

FRIEDRICH V. CALIFORNIA TEACHERS' ASSOCIATION: UNIONS, FREE
SPEECH, AND A SPLIT COURT

HONORS THESIS

Presented to the Honors College of
Texas State University
in Partial Fulfillment
of the Requirements

for Graduation in the Honors College

by

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San Marcos, Texas
December 2016

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ACKNOWLEDGEMENTS

I would like to sincerely thank my thesis supervisor, Dr. Patricia Pattison, for all the guidance she has provided me throughout this process. Professor Pattison has helped to expand my knowledge of the law and legal research and without her help this thesis would not have been possible. I also want to extend my gratitude to Dr. Ronny Haas and to Diann McCabe for helping me understand the thesis process and improve my writing. Thank you, also, to Dr. Heather Galloway and the Texas State University Honors College for providing me with this opportunity and for making my time at Texas State much more engaging and educational.

I would also like to thank my parents, Sue and James Testerman, for giving me every advantage a child could ask for. Thank you for supporting me in every endeavor I have ever undertaken and for instilling in me a desire to learn and succeed. Thank you, lastly, to my partner, Tyler Blakey, for encouraging me throughout this process and for making my four years in college just a little bit less stressful.

ABSTRACT

The history of collective bargaining has been controversial and exciting. Unions formed originally as a way for workers to band together against employers' abuses, but some employees feel that many unions have gotten too powerful and overstepped their boundaries. 26 states are known as right-to-work states; a state with or laws that give employees the right to work in a union shop without being required to join a union. Rebecca Friedrichs and nine other public school employees from California, which is not a right-to-work state, decided to fight the fact that they are compelled to pay any fees to the California Teachers' Association, the sole collective bargaining representative of California public school teachers. Their case that they brought made it all the way to the Supreme Court where it seemed certain that they would win, which would change the law all over the country, effectively putting an end to collective bargaining in the United States. In fact, they urged the lower courts to find against them because they wanted to get it quickly to the Supreme Court. At the time, they were sure to win a 5-4 victory. After oral arguments, however, Justice Scalia passed away, leaving *Friedrichs* with a 4-4 decision and upholding the right of unions to collect fees from employees that they represent whether they are members of the union. My thesis will explore and analyze the legal arguments made in this case and compare the public-school systems in California and Texas to determine whether the unions help or hinder education. By examining the history of right-to-work laws in America and the basic arguments made in *Friedrichs*, this thesis will argue that teachers' unions are beneficial not only to teachers, but to students as well.

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I: Introduction

In January 2016, it seemed certain that the conservative majority on the Supreme Court would all but put an end to collective bargaining in America. After the death of Justice Antonin Scalia, however, the Court lost its conservative majority and handed down a 4-4 decision in *Friedrichs v. California Teachers' Association* (136 S. Ct. 2545). A split decision at the Supreme Court means that the lower court's ruling stands, in this case a victory for collective bargaining. This case threatened to end unions' ability to collect "agency shop" fees. These fees are collected by unions from employees who elect not to join the union in order to cover the employee's share of the cost of the union's collective bargaining efforts and prevent free-riding.

This case had potentially huge implications for the future of collective bargaining in this country, and without the death of Justice Antonin Scalia just one month earlier, would have moved the law further to the right. The split decision at the Supreme Court means that the lower court's ruling stands, a victory for unions, but this case could have placed an insurmountable burden on collective bargaining agencies across the country.

In this paper, I will discuss the history of labor law in America, including the right-to-work movement, and the establishment of agency shops. I will then discuss the history and importance of *Friedrichs* specifically. A comparison of the public schooling systems in California and Texas will illustrate the benefits of unions, with an emphasis on teachers' unions. I will then attempt to find a better solution to the free rider problem than agency shop arrangements. My thesis is unions play an essential role in balancing the power between employers and employees; anyone who is reaping the benefits of a union's collective bargaining efforts should be required to pay their fair share.

II: Background

A- A brief history of collective bargaining

Collective bargaining in America started as a way to balance the power between employers and their employees and has had a long and colorful history. As America industrialized, the work place changed significantly; operations became larger and much more complicated. This led wage workers to band together in order to more effectively bargain with their employers for better pay and better working conditions. Unions also fought to bring an end to child labor in America and fought for the 40-hour work week and overtime pay.

Prior to the legalization of unions, employers normally paid very little to their workers and disregarded safety concerns. Men were often paid only \$2-3 for working a 14-16-hour shift. Women and children were paid even less. Factories hire children as young as six and eight years old, often for dangerous jobs. The only way to solve these problems effectively was to band together and cooperate with your fellow employees. Until *Commonwealth v. Hunt*, however, collective bargaining was often found to be an illegal conspiracy.

Commonwealth v. Hunt (45 Mass. 111) was a case decided in the Massachusetts Supreme Court in 1842. The legality of collective bargaining was uncertain in America. This case centered around a member of the Boston Society of Journeymen Bootmakers who refused to pay a fee for breaking one of the group's rules. The group then persuaded the bootmaker's employer to fire him because of the ordeal. The bootmaker then brought charges of conspiracy against to group. They were found guilty and appealed to the Massachusetts Supreme

Court. In *Hunt* the Court ruled that it was legal if the collective bargaining unions used legal means to achieve a legal end (Witte). This case is an important one in the history of labor law because it gave unions more freedom and solidified their legality.

The Erdman Act, passed in 1898, is an important piece of labor history because it prohibited discrimination against workers on the grounds of union membership. It also provided for arbitration between the companies and their workers and made it illegal to strike or to fire a worker during arbitration proceedings.

In 1913, President Woodrow Wilson appointed the country's first Secretary of Labor. This is a huge development in the history of American labor law because the Secretary of Labor serves as the head of the Department of Labor and suggests laws involving unions, wage standards, job safety, and promotes the welfare of wage workers, the unemployed, and the retired citizens of America (Witte). The Department of Labor enforces thousands of federal regulations and now employs close to 20,000 people.

The National Labor Relations Act (29 U.S.C. § 151-169), also known as the Wagner Act, passed in 1935 is the most influential pieces of legislation in the history of American labor law. It guaranteed private sector employees the right to unionize, bargain for better working conditions, and to strike if necessary. Additionally, the Wagner Act created the National Labor Relations Board (NLRB). In 1937, the constitutionality of the Wagner Act was challenged in the Supreme Court, but its constitutionality was upheld.

The Labor Management Relations Act of 1947 (29 U.S.C. § 401-531), or the Taft-Hartley Act, restricted the power of labor unions. It amended the NLRA of 1935 in order to restrict labor unions activities. President Truman called it a danger to free speech because it prohibited unions and corporations from supporting candidates running for federal office. This statute also outlawed what are known as “closed shop” arrangements which are agreements requiring employers to only hire members of a labor union. The NLRB then added a requirement that forces unions to send to all of their members a break-down of what the unions’ money is being spent on. Section 14B of the Taft-Hartley act also allows states to pass right-to-work laws.

The Federal Labor Relations Act passed in 1978 (5 U.S.C. 71) established collective bargaining rights for employees of the government of the United States. This statute in many ways mirrored the NLRA. The history of American labor law is much more detailed and complex than what I have written here, but for the purposes of this thesis and because of the constraints of time, I have only written about the labor laws that have directly led to the circumstances in which Rebecca Friedrichs brought suit against the California Teachers’ Association.

B-Corruption in powerful unions

Unions have undoubtedly brought about some positive changes for working class Americans, but some arguments against organized labor have been made. Some people believe that unions are unnecessary because in a true free-market economy workers do not need any protection from their employers; they have other employment options and can just leave and find a new job if their

current employer does not provide them with the benefits they desire. In addition, federal and state employment laws are in place to protect employees. Unions have also been said by business owners to suppress development and make companies more inflexible.

Following World War II, American labor union membership was at an all-time high and the unions' officials began asking business management for more union power in making economic decisions. If granted, unions could have impacted business immensely. Many people in business management positions became nervous. This tension resulted in a huge power struggle between unions and corporations. There was a surge in strikes across the country. In the late 1950s, a Senate committee began an investigation into several labor unions on reports of corruption and in many cases the reports were found to be true. There were charges of racketeering and several union officials were thrown out due to affiliation with the communist party. Union membership has been declining since the 1950s, possibly because of these charges of corruption.

The organized crime syndicate known as La Cosa Nostra, or simply the "Mafia," gained control of some labor unions by creating a sense of fear and intimidating the members of the unions through threats and violence. Through this control, they placed Mafia associates in key positions in various unions and influenced the unions' activities. The United States Department of Justice devised a strategy to criminally prosecute the Mafia associates for influencing and corrupting these labor unions (Mayer).

C-The Right-to-Work Movement

In addition to loss of membership, trust in unions has dropped drastically due to these charges of corruption. The lack of trust has contributed to the start of the right-to-work movement. Statutes in 26 states now prohibit union security agreements (Peck). Union security agreements are contractual agreements between a union and an employer that govern whether a union can require the employees to become a member of the union. Prohibiting a union security agreement is intended to give employees the “right to work” without being forced to join a union.

When unions were already declining in popularity, Republicans gained control of many positions in local governments across the country in 2008. This, along with the economically unstable environment of the Great Recession, led to a huge wave of right-to-work legislation being passed across the country (Peck 2015).

D-Agency shop arrangements

California, not a right-to-work state, allows for a union to become the sole collective bargaining representative of public school employees in a district if the proposed union submits proof that a majority of those employees wish to be represented by that union (California Government Code § 3544). After becoming the sole bargaining unit, the union can establish what is known as an agency shop arrangement. It requires all employees to either become members of that union or to pay a fee comparable to the amount of union dues to cover their share of the costs of collective bargaining. These fees are only allowed to be used to fund

activities that are related to collective bargaining and cannot be used for any other activities, such as political lobbying.

These unions are required to send out annual reports that break down the chargeable and non-chargeable portion of the fee. If a non-member wants to avoid paying the non-chargeable portion of the fee, the portion not directly related to collective bargaining, then he or she must affirmatively opt out (Brody).

D1- Opt-Out Requirements: A 1976 Supreme Court case, *Abood v. Detroit Board of Education* (97 S.Ct. 1782), established the constitutionality of these agency shop arrangements. A group of public school employees in Detroit challenged an agency shop arrangement that required non-members of the Detroit Teachers Federation union to pay an agency fee equal to the dues that the union charged its members. The public school employees in *Abood* argued that being required to pay a fee impinged their first amendment right to free speech. The Supreme Court decided that as long as the fees charged to non-members of the union were used for collective bargaining purposes, not lobbying or any other political activity, then the agency shop arrangement was constitutional saying that it helped to fairly distribute the cost of union activities while preventing free-riding and that the conflict with the First Amendment is justified by the importance of unions.

The Ninth Circuit Court of Appeals upheld the constitutionality of opt-out requirement of some agency shop arrangements in the 1991 case, *Mitchell v. Los Angeles Unified School District* (963 F.2d 258). In this case, also involving a group of public school employees challenging agency shop arrangements, the

union sent out a notice that required the non-members of the union to notify the union in writing within 30 days in order to avoid paying the non-chargeable portion of the union fee not directly related to collective bargaining (Brody). Most of the non-members did not respond and that money was automatically deducted from their paychecks. The public school employees in this case sued because they believed it should be required for non-members to consent to paying the non-chargeable portion of the fee instead of being automatically charged unless they opted out. Turning to *Abood* for precedent, the Ninth Circuit decided that the opt out requirement did enough to protect the employees right to free speech because they had a chance to voice their opposition and simply failed to do so.

D2- Fair Share Service Fees: In 2014, the Supreme Court heard another case involving agency shop arrangements in the public sector. *Harris v. Quinn* (134 S.Ct. 2618) involved a group of in-home care providers who were employed by the Illinois Department of Human Services. They challenged a “fair share” fee in their union contract that required all non-members of the union to share the costs of the union’s collective bargaining efforts. Again, they argued that the agency shop arrangement violated their first amendment right to free speech. This time, the Court’s conservative majority delivered a 5-4 decision in which they said that the precedent, *Abood*, does not justify violating the employees’ First Amendments rights. They argued that the Court in *Abood* was decided erroneously and did not apply in this particular case. *Harris* set the stage for *Friedrichs* and gave the petitioners in *Friedrichs* confidence that they could win their case at the Supreme Court, thus changing labor law across the country.

III: Case Background- *Friedrichs v. California Teachers' Association*

A-Facts of the case

Facts: California law allows unions to become the sole bargaining unit for public sector employees and to set up “agency shop” arrangements, which require employees who choose not to join the union to pay a fair share fee close to or equivalent to the union dues in hopes to avoid free-riders, people not paying the union’s fees but still reaping the benefits of the union’s collective bargaining efforts. Unions are required each year to send out a breakdown of the chargeable and non-chargeable fees because the first amendment forbids coerced political speech thus preventing unions from requiring non-members to financially support any action that is not directly related to bargaining. Each year, the employees that elect not to join the union must affirmatively opt-out to avoid paying the non-chargeable portion of the fee. Rebecca Friedrichs, nine other California public school employees, and the Christian Educators Association International sued the California Teachers’ Association arguing that agency shop arrangements violate their first amendment rights.

Issues: 1) Do agency shop arrangements violate the first amendment? 2) Does requiring public sector employees to affirmatively opt-out of paying for the non-chargeable portion of a union’s fee instead of requiring employees to affirmatively opt-in, violate the First Amendment?

Holding: No. The lower Court’s judgement was affirmed by an equally divided court in favor of the California Teachers’ Association.

B- Friedrichs’ journey through the courts:

- **District Court:** The journey this case took to the Supreme Court is actually quite an interesting one. The petitioners in *Friedrichs* sought to overturn *Abood* and *Mitchell*. They had good reason to believe that they would be successful in doing so. In 2014, the Supreme Court heard *Harris v. Quinn* and decided that private sector employees could not be required to pay agency shop fees. This case did not prohibit requiring public employees to pay agency shop fees, but Justice Samuel Alito argued in the majority opinion that *Abood* had been decided invalidly. The petitioners in *Friedrichs* urged the district court to decide against them because they thought their case would be decided the same way as *Harris* and wanted to get it quickly to the Supreme Court where an anti-union decision would have much larger consequences. If the case was decided in favor of the California Teachers' Association at the district court level, then *Friedrichs* could appeal to the 9th Circuit Court of Appeals and then to the Supreme Court in hopes of changing the laws affecting collective bargaining across the country. The District Court ruled in favor of the defendants saying, "Plaintiffs move for judgment on the pleadings, but in Defendants' favor...Plaintiffs are clear that they are asking the Court to enter judgment in favor of Defendants (136 S.Ct. 2545)."
- **Ninth Circuit Court of Appeals:** When the case got to the Ninth Circuit Court of Appeals, the decision was again entered in favor of the California Teachers' Association. The Supreme Court's decision in *Abood* and the Ninth Circuit's decision in *Mitchell* still stood. The three judges on the Court of Appeals all decided to affirm the District Court's decision in favor of the California Teachers' Association.

- **Supreme Court:** Oral arguments were held for *Friedrichs* on January 11th, 2016.

It is easy to see which way Justice Antonin Scalia was leaning:

“Why do you think that the union would not survive without these... fees charged to nonmembers of the union? Federal employee unions do... not charge agency fees to nonmembers, and they seem to survive; indeed, they prosper. Why... is California different (136 S.Ct. 2545)?”

Scalia’s questions obviously heavily favored the abolishment of agency shop fees and the four other conservative justices, Alito, Roberts, Kennedy, and Thomas, appeared to agree. All five of these justices decided that agency shop arrangements in the private sector can violate the first amendment in *Harris v. Quinn* just two years earlier. It seemed almost certain that the Court would decide in favor of the petitioners with a 5-4 majority. Then on February 13th, just one month after the oral arguments in *Friedrichs*, the news broke that Justice Scalia, a solidly conservative voice on the Court, had died in Texas of natural causes. This was a huge blow for the petitioners in *Friedrichs*. They knew they had lost their majority, and on March 29th, the Court handed down a 4-4 decision thus affirming the lower court’s ruling and upholding the constitutionality of agency shop arrangements. Friedrichs’s original plan, asking the decisions of the lower courts to be entered in favor of the union and appeal the decision in order to get the precedent overturned at the Supreme Court, had failed.

- **Summary of Oral Arguments:**

Petitioners: The petitioners argued that agency fee arrangements are unconstitutional because the fee does not just support collective bargaining but

also goes toward political activity. Coerced political speech is banned by the first amendment. Their argument can be summed up by the opening sentence:

“Every year, Petitioners are required to provide significant support to a group that advocates an ideological viewpoint which they oppose and do not wish to subsidize. *Abood's* authorization of this clear First Amendment violation should be overturned, both to end this ongoing deprivation of basic speech and association rights, and to restore consistency and predictability to the Court's First Amendment jurisprudence (136 S.Ct. 2545).”

They also argued that the “free rider” argument, charging nonmembers of the union agency shop fees in order to prevent people from taking advantage the people who pay the union dues, is weak. They alleged that the argument is only valid because the union is the exclusive bargaining representative, thus preventing non-members from individually bargaining with the schoolboard. The non-member teachers are not free riders he argues, but compelled riders (*Estlund*). The concluding argument was that *Abood* denies employees of a fundamental right and should be overturned because fundamental rights are always more important than predictability or precedent.

Respondents: The Attorney General of California argued for the respondents. He acknowledged the first amendment issues involved but said that the state also has an interest in being able to manage the public workplace which should not be impinged unless it is improperly using its role as an employer to coerce or suppress its employee’s speech. He argues that the free rider issue is a significant

one. Even if there is evidence that the majority of employees want collective bargaining and believe it would be advantageous, if given the option to get it for free, they would rather not pay for it. Employers only want to deal with one union which is why the majority selects just one union to represent them. The question is whether they are employing a reasonable technique that does not impose an undue burden on the employees. Since there is no personal attribution of speech to any individual, no suppression of employee speech, and all of the speech is work related.

Next, the Attorney General of California argued that, “Overruling *Abood* now would substantially disrupt established First Amendment doctrine and labor management systems in nearly half the country (136 S.Ct. 2545).” He says that in New York there were strikes all the time until agency shop arrangements were put in place, “Because it enables all of the workers to know they are making a shared sacrifice for the purpose of working together to establish a coherent position with their employer (1).” He argues that there is nothing in the agency shop arrangement that works to silence teachers’ speech. He also argues that the opt-out procedure makes it easier administratively because over 90% of the employees pay the fees and it is much easier to count a smaller number.

During the oral arguments, the Supreme Court Justices focused on the petitioners’ challenge to the decision in *Abood*. The four liberal justices on the Court, Ginsburg, Breyer, Kagan, and Sotomayor, implied that overturning the precedent would have huge consequences and could only be justified with a highly compelling reason. They also worried that the Court might lose some

credibility with the public if they started overturning things without good cause. The then five conservative justices on the Court implied that agency shop arrangements are unnecessary and compelled speech.

C- Implications and importance

After the oral arguments and analyzing the questions made by the Justices, it seemed certain that the decision in *Friedrichs* would follow the pattern in *Harris*; a 5-4 conservative, anti-union majority. If this had happened, would have placed an insurmountable burden on unions across America by making all union dues voluntary. The death of Justice Antonin Scalia, however, left the remaining eight justices to make a decision in *Friedrichs*. On March 29th, 2016, the Supreme Court handed down a 4-4 decision with a one sentence opinion that stated, “The judgement is affirmed by an equally divided Court.” This decision upheld *Abood* and *Mitchell*, but unions are not above attack yet. The decision in *Harris* still stands and states that agency shop arrangements can be held unconstitutional in some circumstances. In addition, twenty six states have laws totally banning agency shop arrangements.

IV: Analysis

A-Texas and California Comparison

There have been many positive effects of organized labor unions, “membership in a labor union directly contributes to a higher quality of life (21, Flavin),” and members of labor unions are more likely to feel secure and happy

with their jobs (22, Sousa-Penzo). Union workers receive higher average wages, better health coverage, and receive pensions more often than non-union workers. California and Texas are dissimilar in the fact that Texas is a right to-work-state and California is not. In an effort to discover whether the presence of teachers' unions have helped improve the California public school system, I have compiled a graph using data from College Board, the National Education Association, the United States Department of Education, and Achieve.

	Salary	Expenditures per Pupil	Graduation Rates	Met SAT Benchmark Score of 1550	Right to Work?
California	\$72,535	\$11,145	80%	42.3%	No
Texas	\$50,713	\$8,826	88%	33.9%	Yes
US Average	\$57,420	\$11,709	80%	42.6%	

Despite how different they may seem, California and Texas do have some similarities. Both in terms of population and square miles, they are two of the largest states in America. Both also have large Latino populations. Because the states are both so large, the cost of living can vary greatly depending on location, but on average, California has a higher cost of living. This might help to explain the huge discrepancy between the average teacher's salaries in these two states, but it seems unlikely that this would explain a \$22,000 difference. Housing is more expensive on average in California than in Texas, but Texans spend more money on things like transportation and residents of both states spend about the same amount on food annually (MIT).

The next category that I used for my comparison is the amount of money spent per pupil in public school. California is right on the mark with the national average. Texas, however, falls almost \$3,000 short of that average. That is \$3,000 that could go towards textbooks, healthy lunches, pencils, and college prep courses. When schools cannot afford the supplies that their students need, the cost usually falls back on the student and their parents. All too often, the parents cannot afford extra money for a new textbook or healthy lunch. This can negatively affect the educational quality and experience of poorer students who cannot afford these extra expenditures (Consolidated State Performance Reports).

The “Graduation Rates” column may seem to signal a win for Texas and Texan teachers, but a closer look at the numbers are alarming. In 2015, when the National Center for Education Statistics released its data, Texas ranked close to the top in graduation rates for black and Latino students and tied for second in overall graduation rates. This was surprising coming from a state that has consistently ranked near the bottom in overall education rankings (College Board Program Results). You have to look deeper than the numbers to explain the discrepancy. The numbers can be explained by the fact that kids who should not be are being counted as high school graduates. Texas state senate bill 149 was signed into law only a few weeks before the 2015 graduating class walked across the stage. The new rules allowed the school districts to form review committees that meet to decide whether seniors who have failed up to two of the five end of course exams should graduate. This comes after a 2013 change that reduced the number of end of course exams required to graduate from fifteen to five.

Proponents said this was to benefit the large population of students in Texas who speak English as a second language, but California also has a large population of ESL students. Critics have said that this rule change is just a way for Texas to pad its graduation numbers when in reality it is graduating students that very well may not be prepared for college or the workforce. This is illustrated through the next column which shows the percentage of seniors in each state that both took the SAT and met the benchmark score of 1550 out of 2400. California is right in line with the national average in both graduation rates and SAT scores, but Texas, the state tied for second in the highest rate of high school graduates, is nearly ten percent below the national average in number of students who met the SAT benchmark. This is perhaps one of the most telling statistics about the two states' education systems.

It is arguable that teachers make more in California because the cost of living is much higher than it is in Texas. The same argument can be made for the discrepancy in expenditures per pupil. The last two columns in the graph are very telling, however, when attempting to determine which state has the better education system and if the union has helped. Texas's graduation rates seem to be very high but the requirements are low. One argument made by the proponents of Texas SB 149 was that it would help students who speak English as a second language. This is a valid argument, but California also has a large Latino population and manages to keep their graduation rate on par with the national average. Although California has a lower graduation rate than Texas, they have a 10% higher rate of students who meet the SAT benchmark score.

Unions are likely not the only cause of the higher success rate of Californian students but the data showing higher teachers' salaries and higher per pupil expenditures suggests that with the benefits of being unionized comes happier teachers which in turn leads to a more productive classroom (Sousa).

B-Balancing Constitutional Rights

Balancing constitutional rights is a pervasive issue in legal philosophy. Balancing is a process in which courts weigh competing interests in a given case. For example, the right to free speech is guaranteed by the First Amendment, but we are not permitted to falsely yell fire in a crowded theater or you may be required to obtain a permit before protesting in a public park. The Constitutional right to free speech must be balanced with the government's interest of keeping the peace and keeping people safe. So, when is it okay to regulate speech or limit First Amendment rights? The government may regulate the time, place, and manner of speech, does not protect obscene speech, and is permitted to regulate commercial speech more closely than other forms of speech.

For the government to be allowed to regulate speech, the speech must be lawful and there must be a valid government interest that will be served in regulating the speech. The regulation can be no more extensive than necessary to serve that government interest. There are times when the government can regulate speech as long as it passes this test.

C-Proposed solution

The Supreme Court denied rehearing *Friedrichs*, but that is not to say that the problem is solved. Union membership has been declining since the 50s and many people believe unions are becoming a thing of the past. However, unions have done a lot of good and have effectively worked to balance the power between employers and their employees for decades. Clearly, some people are not happy with the way unions are operating currently and may feel that the unions are becoming too powerful and political. Rather than ending agency shop arrangements across the country thus effectually putting an end to effective collective bargaining in America, the union funding system needs to be revamped in a way that would benefit both unions and their members. One such possible solution is called a direct payment system.

In a direct payment system, the employer directly reimburses the union for the cost of representing non-members in order to ensure that the union is funded and prevent the problem of free-riding (Hemel). In order to fund a direct payment system, the employer would deduct from the non-members' salaries an amount equivalent to that employee's share of the collective bargaining costs the employer payed to the union. This would prevent free-riding and free employees from agency shop arrangements. While the employee's salary would be reduced by the cost of their share of the collective bargaining, that is already happening in the current agency shop arrangements. This alternative system would do away with the first amendment concerns at the heart of *Friedrichs*. Instead of associating the speech with the individual employees, it would most likely qualify as government speech and thus be subject to less strict scrutiny as stated in the

Supreme Court case *Rust v. Sullivan* (111 S.Ct. 1759). Money, after all, is speech and the First Amendment places constraints on the government's ability to coerce citizens to associate with (or fund) a message they do not agree with, but it does not restrict the government from associating with whatever (reasonable) message it wants as stated in *Regan v. Taxation with Representation of Washington* (103 S.Ct. 1997).

This system would not be legal in the private sector as Section 302 of the Taft-Hartley Act mentioned earlier prevents any private employer from giving money to labor unions as was clarified in *Crilly v. Southeastern Pennsylvania Transportation Authority* (529 F.2d 1355). Some states, including California, currently prohibit public sector employers from giving money to labor unions as well, so this system would require legislative changes. One argument that might be made against making these legislative changes and switching to the direct payment system is that a direct payment system might weaken the autonomy of the union. This problem can easily be addressed, however, by setting up an independent review board that would analyze union expenses and decide how much the employer would need to reimburse the union for. This way, the employer would play no role in deciding how much they would pay the union, thus preserving the union's independence. This solves the problem that Mr. Dumont, the lawyer for the California Attorney General expressed concern expressed in his brief when he said, "...it's very important that we not fund [the union] directly, and that we not be perceived as controlling the speech of that representative (No. 14-915)."

There is potential for another argument in that a critic of the direct payment system might say that government speech is subject to strict scrutiny under the Court's current First Amendment jurisprudence. Certainly, the government is placed under restrictions when it comes to compelling individuals to associate themselves with a certain message, but the Court has consistently granted more latitude to which messages the government associates itself with. The largest obstacle now in the path of implementing the direct payment alternative is legislative changes, and that must be left up to the states.

V: Conclusion

In January 2016, the Supreme Court had the opportunity to put an end to collective bargaining in America. The Court handed down a split decision after the death of Justice Scalia, thus saving labor unions from demise temporarily. This case had the potential to make all union dues and fees voluntary across the country. The split decision at the Supreme Court was a victory for unions and collective bargaining, but unions' approval ratings have been declining for decades. With a pro-business President Elect, a republican-controlled Congress, and a soon-to-be conservative majority on the Supreme Court, the future of unions is still uncertain.

Through examining the history of labor law in America, I have established the importance of collective bargaining. *Friedrichs v. California Teachers' Association* is an interesting and significant case in the history of American labor. Through my analysis of the case and its implications, I discovered there is a large level of discontent with labor unions that needs to be addressed. The solution to the discontent is not to abolish unions

altogether, but to come up with a system that might assuage some of the concerns of people like Rebecca Friedrichs. A comparison of the public schooling systems in California and Texas has proved that there are benefits associated with collective bargaining. California's public school system is not perfect, but they have higher teacher salaries and rates of students who can meet the benchmark SAT score. A direct payment system would solve the First Amendment issues claimed to be of concern to Rebecca Friedrichs and allow for unions to be fully funded. Unions have played a vital role in balancing the power between employers and employees in America for decades and while First Amendment concerns are valid, they can be eased without gutting public sector unions.

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