



Friedrichs Case May Impact Religious Freedom If Forced Union Dues are Outlawed

While much attention has been (rightly) paid to the issue of compulsory union dues for public-sector unions in the ongoing case *Friedrichs v. California Teachers' Association* before the U.S. Supreme Court, the ruling could also impact the role that religious liberty plays in other cases.

A group of California school teachers have challenged the requirement that they pay union dues, arguing that it violates the First Amendment rights of workers. The teachers contend that although they do not share the political positions of the unions, under the law in California, employees who choose not to be in unions must still pay what is known as an "agency fee." The fee supposedly pays for only the collective bargaining activities of the union, and is equivalent to members' dues.



As *The New American* reported last week, the plaintiffs are asking the Supreme Court to overturn the 1977 ruling in *Abood v. Detroit Board of Education*, which permitted public unions to force non-members to cover the costs of collective bargaining. Under the court's reasoning at the time, this was fair because otherwise non-members would become "free riders," receiving the benefits of union representations without having to pay union dues.

Experienced observers of the Supreme Court are predicting that the justices will side with the plaintiffs in *Friedrichs* and strike down the requirement that non-members pay agency fees. However, one justice who is expected to side with unions is Stephen Breyer, a Bill Clinton appointee. "You start overruling things," Breyer insisted, and the country can no longer count on "us as a kind of stability in a world that is tough because it changes a lot."

Referring to the principle of not wanting to contribute money to people or activities one disagrees with, Breyer rejected the arguments of Michael Carvin, the plaintiffs' attorney, declaring, "You go out this door, and you will buy hundreds of things, if not thousands, where money will go from your pocket into the hands of people, including many government people, who will spend it on things you disagree with."

Breyer neglected to add that most of the things people spend money on are voluntary, and they make those choices. In the case of union dues, no such choice exists.

Carvin responded to Breyer's comments. "As to requiring people to give money to [that] which they don't wish to give, Thomas Jefferson said that was 'sinful and tyrannical.'"

While Carvin made use of Jefferson's famous quotation in a case involving forced union dues, the same



Written by [Steve Byas](#) on January 20, 2016

principle is clearly involved in cases such as 2014's *Hobby Lobby v. Burwell*, in which the owners of Hobby Lobby successfully argued that their religious freedom was being violated by having to cover abortion-causing drugs in its employee insurance plan.

Samuel Bagenstos, formerly with the Obama Justice Department overseeing civil rights cases and now a law professor at the University of Michigan Law School, stated,

[There is] an increasing tendency to use the First Amendment or First Amendment-like arguments by conservatives as a way of resisting various forms of regulation or progressive regulation. The arguments that might have come in the past come under the heading of property rights, or freedom of contract now are coming under the heading of free speech, or free association, or religious freedom.

If the Supreme Court does rule for the teacher plaintiffs in the *Friedrichs* case, it would establish a legal precedent in cases such as the use of religious objection to be exempt from anti-discrimination laws so photographers and bakers may refuse to participate at the weddings of same-sex couples. Thomas Jefferson's full quote to which Carvin alluded is, "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." If so, then one would think that being forced to perform a service for someone when such would violate one's conscience and religious beliefs, could also be held to be "sinful and tyrannical."

Some Catholic universities have asked for religious exemptions to block adjunct professors from unionizing at their institutions.

In 1831, Alexis de Tocqueville observed, "The Americans combine the notions of Christianity and liberty so intimately in their minds that it is impossible to make them conceive the one without the other."

Yet modern liberalism has practically declared war on biblical Christianity. Fontbonne Academy, a Catholic school in Massachusetts, has been ordered by a Superior Court judge to hire homosexuals for non-teaching positions. The academy had argued that it hired only those who were in accordance with the teachings of the Roman Catholic Church, including the teaching that homosexual behavior is sinful. Being forced to hire someone who openly practiced such an activity, academy officials insisted, was a violation of the First Amendment right to the free exercise of religion and freedom of expression.

Whether it is the government requiring the payment of agency dues for activities which an employee does not support, small business owners being forced to bake a cake for an activity they consider sinful, or a Catholic institution being forced to hire an employee in open rebellion against its teachings, the principle is the same. And as the Sage of Monticello insisted, it is indeed "sinful and tyrannical."

Steve Byas is the author of History's Greatest Libels. A history professor, Byas defends the reputations of those such as George Washington, Thomas Jefferson, Christopher Columbus, and Joseph McCarthy from unfair attacks.



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