

VIEWPOINT



Why we're fighting for teachers' free speech

Teachers, like all Americans, have an undisputed First Amendment right to refuse to contribute to political and ideological activities. This important precept was decided 40 years ago by the U.S. Supreme Court and has been reaffirmed countless times.

The problem in California is that teachers who exercise their First Amendment right and opt out of their unions' political dues are expelled from the unions entirely—deprived of any say in how the unions operate, even though state law requires the unions to serve as those teachers' exclusive representative in employment negotiations. Teachers who refuse to fund the unions' political agenda are not even permitted to vote on the

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terms of their own employment. In other words, free speech leads inexorably to disenfranchisement and second-class status.

That is why four California schoolteachers brought *Bain v. California Teachers Assn.*, a lawsuit we recently filed in federal court in Los Angeles. These four individuals are seeking to protect teachers' well-established constitutional right to free speech without fear of punishment or reprisal.

The unions and their allies contend that *Bain* is an attempt to silence the unions entirely. But the Supreme Court, in its in-

famous *Citizens United* decision, ruled that political expenditures are political speech entitled to the highest form of First Amendment protection. While much of the debate about this ruling has focused on corporate political activity, *Citizens United* also protects the free speech rights of both the unions and the teachers who fund them.

Moreover, the CTA is not in danger of being silenced. It spent over \$211 million in political expenditures from 2000 through 2009, topping the list of special interest groups in dollars spent to influence California voters

and public officials. Indeed, the CTA spent almost double the next special interest group on the list—another labor union—and more than the oil, tobacco, and pharmaceutical industries combined. And 99.92 percent of the CTA's political contributions, made up almost entirely of member dues, have gone to the Democratic Party.

Imagine if President Bush had signed an executive order declaring that Americans who refuse to contribute \$500 per year to the Republican Party will be stripped of their U.S. citizenship and denied the right to vote in national elections. Such an unfair rule would skew the democratic process, ensuring an endless string of Republican victories by expelling anyone who disagrees from the electorate. The teacher plaintiffs in *Bain* are simply demanding a right to participate in the debate despite their disagreement with union leadership. Such a multiplicity of voices would add strength and credibility to the unions' message, not detract from it.

In California, the situation is even worse. The teachers unions are a state-sanctioned monopoly—the only entity permitted to bargain for teachers' employment benefits—and, as such,

have a legal responsibility to represent all teachers equally. The California unions, however, have carefully crafted a system that provides far more benefits to members (teachers who pay to support their political agenda) than non-members (teachers who exercise their First Amendment right to opt out of political contributions).

For example, in most California school districts, teachers are not entitled to paid maternity leave; they must use their sick days to receive full pay. But teachers who contribute to the unions' political activities are provided access to a "members only" leave package, giving them full pay. Paid maternity leave is exactly the type of benefit an employee expects and demands from her employer and it falls squarely within the realm of benefits negotiated by the unions. It strains credulity to believe that California's teachers unions—the most powerful political force in the state—could not bargain for better maternity leave for teachers if they were not so concerned with protecting "members only" privileges. Instead, they prefer to use this precious benefit to pressure teachers into forgoing their First Amendment rights.

The teachers behind *Bain* are proud union members who appreciate, and are willing to pay for, the collective bargaining efforts made on their behalf. But political contributions are different. If the unions are truly democratic institutions, as they contend, they should be required to earn their political influence through the power of persuasion—convincing teachers that their positions are the right ones and that teachers should contribute money to their cause—not through the power of coercion. Indeed, if the unions believed that their positions had the support of teachers, they would have the confidence to let teachers choose for themselves whether to donate their hard-earned money. The U.S. Constitution demands no less.