

## **BACKGROUND ON LEGAL CHALLENGES TO PUBLIC SECTOR FAIR SHARE FEES**

- In 1977, the United States Supreme Court ruled that public sector unions could collect fair share fees from non-members who the union has a legal duty to represent so that all workers share in the cost of representation that benefits them. Abood v. Detroit Board of Education, 431 U.S. 209 (1977).
- Non-members do not share any of the cost of political activities engaged in by the union.
- For decades no one questioned this fair share principle. But the addition of several conservative justices to the Supreme Court, and in particular Justice Samuel Alito, prompted the National Right to Work Committee and other anti-union groups to start actively bringing cases to try to get Abood overturned, arguing that requiring workers to pay fair share fees to an organization they do not support violates the First Amendment.
- Three years ago, in a scathing opinion against the Service Employees International Union in the case of Knox v. SEIU Local 1000 (2012) – a case that did not involve a challenge to Abood -- Justice Alito essentially invited a legal challenge to Abood, calling the decision “unusual” and “extraordinary.”
- The National Right to Work Committee did not waste any time. NRTW brought Harris v. Quinn to the Supreme Court to challenge the applicability of the State of Illinois’ collective bargaining law (and fair share fee requirement) to home care workers. Right to Work urged the Court to overrule Abood. The Court declined to do so. Still, Justice Alito continued to criticize Abood, calling it “questionable on several grounds.”
- Now another right-wing legal center has petitioned the Supreme Court to take the case of Friedrichs v. California Teachers Association, involving a challenge to the California Teachers’ fair share system. Once again, the petitioners are urging the Supreme Court to overturn Abood.
- The petition for certiorari asking the Court to hear the case was filed on January 26, 2015. The union filed a brief opposing cert on April 1, 2015. The Supreme Court has put the case on the schedule for its May 3, 2015 “conference”, meaning they will meet to decide whether to take the case. The Court may or may not make a decision on May 3 as to whether to take the case – it may hold the case over to a future conference.
- If four justices vote to take the case, it will be argued in the Court’s next term, which begins in October 2015. A decision could be issued as early as the end of 2015, but it could come anytime up to the last day of the Court’s session in June 2016.
- The AFL-CIO is working closely with the California Teachers Association (NEA), AFSCME, AFT, and SEIU on the case and we will file an amicus brief if the Court decides to take the case.

- It's important to keep in mind that unless and until the Supreme Court makes a change, Aboud and fair share requirements in the public sector are good law. There is no need to change collective bargaining agreements or state law on fair share.