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Plenary Session: Friedrichs, Teacher Salaries and Inequality in Public Education

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Friedrichs, Teacher Salaries and Inequality in Public Education


The Supreme Court’s coming decision in Friedrichs v. California Teacher Association (CTA) is just one of the many attempts to limit the power of public sector unions in the United States. In 2012, the Court decided Knox v. SEIU Local 1000, which held that unions are required to give notice to nonmembers for certain political expenditures. In 2014, the Court decided Harris v. Quinn, where the Court held that the home health care workers were not required to pay agency fees to the union that represented them because they were “partial public employees” even though the Illinois legislature passed a law that made them very much like other public employees for the purposes of bargaining.

Each of these cases aimed to limit the political activity of unions through First Amendment challenges brought by nonmembers, but they also limited the rights of unions to represent their members due to the weakened bargaining power of public sector unions after these decisions. As I argue here, the constitutional attack on public sector
unions also includes a campaign against collective bargaining in public education, which will only exacerbate economic and educational inequalities.

Now comes *Friedrichs*, a First Amendment challenge to California’s anti-free-rider agency fee law on the theory that bargaining is inherently a political activity and thus nonmembers cannot be compelled to pay anything to the union that represents them. In other words, the case seeks to constitutionally impose a “right to work” regime in all 50 states (currently there are 25 such states), where employee have a “right to a free ride” on the efforts of the unions that represent them. Contrast this with the 25 “fair-share” states (and the District of Columbia), where public employees must pay their fair share of the costs of representation in bargaining and grievance processing. *Friedrichs v. CTA* is not the first time that teachers’ unions have been at the center of the legal and political storm. For many years, teachers’ unions have been the target of all that ails public education, according to some. Politicians have made a habit of attacking teachers unions in their reelection campaigns.

*Friedrichs*, then, is not just a debate about individual rights, as in all these cases, it is a debate about inequality. And there have been attempts to litigate equality in the public schools that have been funded by wealthy donors on all sides of the political spectrum. Further, *Friedrichs* is part of an effort to radically restructure public education to make it more like a “business,” while the benefits to actual students remain illusory.
Just as was the case with *Knox* and *Quinn*, the forces of privatization have turned to the courts in states which legislated protections they found objectionable. In 2012, the *Vergara v California* was tried in California state court in Los Angeles. The plaintiffs in *Vergara*, students of color in Los Angeles County, challenged the California tenure and due process protections for teachers as a denial of their right to an education under the California Constitution, found to be fundamental by the California Supreme Court. The challenge was funded by Silicon Valley millionaire David Welch. They argued, and the trial court agreed, that employment protections in the California Education Code and collective bargaining agreements prevented them from getting an equal education.

The struggle that the plaintiffs went through to get an education is truly disheartening. But the causal link between employment protections and the quality of the education system is dubious. Nevertheless, the educational inequality that plaintiffs undoubtedly suffered compelled them to lash out at the legal structures that they blamed for deficiencies in the education system rather than decades of underfunding and institutional racism. They were not alone in this challenge, of course, having the support of foundations such as Mr. Welch’s.

That lawsuit was successful at the trial level and is now on appeal to the California Court of Appeal. The lawsuit has spawned similar lawsuits and legislation in
other states. The Nevada Legislature, for example, referenced the *Vergara* case when it recently enacted a law to weaken seniority provisions. Welch also funded another *Vergara* type challenge to New York’s teacher tenure and due process laws.

These initiatives share a common thread — they place the blame for much of what ails the public education system on bureaucracy, or put another way, the due process protections that they claim hamper innovation in the public schools. Little wonder, then, that groups who have tried to privatize public education are well represented as supporters of the challengers to the California agency fee statute in *Friedrichs* — including the Friedman Foundation for Educational Choice, the Rutherford Institute and the Cato Institute. These think tanks have led school privatization efforts in states such as Nevada, which recently enacted a school choice law allowing parents of any income level to use public money for private school tuition or other educational purposes. The reduced bargaining power of teachers, if their unions are hampered by a national right to work regime, will contribute to income inequality. None of the ten states and the District of Columbia with the highest K-12 public teacher salaries are so-called right-to-work states. By contrast, among the bottom ten states in teacher salaries, there is only one that is a fair-share state (New Mexico).

Teachers’ unions have been a force in improving educational quality through class-size reduction laws, professional development programs and mentoring
programs. They have also helped make teacher salaries more competitive in states where their bargaining power is greater. If successful in weakening the bargaining and advocacy power of teachers, the Friedrichs case will reverse the gains made in both these areas and exacerbate educational and income equality.