Written by **Raven Clabough** on July 1, 2015

Supreme Court to Hear Case on Forced Union Dues

The Supreme Court has agreed to hear a case on limiting the power of government employee unions to collect dues from non-members in the term beginning next fall.

On Tuesday, the justices stated that they will hear an appeal from a group of California teachers who have argued that forced union dues are a violation of their First Amendment rights, especially when the employees disagree with the union's positions.

The lead plaintiff in the case is Rebecca Friedrichs, a public school teacher in Orange County, California, who resigned from the California Teachers Association citing the union's positions on a number of issues, which Friedrichs states "are not in the best interests of me or my community." Despite her resignation, Friedrichs indicates she is still required to pay the union over $600 a year to cover bargaining costs.

Reuters reports that 10 teachers, including lead plaintiff Rebecca Friedrichs, decided to sue the unions in 2013 saying the "agency-shop" system violated their free speech rights. In November 2014, the 9th U.S. Circuit Court of Appeals ruled in favor of the unions, prompting the teachers to appeal to the Supreme Court.

According to the challengers, the agency shop system amounts to nothing more than "a multi-hundred-million-dollar regime of compelled political speech."

The plaintiffs are asking the court to "overturn a 38-year-old legal precedent that said unions can require non-members to pay for bargaining costs as long as the fees don't go toward political purposes," Fox News reports.

In the 1977 case *Abood v. Detroit Board of Education*, the Supreme Court determined that private-sector workers should pay "fair share" fees if they are represented by a union, even if they are not members. That was eventually extended to public employees.

But in recent years, the Supreme Court has begun to scrutinize unions and the collective-bargaining rights.

Justice Samuel Alito remarked in a 2012 ruling that *Abood* and other corresponding cases "have substantially infringed upon the First Amendment rights of non-members" of public-sector unions.

In the 2014 ruling in *Harris v. Quinn*, the court did not extend *Abood* precedent to Illinois home-health workers, stating that state-paid, in-home care workers cannot be compelled to pay union dues. In that ruling, Justice Alito wrote that a "bedrock principle" of the First Amendment is that "no person in the country may be compelled to subsidize speech by a third part that he or she does not wish to support."

According to the *Wall Street Journal*, the Supreme Court "all but invited a lawsuit challenging the 1977 precedent" in the 2014 ruling, wherein Justice Alito wrote several pages on the "questionable" grounds on which the 1977 ruling rested. Alito noted that the court had not anticipated the "magnitude" of the

problems that would result from defining union expenditures that were to be supported by non-members.

The Center for Individual Rights, the nonprofit law firm representing the plaintiffs in *Friedrichs*, welcomed the court taking on the case. "This case is about the right of individuals to decide for themselves whether to join and pay dues to an organization that purports to speak on their behalf. We are seeking the end of compulsory union dues across the nation on the basis of the free speech rights guaranteed by the First Amendment," said Terry Pell, the group's president.

In their brief to the court, the teachers unions defended the agency shop arrangement as "simply a requirement that a nonmember teacher who receives the benefit of additional compensation as a result of the unions' efforts in collective bargaining must pay a share of the unions' costs in negotiating those improvements, rather than receiving a free ride." They contend that the dues are not used for political purposes.

But in last year's ruling, Justice Alito observed that in the case of public-sector unions, it is difficult to separate collective-bargaining from political activity as "both collective-bargaining and political advocacy and lobbying are directed at the government."

Similarly, the CATO Institute wrote in the legal brief for *Friedrichs v. California Teachers Association*,

> When it comes to public-sector unions, it is somewhat bizarre to say that some of the spending is "political" and some isn't. A teachers union may run political ads advocating for particular public policy positions, but it also collectively bargains in order to fight for similarly "political" gains, such as class size, school year length, and teacher qualifications. In a sense, a teachers union is just another political party that lobbies the government for preferred policies, and, whether it is spending on political ads or collectively bargaining, both are "political."

Will Collins of the National Right to Work Legal Defense Foundation, in a brief in support of the plaintiffs, articulated similar sentiments. "What the teachers are objecting to is the fact that in the public sector, the distinction between union dues for political activities and union dues for workplace bargaining is artificial," said Collins. "All workplace bargaining involving public sector unions necessarily affects the size and scope of government making it an inherently ideological activity."

According to CATO, the case could impact seven million public-sector employees in more than 20 states. CNN notes that mandatory union dues are currently forbidden in 25 states.