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In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the Supreme Court held that the First Amendment

does not prohibit “agency shop” arrangements under which state employees who decline to join a public-sector

union are required to pay an agency fee to support union work that is related to the collective-bargaining process.

In two recent decisions, the Court expressed doubt about *Abood's* continued validity but did not expressly overrule

it. See *Harris v. Quinn*, 134 S. Ct. 2618 (2014); *Knox v. Serv. Employees Int'l Union*, 132 S. Ct. 2277 (2012).

Today, the Court granted certiorari in *Friedrichs v. California Teachers Association* (No. 14-915) to consider

whether to overrule *Abood* and declare public-sector “agency shop” arrangements unconstitutional.

*Friedrichs* was brought by California public school teachers to challenge the state’s union laws. California law

permits public school employee unions to establish “agency shop” arrangements within their school districts and

thereby require all employees, “as a condition of continued employment,” either to join the union or to pay an

agency fee. According to the law (and consistent with *Abood*), however, agency fees can be used only for activities

“germane” to collective bargaining. Unions therefore must notify nonmembers about which portion of their fees will

and will not go to such activities; nonmembers may avoid the “non-chargeable” portion of the fees only by

affirmatively objecting to them. Plaintiffs' complaint challenged both the agency-shop arrangement and the opt-out

procedure, arguing that they violated plaintiffs' rights to free speech and association under the First Amendment.

The case arrives at the Supreme Court with little procedural history. Recognizing that both claims were foreclosed

by binding precedent (the first by *Abood* and the second by a Ninth Circuit decision upholding similar opt-out

procedures), plaintiffs moved for judgment on the pleadings in favor of defendants. The district court granted

judgment to defendants pursuant to plaintiffs' request, and the Ninth Circuit summarily affirmed. Relying on *Harris*

and *Knox*, the petition for certiorari principally focuses on overruling *Abood*. The petition argues that public-sector

unions' collective bargaining is materially indistinguishable from political speech and thus its compelled

subsidization can be justified only by a sufficiently compelling state interest. According to the petition, the state's

interests in labor peace and preventing non-members from "free-riding" on the collective-bargaining efforts of the

unions do not justify agency-shop arrangements. Alternatively, the petition contends that California's opt-out

procedure imposes an unconstitutional burden on plaintiffs' First Amendment rights.

If the Court overrules *Abood*, its decision will have far-reaching ramifications for public-sector union membership

and on the collective-bargaining regimes of the more than twenty states that use agency-shop arrangements. It



may also reflect a more fundamental shift in the Court's approach to unions and collective bargaining, with

consequences for private employers as well.

Absent extensions, amicus briefs in support of the petitioner will be due on August 21, 2015, and amicus briefs in

support of the respondent will be due on September 21, 2015.