



Right-to-Work Could Come to Public Employment

By Derk Wilcox

Summary

An upcoming Supreme Court case involving the First Amendment right to free speech could bring right-to-work to public sector workers everywhere.

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The United States Supreme Court has agreed to hear a case in its next term that could have a significant impact on public employees' rights, as well as on the governance of states and municipalities. The case is called *Friedrichs v. California Teachers Association*. As the name implies, the case was brought by teachers in California, but the Mackinac Center for Public Policy filed a friend-of-the-court brief urging the court to hear the matter due to its importance.

At issue is whether public sector unions can require public employees who are not union members to pay them as a condition of employment. In California and in many other states, these individuals must pay "agency fees" to the union that represents fellow employees in their workplace. These fees are typically 80 to 90 percent of the full union dues. If the Supreme Court agrees with the teachers in this case and decides that public employees cannot be required to pay these fees, the effect will be that public employees in all 50 states will have the same freedoms that public employees in Michigan gained in 2013 with the right-to-work law.

What makes this dispute worthy of the Supreme Court's scrutiny is that it presents a constitutional question: Does forcing public employees to pay union fees violate their First Amendment right of free speech? The teachers in *Friedrichs* point out that they are required to fund the union which in turn uses their money to lobby the government on a number of positions, taking viewpoints that many of the teachers don't share. They are currently required to subsidize speech, in their name, with which they do not agree. That is a violation of their First Amendment rights.

Besides the individual free speech rights of public employees being at stake, the case could have a pronounced impact on public policy. Public sector unions have, in recent decades, been one of the best-funded and most effective lobbying voices for increased government expenditures and programs. Even the legally required act of mandatory bargaining with unions is, in effect, a lobbying effort. After all, union negotiators would hardly be expected to come to the bargaining table and demand less government spending, fewer government jobs, and lower wages for public employees. The unions' financial self-interest calls for more spending. And because the unions can influence the election of their bargaining partners, their influence becomes even greater, leading to a circular pattern of ever-increasing spending. This places upward pressure on



The Supreme Court could give public employees the ability to break free from union entanglement.

governments at all levels to increase spending and, ultimately, taxes — two inherently political activities.

The unions argue that the required payment of agency fees is their due for the negotiation and representation they do on behalf of all employees. Even if an employee does not belong to the union, the union speaks on his or her behalf; the union speaks for all employees in a union workplace, regardless of what any particular employee may think of the arrangement.

The Mackinac Center has argued that even if individual employees are not forced to pay agency fees, the union is still compensated by its privileged status under public sector labor law. Generally, once a union is the certified representative of employees, it receives substantial economic benefits. Any other party bargaining with the government would pay a premium to obtain the exclusivity, control and special economic benefits conferred upon the unions; yet the unions are given these for free, and all they have to do in return is represent all employees equally, union and nonunion alike.

Unions have argued that without these mandatory fees, they could not exist or operate effectively. When the Mackinac Center urged the Supreme Court to hear Friedrichs, we pointed out that even in right-to-work states like Michigan, where the fees are not mandated, unions continue to exist and function well. The loss of a small portion of mandated fees has a negligible effect on their finances compared to the economic privileges that they still receive. The effect these mandatory contributions have on the free speech rights of the teachers and other public employees is what the court should be considering, and it should decide that these teachers' rights should not be infringed by forcing them to pay the union.

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