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## ALLEGHENY COUNTY LABOR COUNCIL REPORT OF LEGAL COUNSEL December 4, 2014

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### Judicial Sneak Attack: The Threat to Public Sector Labor Unions

Over the past year, the Center for Individual Rights (“CIR”) has been stealthily seeking to undermine public sector labor unions by creating the opportunity for the United States Supreme Court to revisit the decision of *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). In *Abood*, the Supreme Court found that public sector agency fees (i.e., fair share fees) were permissible and did not violate non-union members’ freedom of association under the First and Fourteenth Amendments. Specifically, the Court determined that such fees could be assessed against non-union members as long as they were only used for collective bargaining, contract administration, and grievance adjustment. The *Abood* decision ensures that non-union members are responsible for paying the costs associated with obtaining fair wages, good benefits, and safe working conditions through the collective bargaining process.

The CIR has been using the case of *Friedrichs v. California Teachers Association*, Case No. 13-57095 (9th Cir. Nov. 18, 2014) as its tool for the Supreme Court to revisit the *Abood* decision. The lead plaintiff in this case, Rebecca Friedrichs, has worked as a public school teacher at the Savanna School District in Anaheim, California for more than twenty-five years. Although she was a union member for decades, she resigned from her union membership in 2012 and opted to pay only the fair share portion of her union dues. In support of the CIR’s attack on public sector unions, she argued that being required to pay fair share fees when she did not want to support the union constituted a violation of her right to free expression under the First Amendment.

In order to expedite Supreme Court review, Friedrichs used the unconventional strategy of asking each court to rule against her. When the case was before the Central District of California, she asked the court to rule against her based upon on the pleadings because the decision in *Abood* was binding precedent. The District Court rejected Friedrichs’ claims and ruled in favor of the California Teachers Association. When the case was before the Court of Appeals, Friedrichs asked the court to uphold the decision of the District Court on the basis of the *Abood* decision. As such, on November 18, 2014, the Court of Appeals affirmed the decision rejecting Friedrichs’ claims.



Currently, Friedrichs is preparing to ask the Supreme Court to review this case and reconsider the decision in *Abod*. Although the Supreme Court may decline to review this case, there is a good chance that the case will be reviewed because several conservative Justices have questioned the legal reasoning in *Abod*. A review of this case would be very troubling for organized labor because of the Supreme Court's anti-union tendencies in recent years. A ruling against the California Teachers Association would essentially make the entire United States "right to work" for public sector labor unions. As always, we will keep the Allegheny County Labor Council updated regarding any new developments with this important case.

On behalf of everyone at JPI, we wish you and your family a happy holiday season. We look forward to continuing the fight on behalf of working Americans into 2015.

Respectfully submitted,

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