



A Union of Professionals

## Memorandum

American Federation  
of Teachers, AFL-CIO

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AFT Teachers  
AFT PSRP  
AFT Higher Education  
AFT Public Employees  
AFT Nurses and Health  
Professionals

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**The American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.

To: AFT officers  
Executive Council  
AFT state federation presidents  
AFT staffers on Friedrichs  
AFT Affiliate Attorneys

From: David Strom, General Counsel

Date: September 29, 2015

Subject: ***New Developments in the Friedrichs v. CTA Case***

### Summary

We want to update you on the recent legal developments in the Friedrichs v. CTA case and provide background on the amicus brief that the AFT will be submitting to the Court.

#### **Who Are The Parties and What Are the Issues In Friedrichs?**

As you probably are aware, the Supreme Court accepted for review the Friedrichs v. California Teachers Association case on the very last day of June before it went on recess for the summer. The primary issue in Friedrichs is whether state law may permit public sector unions to require non-members in a bargaining unit who benefit from the collective bargaining agreement to pay their fair share of the costs of reaching and enforcing that agreement. Fair share fees serve an important role in providing necessary resources to support bargaining between public school districts and educators. The right to collect such fair share or agency fees has been upheld by the Supreme Court repeatedly in a series of cases dating back to the unanimous 1977 decision of Abood v. Detroit Board of Education, 431 U.S. 209.

The Petitioners in Friedrichs are ten California teachers and the Christian Educators Association International, a group of California Christian school teachers. The Petitioners are represented by the conservative legal foundation, the Center for Individual Rights. They seek to reverse almost four decades of precedents dating back to the Abood decision. Specifically, the Petitioners are asking the Supreme Court: (1) to overrule Abood and hold that the First Amendment prohibits fair share fees altogether; and (2) to hold that fair share fees may not be collected through an opt-out arrangement. Currently, in most states agency fee payers pay the full dues amount unless they complete a form and return it to the union asking for a rebate of those

expenses that go to non-collective bargaining or ideological activities. This procedure is what is called an opt-out procedure. The petitioners seek to reverse the procedure and require that fee payers automatically pay the reduced amount for collective bargaining and related activities unless they affirmatively opt-in to paying full dues.

The respondents in Friedrichs are the California Teachers Association (“CTA”), National Education Association (“NEA”), and certain NEA locals and local school district superintendents in California. The State of California is also a party to the case since it intervened in the lower court to defend the constitutionality of its statute. At the district court and appellate levels, the Petitioners’ claims were summarily rejected based on Abood and the decisions that have followed it. The trial court issued its decision based on only the pleadings and the 9<sup>th</sup> Circuit Court of Appeals issued a three sentence order with no opinion. In short, there is virtually no record in this case.

If Petitioners succeed in convincing the court to reverse Abood, then across the country we will lose the right to collect fair share or agency fees. Twenty-three states and the District of Columbia now permit fair share fee arrangements for educators. Additional states permit such arrangements for other types of public sector employees (such as fire fighters and police). There are literally tens of thousands of public sector collective bargaining agreements containing agency fee provisions. If the Court were to rule that such fee provisions are unconstitutional, the longstanding right of states and localities to make decisions about how labor relations will be conducted in the public sector will be changed. It is also possible that some of these states and localities would be exposed to litigation and potential liability over their well established contractual agreements to provide for the collection of fair share fees.

The Petitioners’ brief on the merits was filed on September 4, 2015, and their supporting amici (including the National Right to Work Foundation) filed on September 11, 2015. The State and Union Respondents Briefs on the merits are due October 26, 2015, and amicus briefs in support of the Respondents are due on November 2, 2015. The date for oral argument has not been set, but it is expected to be in December or mid-January. The Court’s decision is expected at any time from April 1 through the end of June 2016.

#### **AFT Amicus Brief**

There is a comprehensive effort to submit a broad array of amicus briefs to support the union’s position in Friedrichs. Among the parties submitting

amicus briefs will be the U.S. Solicitor General, various State Attorneys General, AFL-CIO, AFSCME, SEIU and public hospitals, first responder/public safety unions, school districts, municipalities (local government entities and officials), state legislators (Republican or bipartisan), civil rights organizations, ACLU, constitutional law scholars, labor professors/academics, corporate law professors and potentially state Bar Association Presidents.

*AFT will be filing an amicus brief* that will demonstrate that collective bargaining is a unique, highly valuable vehicle for improving public education and enabling the improvement of student performance. The brief will include arguments based on provisions in public sector collective bargaining statutes, case law, and administrative decisions that demonstrate that unions and educational institutions can and have negotiated provisions that benefit students and student outcomes. We also will identify any legal arguments that may be persuasive to the Court but are not made or sufficiently emphasized by the parties. We have retained Kevin Russell with the law firm of Goldstein & Russell to prepare the AFT amicus brief. Kevin has argued eleven merits cases in the past nine years and served as counsel or co-counsel in nearly 50 merits cases before the Court, including the Ledbetter case.

### **Conclusion**

As this important case moves forward before the Court, we will provide you with updates on significant developments from time-to-time.

DS : vk