

GUTTING PUBLIC SECTOR UNIONS: FRIEDRICHS V. CALIFORNIA TEACHERS ASSOCIATION

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INTRODUCTION

In *Friedrichs v. California Teachers Association*,¹ public-sector unions face a constitutional challenge that could lead to their demise. In California, all public school employees are represented by a union—whether or not they are union members—and are required to pay an agency fee. This requirement seems to run contrary to the First Amendment, which generally prohibits the government from compelling citizens to support the speech and expressive activities of a private organization. However, in the 1977 case *Abood v. Detroit Board of Education*, the Court found constitutional a statute that allowed unions to compel dissenting non-union members to pay agency fees.² Specifically, the Court held statutes that forced public employees to pay agency fees did not violate the First Amendment as long as the agency fees were germane to a union’s bargaining expense and were unrelated to a union’s political activity.³

In *Friedrichs*, the Court is being urged to overrule *Abood* and find that under the First Amendment, public employees who decline to join a union cannot be required to pay union agency fees.⁴ The Court’s ruling in *Friedrichs* could have a broad impact on public-sector unions’ financial health and political clout, as well as politics more broadly.⁵ This commentary will discuss the factual and legal background leading up to

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1. *Friedrichs v. Cal. Teachers Ass’n*, 2016 WL 1191684 (2015).

2. *See Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 235 (1977) (noting agency fees must be collected for a purpose related to a union’s duty as the collective-bargaining representative).

3. *Id.* at 235–36.

4. Brief for Petitioners at 16, *Friedrichs v. Cal. Teachers Ass’n*, No.14-915 (U.S. Sept. 4, 2015) [hereinafter Brief for Petitioners].

5. Amy Howe, *Justices return to dispute over union fees for non-members: In Plain English*, SCOTUSBLOG (Jan. 5, 2016, 4:46 AM), <http://www.scotusblog.com/2016/01/justices-return-to-dispute-over-union-fees-for-non-members-in-plain-english/>.

Friedrichs, analyze each party's argument and discuss why the Court should decline to overturn *Abood*.

I. FACTS AND PROCEDURAL HISTORY

A. *Factual Background*

The petitioners in this case are led by Rebecca Friedrichs, who, along with nine other California public school teachers, objects to being required to pay an agency fee to a union as a nonmember.⁶ Respondents include the local unions, the National Education Association, and the California Teachers Association. The National Education Association is the nation's largest professional union, and is "committed to advancing the cause of public education."⁷ The California Teacher's Association represents 325,000 public educators in California and is the largest affiliate of the National Educators Association.⁸ In addition, California Attorney General Kamala Harris intervened in the district court proceeding, was an intervenor in the court of appeals, and is consequently a party to the proceeding.⁹

Friedrichs and the nine other school teachers work in school districts that recognize a union as the exclusive bargaining agent for its employees.¹⁰ These districts and the respective unions have entered into several agreements that establish the terms and conditions of employment for Friedrichs and other public employees.¹¹ One of these conditions for employment requires Friedrichs and other public school teachers to either join a union or allow agency fees to be deducted from their paycheck.¹² Because Friedrichs is not a member of a union, she must pay the union an agency fee.¹³ The total amount Friedrichs must pay is determined by the local unions and may be comprised of both chargeable and nonchargeable expenses.¹⁴ A "chargeable" expense is defined as a fee collected for purposes germane to the union's "function as the exclusive bargaining representative."¹⁵ The union has the duty of establishing which expenses

6. See Brief for Petitioners, *supra* note 4, at ii.

7. NAT'L EDUC. ASS'N, <http://www.nea.org/> (last visited Jan. 2, 2016).

8. CAL. TEACHERS ASSOC., <https://www.cta.org/> (last visited Jan. 2, 2016).

9. Brief for Petitioners, *supra* note 4, at iii.

10. *Id.* at 5–6.

11. *Id.* at 6–7.

12. *Id.*

13. *Id.*

14. Brief for Union Respondents at 9, *Friedrichs v. Cal. Teachers Ass'n*, No.14-915 (U.S. Nov. 6, 2015) [hereinafter Brief for Union Respondents].

15. CAL. GOV'T CODE § 3456(a) (West 2011).

are nonchargeable.¹⁶ Under state law, nonmembers must be allowed to object, or “opt-out,” of paying the nonchargeable expenses—which all petitioners do—and be charged a reduced agency fee comprised exclusively of chargeable expenses.¹⁷

After determining the annual agency fee, the unions inform all the school districts that are under agency-shop agreements of the amount due.¹⁸ The school districts then automatically deduct from the teachers’ paychecks the amount due in pro rata shares.¹⁹ These deductions are directly sent to the local unions and the California Teachers Association.²⁰

Agency fees for nonmembers are typically around two percent of a teacher’s total salary, equating to around \$1,000 a year.²¹ Individuals who opt-out of paying the nonchargeable expenditures typically pay a reduced fee of \$600 to \$650 annually.²²

B. Procedural History

From the beginning, this case seemed destined for the Supreme Court. On April 30, 2013, Friedrichs filed suit in federal district court, challenging the Respondents’ agency-shop requirements. There, Friedrichs conceded her case was controlled by *Abood v. Detroit Board of Education* and moved for judgment on the pleadings against her.²³ The Respondents opposed Friedrichs’s motion and sought discovery to develop an evidentiary record related to Friedrichs’s claims. The district court rejected Respondents’ motion and granted Friedrichs’s motion for judgment against herself.²⁴

Friedrichs then appealed the district court’s judgment to the Court of Appeals for the Ninth Circuit.²⁵ Again, she conceded that *Abood* foreclosed her Constitutional claim and moved for judgment against herself.²⁶ Respondents opposed this motion, arguing that the Ninth Circuit should conduct oral arguments and issue a published opinion.²⁷ The Ninth Circuit

16. Brief for Petitioners, *supra* note 4, at 4, 8.

17. *Id.*; see also *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 236 (1977) (stating that activities not germane to a union’s duty as a collective bargaining agent may be financed by members and nonmembers who do not object to those expenditures).

18. Brief for Petitioners, *supra* note 4, at 6.

19. *Id.* at 6–7.

20. *Id.* at 7.

21. *Id.*

22. *Id.*

23. Brief for Union Respondents, *supra* note 14, at 10–11.

24. *Id.* at 11.

25. Brief for Petitioners, *supra* note 4, at 8.

26. *Id.* at 8–9.

27. *Id.* at 9.

declined this request and instead summarily affirmed the district court.²⁸ Friedrichs appealed the decision to the Supreme Court, which granted her writ of certiorari on June 30, 2015.²⁹

II. LEGAL BACKGROUND

A. *Exclusive Bargaining and Agency-Shop Agreements*

Under California law, a union can become the exclusive bargaining representative for public school employees in a bargaining unit after demonstrating “proof of majority support.”³⁰ After a union demonstrates sufficient support,³¹ the union becomes the sole representative of all the public school employees within the bargaining unit for purposes of bargaining over “wages, hours of employment, and other terms and conditions of employment.”³² A union’s exclusive representative status prohibits school districts from bargaining over terms and conditions of employment with individual employees, or with any other labor organization.³³ Additionally, a union must represent every employee in its bargaining unit,³⁴ including employees who are not actual members of the union.³⁵

To discourage employees from “free-riding”—refusing to contribute to the union, yet retaining the benefits of union representation—California law enables school districts to enter into agency-shop³⁶ agreements with a union.³⁷ This agreement empowers school districts to require that all

28. *Id.*

29. *See* Friedrichs v. Cal. Teachers Ass’n, 135 S. Ct. 2933 (2015) (granting certiorari).

30. CAL. GOV’T CODE § 3544(a) (West 2011).

31. The specific and detailed requirements for a union to become officially recognized and certified as the exclusive bargaining representative for a group of public employees are not relevant for this commentary.

32. CAL. GOV’T CODE § 3543.2(a)(1) (West 2011); *see generally* Brief for the Attorney General of Cal., Friedrichs v. Cal. Teachers Ass’n, No. 14-915 (U.S. Nov. 6, 2015) (noting that by law, the scope of collective bargaining is limited to terms and conditions of employment).

33. *See, e.g.,* Benjamin Wyle, *Labor Arbitration and the Concept of Exclusive Representation*, 7 B.C. L. REV. 783 (1966).

34. CAL. GOV’T CODE § 3546(a).

35. *See* Steele v. Louisville & R.R. Co., 323 U.S. 192, 194 (1944) (“So long as a labor union assumes to act as the statutory representative of a craft, it cannot rightly refuse to perform the duty . . . [and it must] represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith.”).

36. Also known as a “union shop” agreement.

37. *See* Abood v. Detroit Bd. of Educ., 431 U.S. 209, 221–22 (1977) (noting an agency-shop agreement fairly distributes a union’s cost from collective bargaining and “counteracts the incentive that employees might otherwise have to become ‘free riders’”).

employees join the union or pay an agency fee,³⁸ as a condition of employment.³⁹ Under an agency-shop agreement, employers are mandated to deduct from the nonmember's salary an agency fee that ideally represents that employee's fair share of the union's chargeable and nonchargeable activities.⁴⁰

B. First Amendment Implications of Agency-Shop Agreements

The First Amendment protects individuals' freedom of speech,⁴¹ their freedom to associate for the advancement of ideas, and their freedom to refrain from doing so.⁴² Absent safeguards, agency-shop agreements have the ability to violate nonmembers' First Amendment rights.⁴³

In *Abood*, the Court recognized that forcing employees to contribute to a union impacts their First Amendment rights because certain employees may have a number of ideological objections to union activity.⁴⁴ For example, "[o]ne individual might disagree with a union policy of negotiating limits on the right to strike . . . or might have economic or political objections to the unionism itself."⁴⁵ However, the Court also recognized that the union's duty to bargain collectively on behalf of all employees⁴⁶ "carries with it great responsibilities" and comes at a substantial cost.⁴⁷ The *Abood* Court found a compromise, and held the First Amendment prohibits compelling nonmembers to pay agency fees that are not collected for purposes germane to a union's role as the "exclusive bargaining representative."⁴⁸

In the subsequent case *Lehnert v. Ferris Faculty Association*,⁴⁹ the Court established that state statutes that enable unions to collect from dissenters agency fees that are germane to their role as a bargaining agent are justified because they serve the government's "vital policy interest in labor peace and avoiding 'free riders.'"⁵⁰

38. Also known as a "fair share service fee."

39. Brief for Petitioners, *supra* note 4, at 2.

40. CAL. GOV'T CODE § 3546(a) (West 2011).

41. U.S. CONST. amend. I.

42. *Abood*, 431 U.S. at 222.

43. *See id.* at 234 (noting that because petitioners are being "compelled to make, rather than prohibited from making" contributions, it is "no less an infringement of their constitutional rights").

44. *Id.* at 222.

45. *Id.*

46. *See id.* at 221 (noting the union is required to represent all employees, "union and nonunion").

47. *Id.*

48. *Id.* at 235–36.

49. 500 U.S. 507 (1991).

50. *Id.* at 522.

C. *The Legal Context Leading up to Friedrichs*

Although *Abood* remains a controlling decision—and has been since 1977—two recent Court decisions hinted that *Abood* may be in jeopardy.⁵¹ In *Knox v. SEIU Local 1000*,⁵² Justice Alito and the majority questioned the constitutionality of agency-shop agreements.⁵³ They stated that “acceptance of the free-rider argument as a justification for compelling nonmembers” to pay an agency fee is “something of an anomaly.”⁵⁴ In other words, compelled agency fees burden non-members’ First Amendment rights, and that burden might not be outweighed by a State’s interest in preventing free-riding.

Perhaps sensing the Court’s trepidation towards upholding the constitutionality of agency-shop agreements, non-union workers in *Harris v. Quinn*⁵⁵ seized the moment and asked the Court to overturn *Abood*. Justice Alito again wrote the Court’s opinion, which held that *Abood* did not apply to the facts in *Harris*, and consequently refused to overrule it.⁵⁶ Nevertheless, Justice Alito and the majority wrote four pages highlighting what they deemed problematic with *Abood*, arguing it is a “bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support.”⁵⁷

III. ARGUMENTS

A. *Should the Court Overrule Abood?*

1. Friedrichs’s Argument

Friedrichs’s first argument is very simple: the underlying compromise in *Abood v. Detroit Board of Education*—allowing unions to collect agency fees from nonmembers for the purpose of collective bargaining but prohibiting charges for political activities—is constitutionally indefensible.

51. Lyle Denniston, *New Challenge to Public Employee Unions, Made Simple*, SCOTUSBLOG, (August 24, 2015, 12:08 am), <http://www.scotusblog.com/2015/08/new-challenge-to-public-employee-unions-made-simple/>.

52. *Knox v. Serv. Emps. Int’l Union, Local 1000*, 132 S. Ct. 2277 (2012).

53. *See id.* at 2282.

54. *Id.* at 2290.

55. 134 S. Ct. 2618 (2014).

56. *See id.* at 2638 (finding that agency-shop agreements are not chargeable to employees who were not exclusively employed by the state); *see also id.* at 2641 (noting the rationales supporting fair share agreements did not apply when the union’s bargaining was limited to those terms and conditions of employment controlled by the state).

57. *Id.* at 2644.

She contends *Abood* is unsustainable because, due to the broad fiscal impact of union bargaining, everything that a public-sector union does is political in nature.⁵⁸ Thus, it follows that *any* compelled agency fee violates a nonmember’s First Amendment right not to pay for political activities to which they object because whenever a union bargains with the government, it is a “quintessentially political act.”⁵⁹

Friedrichs also contends the Court should overrule *Abood* because it is a “jurisprudential outlier”⁶⁰ and “irreconcilable with [the Supreme] Court’s decision in every related First Amendment context.”⁶¹ She states that the Court has recently held that the freedom to speak, or refrain from speaking, triggers exacting review, regardless of “whether the government is regulating its citizenry at large or requiring its employees to support and affiliate with particular political entities.”⁶² Therefore, it is “clear that exacting scrutiny applies where, as here, a state compels its public-school teachers” to pay agency fees.⁶³

Friedrichs further argues the “compelling interests” proffered in *Abood* and *Lehnert* to support compelled subsidization of collective bargaining—promoting labor peace and preventing free-riding—do not withstand the required scrutiny.⁶⁴ First, citing *Abood*, Friedrichs defines the government’s interest in labor peace as preventing the potential confusion and conflict that could arise if rival labor unions with different views sought to bargain with an employer.⁶⁵ She reasons that this argument only supports a union’s right to exclusive representation, not its right to compel employees to pay union agency fees.⁶⁶ Friedrichs also asserts that the government’s interest in labor peace is only implicated if Respondents can demonstrate agency fees are essential to a union’s survival. Because public-sector unions are “flourishing” in right-to-work states, the government’s interest in labor peace does not withstand scrutiny.⁶⁷

Second, Friedrichs rejects the government’s interest in compelling agency fees as a means to prevent free-riding. She again contends that

58. Petition for Writ of Certiorari at 14, *Friedrichs v. Cal. Teachers Ass’n*, No. 14-915 (U.S. Nov. 6, 2015) [hereinafter *Petition for Writ of Certiorari*].

59. Brief for the Petitioners, *supra* note 4, at 9.

60. *Id.* at 2.

61. *Id.* at 1.

62. *Id.* at 10.

63. *Id.* at 10–11.

64. *Id.* at 12.

65. *Id.*

66. *Id.*

67. *Id.*

preventing the compulsion of agency fees will not bankrupt unions, and thus the government's interest in "preventing 'free-riding'" does not withstand exacting scrutiny.⁶⁸ Additionally, Friedrichs argues those employees that reject their union's policies obviously are not free-riding on the policies they reject.⁶⁹

2. Respondents' Argument

The Respondents urge the Court to uphold *Abood* because it "correctly reflects"⁷⁰ the principle that a state's interest in managing its workforce justifies infringing an employee's First Amendment interests through imposed agency-fees.⁷¹ The Respondents first argue that Friedrichs incorrectly challenged agency fees on the theory that it cannot survive exacting scrutiny. As reflected in *Abood*, the Court recognizes that First Amendment analysis differs depending on whether the government is acting as an employer or regulator.⁷² Respondents point to *Pickering v. Board of Education*, and note that the Court previously held that if "the employee is not speaking 'as a citizen' and 'on a matter of public concern,' 'the employee has no First Amendment cause of action.'"⁷³ Accordingly, the Respondents claim compelled agency fees collected for the purpose of collective bargaining are constitutionally justified, as they are a form of employee speech that is not a matter of public concern.⁷⁴ Respondents claim this distinction between the government acting as an employer and a regulator is critical to prevent public employees' speech from "interfer[ing] with the efficient and effective operation of government."⁷⁵

Second, Respondents point out public employees' First Amendment interests against compelled agency fees are "certainly not *stronger* than the interest in affirmative expression."⁷⁶ On the contrary, Respondents claim mandatory fees are actually less restrictive of First Amendment interests because they retain the public employees' right to express themselves as

68. *Id.* at 13.

69. *Id.*

70. Brief for Union Respondents, *supra* note 14, at 11.

71. *Id.*

72. *See id.* at 19 (noting that "the Government has a much freer hand in dealing 'with citizen employees than it does when it brings its sovereign power to bear on citizens at large'").

73. *Id.* at 20.

74. *See id.* at 25 ("Collective bargaining . . . [is] employee speech because [it] fall[s] within the State's internal personnel administration process for dealing with employment terms and conditions and thus fall[s] squarely within the State's prerogative to manage its workplace.").

75. *Id.* at 20.

76. *Id.* at 24.

citizens.⁷⁷

Third, Respondents contend that even if there were reasons to question *Abood*, the Court should at the minimum reaffirm the case based on stare decisis.⁷⁸ Respondents point out that “strong reliance interests have developed around the agency-shop model,” and note outlawing agency-shop agreements would overrule the “judgments of 23 States plus the District of Columbia.”⁷⁹ Further, they claim that if the Court were to outlaw agency-shop agreements, tens of thousands of collective-bargaining agreements governing public employees would be thrown into disarray.⁸⁰

IV. ANALYSIS

It is likely that the Court will rule in favor of the California Teachers Association and the other respondents, and reaffirm the constitutionality of agency-shop agreements. First, if the Court overturns *Abood v. Detroit Board of Education* and holds that compelling non-members to pay agency fees violates the First Amendment, the Court will contradict its precedent regarding employee speech, and may limit the First Amendment rights of unions and paying members.⁸¹ Second, even if the Court finds Friedrichs’s argument convincing, the Court will likely find Friedrichs failed to show special justification to overcome the doctrine of stare decisis.

A. The First Amendment Rights of Public Employees and the Right of the Government to Maintain Control of Its Workforce

Following *Abood*, the Court has consistently found the government “has broader discretion to restrict speech when it acts . . . as employer.”⁸² The principle remains true in cases in which the state is the proprietor in managing its workforce, and is not the direct employer.⁸³ Of course, a citizen does not lose his First Amendment rights by becoming a public

77. *Id.*

78. *Id.* at 31.

79. *Id.* at 12.

80. *Id.*

81. Catherine L. Fisk & Margaux Poueymirou, *Harris v. Quinn and the Contradictions of Compelled Speech*, 48 LOY. L.A. L. REV. 439, 461–70 (2015).

82. *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006); *see also Pickering v. Bd. of Educ. of Twp. High Sch. Dist. 205, Will Cty., Ill.*, 391 U.S. 563, 568 (1986) (“[T]he State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general.”); *see also Enquist v. Oregon Dep’t. of Agric.*, 553 U.S. 591, 599 (2008) (“[G]overnment has significantly greater leeway in its dealing with citizen employees than it does when it brings its sovereign power to bear on citizens at large.”).

83. *Nat’l Aeronautics and Space Admin. v. Nelson*, 562 U.S. 134, 148 (2011).

employee.⁸⁴ However, a citizen's First Amendment rights are circumscribed when he accepts public employment⁸⁵ because his rights are balanced against the government's "substantial interest" to act as an effective employer.⁸⁶ Indeed, the Court has warned against constitutionalizing employee speech relating to terms of employment,⁸⁷ noting the government has "broad authority" to supervise the conduct of public employees.⁸⁸ Similarly, Justice Kagan, in dissent in *Harris v. Quinn*, declared that "except in narrow circumstances [the Court will] not allow an employee to make a 'federal constitutional issue' out of basic 'employment matters, including . . . pay, discipline, promotions, [and] leave.'"⁸⁹

Public employees lack First Amendment protection for speech that is related to their terms of employment.⁹⁰ Collective bargaining—contrary to Friedrichs's argument—merely involves speech-related terms of employment.⁹¹ Therefore, the Court should follow its precedent and find that requiring agency fees for the purposes of collective bargaining falls outside First Amendment protection.

Even if the Court were to find agency fees implicate the First Amendment, they should still hold in favor of Respondents. The Court should hold that any limited burden on the First Amendment rights of dissenting non-members is outweighed by the government's benefit of having effective and efficient management of its workforce.⁹² In other words, the Court should reaffirm the government's "broad authority" to manage its workforce.⁹³ If the Court were to rule in favor of Friedrichs, the decision would be—borrowing from Justice Alito—"something of an anomaly"⁹⁴ and would overturn years of Court precedent regarding public-employee speech claims.

If the Court holds that statutes that enable unions to require agency fees

84. *Pickering*, 391 U.S. at 568.

85. *Garcetti*, 547 U.S. at 418.

86. See *Borough of Duryea, Pa. v. Guarnieri*, 131 S. Ct. 2488, 2494 (2011) ("The government has a substantial interest in ensuring that all of its operations are efficient and effective.").

87. *Connick v. Myers*, 461 U.S. 138, 148 (1983).

88. *Guarnieri*, 131 S. Ct. at 2494.

89. *Harris v. Quinn*, 134 S. Ct. 2618, 2655 (Kagan, J., dissenting) (quoting *Guarnieri*, 131 S. Ct. at 2496).

90. Benjamin Sachs, *Harris v. Quinn: The Context of First Amendment Claims*, ON LABOR (Jan. 20, 2014), <http://onlabor.org/2014/01/20/harris-v-quinn-the-context-of-first-amendment-claims/>.

91. *Id.*

92. Ann Hodges, *Symposium: Public-sector Unions, Labor Relations, and Free Speech*, SCOTUSBLOG, (August 25, 2015 10:15 AM), <http://www.scotusblog.com/2015/08/symposium-public-sector-unions-labor-relations-and-free-speech/>.

93. *Guarnieri*, 131 S. Ct. at 2494.

94. *Knox v. Serv. Emps. Int'l Union, Local 1000*, 132 S. Ct. 2277, 2290 (2012).

from dissenting nonmembers is compelled speech, then forcing union members to pay to support these members is also compelled speech.⁹⁵ Accordingly, a ruling in favor of Friedrichs violates the First Amendment rights of unions and its members by requiring them to subsidize the speech of nonpayers.⁹⁶ Plus, in theory, unions and their members have their resources that they can spend on political activities limited by free-riders, which further infringes their First Amendment rights.⁹⁷ Put simply, if the Court were to overrule *Abood* and hold that forcing dissenting nonmembers to pay agency fees is a violation of their First Amendment rights, the Court would in effect violate the First Amendment rights of unions and its paying members.⁹⁸ Therefore, the Court reaffirming *Abood's* requirement that fees can only be collected for purposes of collective bargaining would represent a reasonable compromise in a situation “with conflicting First Amendment rights at stake.”⁹⁹

B. *The Doctrine of Stare Decisis*

Even if the Court finds that Friedrichs’s argument is stronger, the “Court has always held that ‘any departure’ from precedent ‘demands special justification.’”¹⁰⁰ *Abood's* principles have become embedded in the law, as well as public-sector employment relationships.¹⁰¹ Until very recently, the Court has re-affirmed and cited favorably *Abood's* principle that distinguishes agency fees collected for the cost of collective bargaining and those of political activity.¹⁰² Further, more than twenty states have statutes that explicitly authorize agency-shop agreements, which has resulted in thousands of multi-year contracts between state governments and public-sector unions.¹⁰³ The Court has previously held that stare decisis is of increased importance when overturning precedent would require States to amend their statutes and affect contracts.¹⁰⁴

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. ANN C. HODGES, AM. CONST. SOC’Y FOR LAW & POL’Y, *FRIEDRICH V. CALIFORNIA TEACHERS ASSOCIATION: THE AMERICAN LABOR RELATIONS SYSTEM IN JEOPARDY* 11 (Nov. 12, 2015).

100. *Harris v. Quinn*, 134 S. Ct. 2618, 2651 (2014) (Kagan, J., dissenting) (quoting *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984)).

101. *Id.* at 2651–52.

102. *See, e.g., Locke v. Karass*, 555 U.S. 207, 213–14 (2009); *Lehnert v. Ferris Facult. Ass’n.*, 500 U.S. 507, 519 (1991); *Ellis v. Ry. Clerks*, 466 U.S. 435, 455–57 (1984); *see also Harris*, 134 S. Ct. at 2652 (pointing out the Court had not indicated it had any problem with *Abood* until *Knox* in 2012).

103. *Harris*, 134 S. Ct. at 2652.

104. *Id.* at 2652.

The Friedrichs's primary argument is that *Abood* is self-contradictory, and thus unworkable, and violates the First Amendment rights of dissenting nonmembers because all public sector collective bargaining is inherently political.¹⁰⁵ The petitioners in *Abood* made the same arguments, but the *Abood* Court rejected them. The Court noted,

There can be no quarrel with the truism that because public employee unions attempt to influence governmental policymaking, their activities and the views of members who disagree with them may be properly deemed political. But that characterization does not raise the ideas and beliefs of public employees onto a higher plane than the ideas and beliefs of private employees.¹⁰⁶

Abood recognized the political character of public-sector bargaining, yet held agency-shop agreements do not violate the First Amendment rights of dissenting nonmembers.¹⁰⁷ Although the petitioners in this case have changed, their arguments remain the same as those that were rejected by the court in *Abood*.¹⁰⁸ Here, Friedrichs merely rehashes old arguments and catalogs alleged errors committed in *Abood*, which is not sufficient to overcome the doctrine of *stare decisis*.¹⁰⁹

Friedrichs argues that “the right of the citizen not to be subjected to unconstitutional treatment outweighs any reliance or predictability interests of *stare decisis*.”¹¹⁰ Essentially, special justification is not needed if it involves denial of a constitutional right.¹¹¹ However, if the Court begins simply overruling precedent, what happens to society's view of the Court as legitimate and stable?¹¹² Certainly, some cases should be overturned. Here, however, the Court should not overrule *Abood*—which has worked “reasonably well”¹¹³—because there is no “basic principle here that's erroneous.”¹¹⁴ There is simply no special justification for the Court to overrule *Abood*.

105. Petition for Writ of Certiorari, *supra* note 58, at 14.

106. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 231 (1977).

107. *See id.* at 209 (finding agency-shop clauses are valid).

108. HODGES, *supra* note 99, at 7.

109. *See Harris*, 134 S. Ct. at 2652 (noting that “[t]he special justifications needed to reverse an opinion must go beyond demonstrations (much less assertions) that it was wrong; that is the very point of *stare decisis*”).

110. *Howe*, *supra* note 5.

111. *Id.*

112. Transcript of Oral Argument at 33, Friedrichs v. Cal. Teachers Ass'n, No.14-915 (Jan. 11, 2016).

113. *Id.* at 29.

114. *Id.* at 33.

CONCLUSION

The Court's decision in *Abood v. Detroit Board of Education*, which held constitutional state statutes that enable public-sector unions to require agency fees from dissenting nonmembers, should be left untouched. The Court cannot overturn *Abood* without violating its precedent regarding First Amendment restrictions on employee speech. Plus, a ruling in favor of *Friedrichs* may infringe on the First Amendment rights of unions and paying members.¹¹⁵ Finally, even if the Court finds merit in *Friedrichs*'s argument, it will not find the special justification needed to overcome the doctrine of stare decisis. *Friedrichs*'s attempt to escape paying agency fees should be rejected by this Court.

115. Fisk and Poueymirou, *supra* note 81, at 461–70.