



Written by [Raven Clabough](#) on January 12, 2016

Supreme Court May Strike Down Compulsory Union Dues

Supreme Court justices revealed on Monday that they could strike a blow to public-sector unions over the forced union dues that workers are compelled to pay, potentially overturning a 40-year-old precedent. Fox News reports that during 80 minutes of oral argument on whether state government workers who choose not to join a union should still be required to pay union dues to cover costs of collective bargaining, the court's conservative justices, as well as a swing justice, "made skeptical comments about the legality of the payments."



A group of school teachers in California brought the issue to the Supreme Court, arguing that mandatory union dues violate the First Amendment rights of workers who do not share the political positions of the unions. Under California law, public employees who opt out of the union must still pay an "agency fee," dubbed the "fair share service fee," that is equivalent to members' dues in order to support the union's collective bargaining activities, reports the *New York Times*.

The plaintiffs argue that they should not have to pay dues to an organization that they feel does not represent them or their interests. "Really, these unions are not speaking on my behalf. They're speaking on behalf of the union and the union leadership," school teacher and plaintiff Rebecca Friedrichs said.

The plaintiffs are asking the court to overturn a 1977 precedent created by *Abood v. Detroit Board of Education* that permits public unions to force non-members to cover the costs of collective bargaining. The 1977 ruling determined that it was fair to ask non-members to pay dues so that they did not become free riders, a term dubbed for workers who would reap the benefits of union representation without having to pay union dues.

Before reaching the Supreme Court, a federal district court ruled against the teachers, pointing to the precedent set in *Abood*, a ruling that was affirmed by the 9th U.S. Circuit Court of Appeals.

But as noted by Justice Anthony Kennedy, considered to be a "swing vote," the precedent established in 1977 in an effort to remove opportunities for "free riders" ultimately turned workers into "compelled-riders' on issues with which they strongly disagree."

California Solicitor General Edward Dumont argued on behalf of the union, claiming that the union requires funding by all workers in order to be able to effectively engage in collective bargaining, and that the fees that fund such bargaining typically pertain to non-political issues.

But Chief Justice John Roberts responded that even mundane matters have the potential to become political whenever state money is involved. "That's always a public policy issue," he said.

Furthermore, the plaintiffs contend that despite the original intent to ensure that union dues by non-members are not utilized for political causes, the unions have become increasingly political over time. Additionally, even a union effort to increase salaries and benefits for teachers is political by nature, they argue, because it calls into question the best use of taxpayer dollars, a point which Justice Kennedy



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reiterated. “Many teachers strongly, strongly disagree with the union position on teacher tenure, on merit pay, on merit promotion, on classroom size,” Kennedy stated, adding that the requirement to pay the dues ultimately forces teachers and employees who do not agree with those positions to “nevertheless subsidize the union on those very points,” in flagrant disregard of the First Amendment.

But according to David Frederick, a lawyer for the union, the positions the union takes in contract negotiations are outside of what is typically protected by the First Amendment, as they involve what he contends are “bread-and butter employment issues.”

In the opinion of the state, “Collective bargaining does not resemble the wide-ranging, open, and public debate that the First Amendment traditionally protects,” he added.

While the position of the more conservative Supreme Court justices was clear, so too was that of the high court’s four liberal justices, who expressed concerns over the notion of overturning long-standing precedent. “You start overruling things,” Justice Stephen Breyer said, and “What happens to the country thinking of us as a kind of stability in a world that is tough because it changes a lot?”

NBC News writes that the union “hoped it might find some support from Justice Antonin Scalia, who had suggested in the past he might be responsive to its position.”

But that seemed to be a thing of the past as Scalia too noted the potential constitutional violations of compulsory union dues. “The problem is that everything that is collectively bargained with the government is within the political sphere, almost by definition. Should the government pay higher wages or lesser wages? Should it promote teachers on the basis of seniority? All of those questions are necessarily political questions,” he said.

Jeff Grabelsky, who studies unions at the Worker Institute at Cornell University, contends that a loss for the unions in this case “could have a profound impact on unionism in the United States.”

Half the states currently have right-to-work laws that ban compulsory fees, but states such as New York and California, where most public-employee unions are concentrated, do not.

But on Monday Justice Scalia called into question claims that the unions could not survive without the compulsory dues from non-members. “Why do you think that the union would not survive without these fees charged to nonmembers of the union?” Scalia asked. “Federal employee unions do not charge agency fees to nonmembers, and they seem to survive. Indeed, they prosper.”

Opponents of compulsory union dues applauded the justices following Monday’s arguments. Carrie Severino, chief counsel at the Judicial Crisis Network, who filed a brief supporting the plaintiffs, issued a statement on Monday noting that the court seemed to recognize that the mandatory fees amount to “subsidies” for political speech. “As Justice Kennedy observed, forcing nonmembers to subsidize a union they disagree with doesn’t make them free riders, it makes them compelled riders. Today it seems like the court is finally ready to let them get off that train,” she said.

A decision in the case is expected by late June.



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