

# Friedrichs v. CTA and the Future of Fair Share Fees

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## **DISCLAIMER**

This presentation is not intended to be legal advice. It neither creates nor alters a privileged attorney-client relationship.

# Overview

- California's School Unionization Law (EERA)
- Agency/Fair Share Service Fees
- A Challenge to EERA's Fair Share Fee System:  
Friedrichs v. Cal. Teachers Ass'n
- "Friend of the Court" Briefs and Next Steps

# California's School Employee Unionization Law

- Educational Employment Relations Act (EERA)
  - Passed in 1976.
  - Grants most school district employees the right to designate an exclusive bargaining representative.
- Does not require all employees to join the union.
- Does require:
  - Union to represent all employees, even non-members.
  - Non-member employees to pay “fair share services fee” to the union.

# Fair Share Fees: Definition

- Paid by non-members to cover their share of the union's cost of direct representation.
  - Limited in scope for public employee unions.
  - Cannot include the cost of union's lobbying or political activities.
  - Can include contract negotiation, administration, and other activities that are "germane to [the union's] functions as the exclusive bargaining representative". (Gov't Code § 3546(a))
- Employees must request rebate of indirect costs each year.

# Fair Share Fees: Balancing Interests

- EERA's distinction between “political” activities and “germane to representation” activities comes from U.S. Supreme Court precedent.
- Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1979)
  - First Amendment right to free speech & association
  - Public interest in “promoting peaceful labor relations” and avoiding disruption to public services
  - “Free rider” problem

# Friedrichs v. Cal. Teachers Ass'n

- Supreme Court recently questioned Abood.
- 10 teachers from California have challenged the constitutionality of EERA's fair share service fees.
  - For government employees, even bargaining issues are “ideological” because they involve public finance and are akin to lobbying
  - “Ideological” acts implicate the First Amendment
  - Would overturn Abood
  - Opt-in vs. opt-out
- Supreme Court agreed to hear the case. Argument expected in early 2016.

# “Friend of the Court” Briefs

- Filed by non-parties.
- Designed to “bring to the attention of the Court relevant matter not already brought to its attention by the parties.” (U.S.S.C. Local R. 37.1)
- Can include public policy effects of case.
- More than 85 individuals and organizations have signed on to 25 friend of the court briefs filed thus far in Friedrichs.



# “Friend of the Court” Briefs

- Additional brief being prepared by former Solicitor General Seth Waxman.
  - *Pro bono*
  - On behalf of group of school districts nationwide
- Intended to explain to Court the benefits of continuing under current system:
  - Stability
  - Fairness
- To be filed November 13.
- District has been invited to join the brief.

# Questions?