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The Teacher Who Could Gut Unions.

Rebecca Friedrichs's challenge to mandatory fees could reduce labor's political clout.

A Supreme Court decision coming by the end of June could be devastating for organized labor. The case, *Friedrichs v. California Teachers Association (CTA)*, challenges a 1977 ruling allowing public-sector unions to charge nonmembers covered by union contracts mandatory fees to pay for the costs of collective bargaining. The lead plaintiff, Rebecca Friedrichs, is an elementary school teacher. She claims that being forced to pay money to California's politically powerful and overwhelmingly Democratic teachers' union as a condition of her employment violates her First Amendment rights.

Conservatives want the court to ban the mandatory fees. That would create a crisis for organized labor, about half of whose members are in the public sector; dues and fees made up \$174 million of CTA's reported \$186 million in revenue in 2013. It could also cause trouble for Democrats, who depend on union support during elections. CTA reported spending \$211 million on campaigns and lobbying from 2000 to 2009, according to Friedrichs's suit, including \$26 million to oppose a school-voucher proposition.

The Supreme Court has already said government workers can't be required to fund union activities if they're unrelated to collective bargaining. But the plaintiffs argue that collective bargaining is inherently political when the government is the employer. "One of the things people fight about in politics is, should you spend more money on teachers or police?" says Ronald Cass, a former dean of Boston University School of Law, who co-wrote an amicus brief in support of Friedrichs.

Unions' best hope of winning rests with an unlikely ally: Antonin Scalia. He wrote in a 1991 case that, because the government requires public-sector unions to provide equal representation to nonmembers, it has an interest in making sure that service is paid for. "Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them," he wrote.

Scalia has also argued that the government has much more leeway to exercise control over its employees than over private citizens, a view that could help unions. "Private citizens perhaps cannot be prevented from wearing long hair, but policemen can," he wrote in a 1990 dissent involving public employees in Illinois.

Scalia brought up police officers' First Amendment rights again last year in a union fees case involving home-health-care workers supported by Medicaid. In oral arguments, Scalia posited a discontented cop who insisted on meeting over and over with the police commissioner to bug him for a raise: "The commissioner finally is fed up and tells his secretary, I don't want to see this man again—has he violated the Constitution?" In that case, Scalia ended up joining the 5-4 majority opinion, which found that "quasi-public employees," like home aides, can't be required to pay union fees.

The biggest public-sector unions, including the American Federation of State, County & Municipal Employees (AFSCME), are already canvassing workers, asking them to become dues-paying

members before the court rules on the case. Even pro-union workers may be tempted by the chance to have their representation for free, says Lee Saunders, president of AFSCME. “That’s going to be a hard choice for some people.”

by Josh Eidelson

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