

Lawsuit challenges teachers' compulsory dues

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Rebecca Friedrichs, lead plaintiff in Friedrichs v. California Teachers Association.

Vergara v. State of California, threatening teacher protection laws in California, has consumed the attention of the California Teachers Association. But another lawsuit working its way through the courts is striking at the core of the CTA's power: its authority to automatically deduct hundreds of millions of dollars a year in dues from the paychecks of both members and non-members.

A victory by the plaintiffs in Friedrichs v. California Teachers Association et al. would revoke automatic deductions for union dues, which could sap the revenues of the CTA and all public employee unions and lead to a sharp decline in membership. It would force the unions to persuade those they represent to voluntarily pay dues. With an annual income of \$186 million, the CTA is the state's biggest donor to political campaigns, according to a [report by the California Fair Political Practices Commission](#).

INTERNAL DISSENTER TO LEAD PLAINTIFF

Rebecca Friedrichs has been a member of the California Teachers Association for 13 of the 27 years that she has taught elementary school in the Savanna School District, a small district in Anaheim. She was her school's union representative and secretary of the Savanna District Teachers Association. Now, her political and philosophical disagreements with the CTA are so strong that she agreed to become the lead plaintiff in a lawsuit seeking the right to refuse to give any money to the union legally obliged to represent her.

"When unions first started, they did a lot of good things. Many people were abused and I could see good use for unions," she said in an interview. "But they have become what they used to fight, so focused on their preservation to keep their power that they are not listening to their members."

A 49-year-old mother of two sons who attended schools in Capistrano Unified, Friedrichs disagrees with the positions of the CTA on a number of issues: the union's support of gay marriage, its opposition to school vouchers – to allow tax subsidies for attending private schools – and its strong campaign for Proposition 30, the 2012 ballot measure temporarily raising taxes to restore billions of dollars for schools. She said she opposed higher taxes, even for schools, when many of her neighbors were financially hurting.

Because of her disagreements, she didn't join the CTA for the first 10 years she taught, then joined to try to change the union's positions as a dissenter from within for the next 13 years. She bowed out again three years ago. As a non-member, she didn't have to pay the roughly 35 percent of dues that underwrite what she calls the CTA's "far-left, one-sided politics."

Now, she and nine other teachers want to go further, and overturn a state law forcing them to pay “agency” or “fair share” fees underwriting the union’s cost of collective bargaining – about \$650 per year. She says forcing her to support the positions of the union on core issues of collective bargaining violate her First Amendment rights. Those issues include support for tenure – “I have a problem with tenure,” she said. “I have watched abusive teachers stay in the classroom and keep their jobs” – and lobbying for a defined pension program with a \$74 billion shortfall. “I am not saying teachers are overpaid,” she said. “But taxpayers are the ones paying us, and we must be mindful of where our pay is coming from.”

Most other teachers at her school, she said, don’t care that she is a non-union teacher who doesn’t pay the dues they pay. “I am a good teacher and a nice colleague – everything is fine,” she said. But the union representatives have treated her like a pariah. “It’s more of the feeling of disdain. You are not in the club.”

More teachers would not pay dues for political activities, she said, but feel pressured to contribute as a result of “an undercurrent of fear” she had difficulty describing in detail. “If you taught with me, you’d know the feeling I am talking about,” she said.

A Washington, D.C., libertarian nonprofit law firm, The Center for Individual Rights, brought the Friedrichs lawsuit on behalf of 10 California teachers and Christian Educators Association International, a religious organization serving public school teachers. The plaintiffs assert that compulsory fees violate their First Amendment right of free speech.

In filing the lawsuit in April 2013, they acknowledged they’d lose in lower courts because their position conflicts with a well-established Supreme Court decision, so they have sought an expedited path to the U.S. Supreme Court. U.S. District Court Judge Josephine Staton cooperated and ruled for the defense without a trial last December. Then in June, the plaintiffs became emboldened to push their appeal forward when Supreme Court Justice Samuel Alito issued an invitation.

Signals from Supreme Court

Writing for the five conservative Supreme Court justices in *Harris v. Quinn*, a narrow decision involving Illinois health-care workers, Alito referred to the “questionable foundations” of *Abood v. Detroit Board of Education*. That’s the landmark 1977 Supreme Court decision authorizing public employee unions to compel all workers to pay “agency” or “fair share” fees that support collective bargaining in those states – now 26, including California – that permit it. Two dozen states, mainly in the South, have passed right-to-work laws prohibiting the compulsory fees authorized in the *Abood* case.

All of a union’s collective bargaining expenses can be apportioned equally to members and non-members. In the case of a teachers union, the agency or fair share fee includes a portion of the expenses of the union local, the CTA and the National Education Association. Union teachers in California pay on average about \$1,000 per year in dues, with \$640 to the CTA, \$183 to the National Education Association and the rest to their local union. About two-thirds of the total are chargeable as agency fees.

The other, voluntary, one-third of dues covers political activities, including candidate donations and money supporting or opposing state and local issue campaigns and initiatives. Courts have ruled that teachers who do not join their unions aren’t obligated to pay that portion of the dues. Lead plaintiff Rebecca Friedrichs, a 27-year teacher now teaching 4th grade in the Savanna School District in Anaheim, and the others named in the lawsuit have gotten that money back – about \$350 per year – as long as they file a request every fall for the rebate. They are among the approximately 29,000 teachers – a little less than one out of 10 teachers statewide – who pay only the agency fees and opt out of union membership. The CTA has about 300,000 active members.

From ballot box to courtroom

The plaintiffs in *Friedrichs* are trying to do in court what they’ve been unable to do at the ballot box. Three times in the past 16 years, California voters have defeated initiatives to eliminate the compulsory fees deduction or prohibit unions from collecting a portion of dues for political purposes. Proponents came closest in 1998, when Proposition 226 lost 46.8

percent to 53.2 percent. But it has been expensive for public unions, especially the CTA. Unions have spent a combined \$132 million to defeat the three ballot measures, with CTA kicking in \$60 million, including in-kind donations. Proponents also spent about \$60 million.

In the *Abood* decision, the Supreme Court said that collecting agency fees was necessary to prevent “free riders” – those who benefit from collective bargaining without providing money the union needs to negotiate on behalf of all workers. The court in *Abood* found that it’s in the state’s practical interest as an employer to negotiate with an exclusive representative of employees that has the resources to handle complex labor issues. The justices reasoned that *Abood* doesn’t favor one political viewpoint since employees can choose whoever they want as leaders.

But the plaintiffs say the *Abood* decision violates their First Amendment rights. States, they argue, shouldn’t coerce them to pay fees to a union whose positions they don’t support.

Abood rests on the notion that there is a clear distinction between collective bargaining by public-sector unions for wages and working conditions and the overt political lobbying that non-union employees can’t be forced to underwrite. But in reality, the plaintiffs argue, there is no difference. Political speech is involved in bargaining with and lobbying government, whether a state agency or a local school district.

In California, as in other states, laws allow agency fees to pay for lobbying expenses related to collective bargaining and working conditions. The plaintiffs’ brief cited statutes that the CTA fought for that are at issue in *Vergara*: teacher tenure within two years, layoffs by seniority and the dismissal statutes.

“Many policies advocated by the Unions do not benefit teachers, especially competent teachers,” the plaintiffs argue in their appeals brief. “Unions regularly bargain for compensation based on seniority and tenure rather than merit, and therefore privilege long-time employees over newer employees who may be more talented.”

The CTA and other public service unions are far more powerful now than in 1977, said Terry Pell, president of the Center for Individual Rights, so “it’s harder to justify the balancing test” the court used in *Abood* to permit compulsory dues.

‘Burden’ of opting-out

If the Supreme Court doesn’t overturn mandatory agency fees, Pell said the plaintiffs have a fallback position: make it easier for non-union members to exercise their right to refuse to pay for the CTA’s political activities. Currently, a teacher must sign a statement annually opting out of the payment, which the plaintiffs call a “significant burden.” They are then entitled to a rebate.

Instead, they want an opt-in provision, requiring teachers to explicitly permit the union to take money out of their paychecks. The CTA, in response, calls the current opt-out process “an innocuous requirement” that none of the plaintiffs have complained about.

GOING DEEPER

[Appeals brief filed by 10 teacher plaintiffs and Center for Individual Rights](#), July 2014

[Appeals brief filed by the California Teachers Association](#), September 2014

[Federal District Court ruling in support of the CTA](#), December 2013

[Article on relation of *Abood v. Detroit Board of Education* to lawsuit](#), January 2014

Measuring potential impact of *Friedrichs*

Pell said that the *Friedrichs* lawsuit is “not an attack on collective bargaining but an effort to strengthen free speech rights.” He said he could not predict the impact of eliminating compulsory dues – other than an immediate loss of the

agency fees of the 29,000 non-union teachers, about \$13 million per year. That by itself would not drastically diminish CTA's wealth and political power, he said.

CTA President Dean Vogel characterized the lawsuit as part of political conservatives' ongoing "strategy to neutralize unions." He called Friedrichs "more troublesome than Vergara," because he's confident that the district court judge's ruling in Vergara, overturning teacher protection laws on tenure, dismissal and layoffs, will be overturned on appeal. But the Friedrichs lawsuit is problematic, he said, because conservatives on the Supreme Court appear open to overturning 40 years of precedent set by Abood.

At its conference for local union presidents in San Jose in July, the CTA shared a 23-page presentation on Friedrichs with the fatalistic title "[Not if but when: Living in a world without Fair Share.](#)"

Vogel said the presentation was not a prediction but reflected a "realistic assessment" of how things might change if the Supreme Court overturns the Abood decision. He said it's a reminder of the need for a new strategic plan. "We've got to start paying attention and build an organizing culture," he said. The threat from Friedrichs offers an opportunity to interact routinely with members and discuss what the CTA is doing on their behalf, he said.

In an effort to move Friedrichs to the Supreme Court quickly – possibly this year – attorneys for the plaintiffs have asked the U.S. 9th Circuit Court of Appeals to skip customary oral arguments and rule on the briefs that have been filed. The court hasn't decided yet. The Supreme Court could decide not to take the case, or, if it does, to reaffirm Abood, overturn all or part of it or send Friedrichs back to the district court for a full trial that was skipped at the plaintiffs' request.



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