

# De facto union victory in dues case leaves issue unsettled

*Attorney plans to ask to hold case until a new justice is named*

By Meghann M. Cuniff

The split vote Tuesday by the U.S. Supreme Court regarding the constitutionality of requiring public employees to pay union dues is at the least a temporary victory for unions, but other battles over the explosive labor relations issue are looming.

"We think we have a compelling First Amendment argument, so we're quite optimistic," said Michael A. Carvin, a partner in the Washington, D.C., office of Jones Day LLP who sued the California Teachers Association on behalf of Rebecca Friedrichs, an Orange County resident, and nine other schoolteachers.

Carvin said he plans to ask the court to hold the case "until a new justice is appointed."

"Then the full Supreme Court can resolve this one way or the other," Carvin said.

But Michael Rubin, an employee-side lawyer with Altshuler Berzon LLP, is confident there won't be a different outcome in the future.

"As a practical matter, we think the concerns about an adverse decision in Friedrichs or a post-Friedrichs lawsuit are pretty much over," Rubin said.

The 4-4 vote by justices in Friedrichs et. al. v. California Teachers Association et. al., 14-915, is not precedent setting and simply upholds a 2014 decision by the 9th U.S. Circuit Court of Appeals that mandatory dues under the 1977 Supreme Court ruling in Abood v. Detroit Board of Education do not violate dues paying members freedom of speech.

Carvin's plan throughout was to concede the case to the 9th Circuit in order to create a precedent through the Supreme Court, and oral arguments in January indicated justices likely would vote 5-4 in his favor. But Justice Antonin Scalia's death last month changed everything: Even Carvin said Tuesday that the split vote "wasn't entirely unexpected" because of Scalia's passing.

Now he, as well as union side lawyers, are preparing for another likely round of wrangling.

Catherine Fisk, a labor law expert and professor at UC Irvine School of Law said whether another lawsuit could succeed depends on who wins the November election and how the appointment of Scalia's replacement is handled.

"If the Democrats win, they are highly unlikely to appoint a justice who believes that unions and collective bargaining are unconstitutional," Fisk said. "It's anyone's guess who Donald Trump would appoint, (but) I think we might expect that a Republican nominee might vote to overturn."

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## Labor/Employment

### De facto union victory in dues case leaves issue unsettled

The post-Scalia Supreme Court reached a 4-4 split on whether public union dues are unconstitutional.

## Government

### Bill to boost immigrants' damage awards clears hurdle in Legislature

The state Assembly Judiciary Committee passed a bill Tuesday that would knock out a 30-year-old appellate court ruling which called for juries in personal injury cases to calculate monetary damages for undocumented residents in the currency of the plaintiff's native country rather than U.S. dollars.

### Wells Fargo settles state, counties' privacy suit

Wells Fargo Bank NA will pay \$8.5 million to settle allegations that customers remained too long in the dark about the company recording their phone calls.

## Bar Associations

### Former bar employee files suit over dismissal

Thomas Layton alleges he was fired in part for his close ties to the former executive director.

## Government

### FTC files complaint against Volkswagen over rigged emissions tests

Volkswagen's "clean diesel" commercial campaign was dirty pool, the Federal Trade Commission charges in a new federal lawsuit filed against the beleaguered German automaker.

## Litigation

### Attorneys fees in Sterling lawsuit halved

O'Melveny & Myers attorneys' \$212,787 request was lowered to \$97,139 by a Superior Court judge.

## Law Practice

### California firm named largest women-owned firm in country

Walsworth has been named the largest women-owned law firm in the country, according to a woman's advocacy group. The 80-attorney firm

California Teachers Association spokesman Frank Wells said the union is prepared for more lawsuits.

"There have been a slew of attempts. We certainly don't think this is the last," Wells said. "Our membership is strong and we're continuing to build on that, so we're going to move forward."

But David A. Schwarz of Irell & Manella LLP, who wrote an amicus brief for the plaintiffs and attended oral arguments in January, believes the First Amendment argument is too compelling for the full court to ignore.

"I don't for a moment believe that this issue is dead and gone," Schwarz said.

One case set to emerge now that Friedrichs has concluded: *Bain v. California Teachers Association*, CV15-2465 (C.D. Cal., filed April 3, 2015), in which four teachers claim they are unfairly forced to choose between paying dues for political causes they don't support or receiving key union benefits.

U.S. District Judge Stephen V. Wilson issued a stay in the case pending the Supreme Court decision on Friedrichs. Joshua S. Lipshutz, a lawyer with the plaintiff's firm Gibson, Dunn & Crutcher LLP, said Tuesday he plans to request a new hearing regarding the union's motion to dismiss now that Friedrichs is resolved.

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### Media

#### **Fair use advocates want updated publicity rights ruling**

The last time the Supreme Court weighed in on rights of publicity was in 1977.

### U.S. Supreme Court

#### **Court splits begin to roll in**

Last week, and again Monday, the U.S. Supreme Court split 4-4. By **Angela E. Kleine**

### Insurance

#### **What are 'reasonable expectations'?**

How should an ambiguity argument be evaluated in insurance cases? By **Rex Heeseman**

### Family

#### **New case may expand grandparent visitation rights**

The understanding in the state of California has long been that grandparent visitation rights are limited. But there's always exceptions to the rule. By **Navid Moshtael**

### Labor/Employment

#### **No joking matter: California ramps up enforcement with new FEHA rules**

New amendments to California's Fair Employment and Housing Act employment anti-discrimination and harassment regulations go into effect April 1. By **Jim McNeill and Peter Z. Stockburger**

### Letter to the Editor

**Letter to the editor: Unaccredited schools**  
Needless to say, I was distressed with Hirbod Rashidi's recommendation in a recent article. By **Jeff A. Fleming**

### Judicial Profile

**Thomas DeSantos**  
Superior Court Judge Kings County (Hanford)

### Law Practice

#### **Farella Braun launches cannabis practice group**

The firm made its announcement the day after a cannabis market research firm declared that cannabis sales in the state exceeded \$2.7 billion in 2015.

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