrichs* plaintiffs succeed in all their claims before the high court, they could cause public-sector unions to have significant drops in membership, since all the workers covered under their union contract could cease payment of any dues or fees to the union, even though the union would still be legally obligated to provide them with services. The unions would have to sign up their current members to collect payments from them again, causing them to devote additional staff and resources to organizing. As well, the resources unions could devote to political action could be substantially diminished—a possible reason why, with the 2016 elections looming, right-wing organizations have been so determined to fast-forward the case to the Supremes.

WHEN THE CENTER FOR Individual Rights first came on the scene in 1989, Frank Deale was on the staff of the Center for Constitutional Rights, the organization that made its mark in the field of civil rights. “When I first heard their name I said, ‘For goodness’s sake, they’re picking up *our* name,’” he says. “It sounded so similar.”

CIR's name was likely no accident; it was founded by two lawyers from the Washington Legal Foundation, a right-wing public-interest law organization frequently in combat with the Center for Constitutional Rights during Deale's tenure there.

Since its founding, the Center for Individual Rights has maintained a special focus on challenging civil-rights measures, especially affirmative action. In 1995, it scored a significant, if fleeting, victory in *Hopwood v. Texas*, until the Supreme Court overturned the federal court decision in the case, which had struck down affirmative-action admissions standards at the University of Texas Law School. To step up its efforts, in 1999, CIR ran ads in campus newspapers seeking plaintiffs among white students looking to challenge their colleges' affirmative-action policies.

CIR also set its sights on the 1965 Voting Rights Act, representing plaintiffs in the recent case *Nix v. Holder*, which, while unsuccessful, ran parallel to *Shelby v. Holder*, the 2013 case that gutted Section 5 of the VRA, effectively curtailing the enforcement provision of the law.

The list of foundations and donor-advised funds supporting the Center for Individual Rights reads like a who's who of the right's organized opposition to labor. A number of those funders, unsurprisingly, enjoy the support of Charles and David Koch, the billionaire brothers who are principals in Koch Industries, the second-largest privately held corporation in the United States. (*Forbes* estimates each of the brothers' personal wealth at \$42.3 billion.) Longtime supporters of anti-labor efforts, the Koch brothers even founded their own organization, Americans for Prosperity, to create for the Republican right the sort of electoral get-out-the-vote ground teams that members of unions often form on behalf of pro-labor, usually Democratic, candidates.

In January 2011, Americans for Prosperity President Tim Phillips explained to a room full of right-wing activists in Arlington, Virginia, why Republicans had failed to gain a more permanent foothold in Congress in the 1990s: “They had the public employee unions,” **Phillips said** of the Democrats, “which have only gotten stronger, have only gotten better funded, have only gotten better organized in the period of time between the 1990s and today.”

Six weeks later, Scott Walker, the Koch-supported Wisconsin governor, introduced the legislation that killed public-sector unions’ ability to collect agency fees in his state.

Koch-linked groups known to have made grants to CIR, **according to the Center for Media and Democracy**, include DonorsTrust, the Donors Capital Fund, and the Claude R. Lambe Charitable Foundation. Other CIR funders belong to the Koch donor network. Among them are the Dick and Betsy DeVos Family Foundation, as well as the Lynde and Harry Bradley Foundation, which was instrumental in the legislative attack on labor in Wisconsin. (Scott Walker was hand-picked as an anti-labor warrior **by Bradley Foundation President Michael W. Grebe** back when Walker was in college; years later, Grebe went on to chair Walker’s gubernatorial campaign. The foundation, meanwhile, dumped millions into anti-labor think tanks such as the MacIver Institute and the Wisconsin Policy Research Institute, which supplied the talking points and ideas that shaped Walker’s 2011 anti-union legislation. By 2013, the Wisconsin Policy Research Institute had received at least \$17 million from the Bradley Foundation, according to the **Center for Media and Democracy**.)

Think tanks and groups that receive either direct funding from Koch entities or are linked to the Koch brothers’ funding network also filed amicus briefs in favor of the *Friedrichs* plaintiffs. They include the Cato Institute, the National Right to Work Legal Defense Fund, and the Mackinac Center, a major force behind the 2012 anti-union legislation enacted in Michigan.

According to journalist Laura Flanders, earlier in its history CIR also **enjoyed the support** of the Pioneer Fund, a white supremacist organization devoted to the promotion of eugenics. Flanders, **writing in *The Nation*** in 1999, found through an examination of the group’s tax records that the Pioneer Fund had made three separate grants to CIR.

While the involvement of the Pioneer Fund in CIR may seem unrelated to the law group’s anti-union work, it is not uncommon for organizations opposed to the interests of labor to also have histories of antipathy to other forms of civil rights. For instance, Reed Larson, who led the National Right to Work Committee and the National Right to Work Legal Foundation for three decades, was an **early member of the John Birch Society (JBS)**, as was Fred Koch, father to Charles and David. (Charles Koch resigned from JBS in 1968; David Koch does not appear to have ever been a member.) JBS opposed the civil-rights movement, alleging it—and desegregation efforts in general—**to be a communist plot**.

One such far-right group included among the plaintiffs in *Friedrichs* is the Christian Educators Association International (CEAI), which seeks to provide to right-wing Christian teachers working in public schools some of the services teachers now receive through their unions. CEAI is virulently opposed to LGBT rights, and its website includes a statement accusing public schools and the National Education Association (NEA) of promoting “the homosexual agenda.” Among the books sold as guides for teachers on the CEAI website are several by Carl Sommer, a

former New York City high school teacher known for his opposition to school desegregation and sex education.

THE RIGHT-WING ONE-PERCENTERS behind the assaults on labor appear to be leaving nothing to chance.

Lawyers at the Center for Individual Rights understood that *Harris v. Quinn*, which challenged the unionization of home-care aides employed jointly by the state of Illinois and their individual clients, could well result in a narrow ruling that applied only to workers with joint employers in the state of Illinois. (And that's exactly what happened.) The Center's decision to move *Friedrichs* through the legal system at record speed anticipated just such a ruling—an incomplete victory—that would require the right to have, ready to go, a case that could yield a broader decision.

Now, because *Friedrichs* could yield a similarly limited outcome, the anti-labor right has other anti-union cases in the works. Late last month, a federal district judge ruled against the plaintiff in *Bain v. California Teachers Association*, a suit challenging unions' political activity brought by the ironically named anti-union group StudentsFirst, which is helmed by charter schools proponent Michelle Rhee. If the Supreme Court doesn't overturn its 1977 decision in *Abod*, it's clear that the Koch brothers and their allies will run yet another suit through the courts in their decades-long effort to destroy unions.

The next U.S. president may get to appoint as many as three Supreme Court justices. The fate of labor may well rest with those choices.