

Supreme Court ruling favors unions in agency shop dues case

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The United States Supreme Court issued a one-sentence ruling yesterday in a major case concerning the constitutionality of so-called “agency shop” agreements for public employees.

Also known as “agency fee” or “fair share” agreements, these contracts give a single union the exclusive right to represent a particular category of workers, as well as the power to compel all of those workers to pay the equivalent of union dues. These agreements have been upheld for decades, including in the 1977 Supreme Court case of *Abood vs. Detroit Board of Education*. However, the agreements were challenged in yesterday’s case of *Friedrichs v. California Teachers Association* as infringing on the constitutional free speech rights of workers who do not wish to join or support the union.

At the time of oral arguments in the case in January, the Supreme Court was expected to declare agency shop fees for public employees unconstitutional by a vote of 5-4. However, the unexpected death of Antonin Scalia last month left the Supreme Court with a 4-4 split vote. In cases of a tie vote, the decision of the last appeals court to hear the case is upheld. In the *Friedrichs* case, the Ninth Circuit Court of Appeals had ruled in favor of the unions in November 2014, citing the *Abood* decision.

Accordingly, the Supreme Court’s decision yesterday simply reads, in its entirety, “The judgment is affirmed by an equally divided Court.”

This decision leaves the *status quo ante* in place. For the time being, unions can continue to compel payment of “fair share” fees from non-union workers. At the same time, the Supreme Court left the merits of the constitutional question undecided. Yesterday’s decision kicks the can down the road, with the issue likely to be revisited once a newly appointed Supreme

Court justice can break the tie.

The hard-fought *Friedrichs* case reflects ongoing divisions within the American ruling class over the best means of exploiting workers and suppressing their struggles.

On the one hand, the attack on agency shop fees is identified with the so-called “right to work” campaign and roughly corresponds to the Republican Party position. This position reflects the interests of those sections within the ruling establishment that would prefer to dispense with the services of the trade unions in suppressing the class struggle and facilitating layoffs, wage-cuts and speedups. Instead, these sections would resurrect the *laissez faire* legal framework and doctrines that prevailed at the beginning of the last century.

The case was brought on behalf of a number of California teachers by the Center for Individual Rights, a law firm with a history of right-wing religious and libertarian legal campaigns. A consortium of right-wing entities supported the case in the Supreme Court, including the National Right to Work Legal Defense Fund and the Pacific Legal Foundation, which was founded by former members of Ronald Reagan’s welfare “reform” team while he was governor of California.

The challenge to agency shop fees is based on the legal theory that they infringe on the First Amendment free speech rights of workers because they force workers to subsidize the activities of unions with which they do not agree. This theory, which the Supreme Court would likely have endorsed were it not for Scalia’s death, would have precluded public employee unions from collecting any funds from non-union members, which in turn would have jeopardized the unions’ revenue streams.

On the other hand, the defenders of agency shop fees, roughly corresponding to the Democratic Party position, believe that the state should continue to grant legal protection to what have long since become right-wing, pro-management organizations, such as the California Teachers' Association, its parent organization the National Education Association, and the official unions more generally. This faction within the ruling elite considers the role of these organizations to be critical in undermining the opposition of workers to the destruction of living standards, working conditions and social services such as public education.

If "right to work" is the slogan of the Republican position, then the Democratic position can be identified with the slogan "labor peace." Neither side in this legal dispute in any way represents the interests of the working class.

The Democratic position is that compelling workers to support pro-management unions, and deeming those unions to be the "sole legal representatives" of the workers, is a more effective, efficient and reliable way to attack workers' rights than abolishing these organizations, a risky proposition that poses the danger of genuine, militant and even revolutionary workers' organizations replacing them.

The Democratic Party also has a direct pecuniary interest in protecting unions, which have become completely integrated into the Democratic Party apparatus and provide it with campaign cash and election workers.

The 1977 Supreme Court decision in the *Aboud* case emphasized the "governmental interests advanced by the agency-shop provision," and specifically cited the governmental interest in "labor peace." The Supreme Court indicated that it would be undesirable if "rival teachers' unions, holding quite different views as to the proper class hours, class sizes, holidays, tenure provisions, and grievance procedures, each sought to obtain the employer's agreement." It was therefore better from the standpoint of the state for a specific union to be designated the "sole legal representative" of the workers, with authority to negotiate on behalf of those workers and collect money from each of them.

A friend of the court brief by the American Federation of Teachers union in the current case emphasizes "states' interests in promoting collaborative working relationships with their unions."

The brief goes on to praise "what can be achieved through labor-management collaboration." Variations on the word "collaborate" appear at least ten times in the brief. This encapsulates the unions' position that they should continue to enjoy legal privileges based on their usefulness to management and the state.

In oral arguments in January, the attorney for the California Teachers Association expressly argued that agency shop fees promote "labor peace." He said, "In New York City, for example, there were strikes that were occurring all of the time until an agency fee system was put into place, and that enabled the city to better deliver transit services, school services, and the like." In other words, an agency fee system is a tool for reducing strike activity.

Workers should reject the entire framework of the alternatives as they are defined in the Supreme Court case. They can effectively fight the attacks of the employers and the government only by breaking the grip of the corporatist unions and building new organizations—factory and work place committees of struggle, democratically controlled by the workers themselves and completely independent of the official unions and all of the politicians and parties of big business.

The Socialist Equality Party supports all efforts to build such organizations and fights to link this struggle to the development of an independent political movement of the working class based on a socialist program.



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