Film Guide

Narrated by Emmy-award winning actor Bradley Whitford, *The Right to Unite* is a short documentary that reveals the profound impact of Supreme Court decisions on working Americans.

Powerful corporate interests have spent decades working to reshape our judiciary (especially the Supreme Court) into one that would reinforce and deepen inequality rather than remedy it. As a strong counterweight promoting equality and opportunity, the labor movement has been fighting back. That has put it in the cross-hairs of the corporate interests who want more for the top one percent at the expense of everyone else.

The 2014 case *Harris v. Quinn* demonstrates what’s at stake. The case concerned home care providers, who saw their benefits, training, and wages increase dramatically after coming together as a union. And that improved the quality of care for the vulnerable Americans they serve. But the conservative majority on the Supreme Court, led by Justice Samuel Alito, limited these workers’ ability to join together and have a voice in their workplace.

The corporate interests that pushed *Harris v. Quinn* to the Supreme Court are not done. They’ve brought another case this term, *Friedrichs v. California Teachers Association*, that could undermine the rights of all public employees to organize in effective unions—and that could lower the standard of living for all working Americans and their families. In the film, Roosevelt Institute Fellow Dorian Warren explains how this is yet another attempt by the one percent to advance their own self-interests through the Court.

Through the stories of two home care providers, Lidia Rodriguez and Alantris Muhammad, *The Right to Unite* shows us what the lives of these care providers are like, what their unions mean to them, and why their fight is *our* fight.

Appearing in the Film

Lidia Rodriguez

Despite enduring more than most do in a lifetime, Lidia Rodriguez is a caregiver who hasn’t let anything take away her joy and zeal for life. When her son Isaac was 18, he was shot in the spine, and the injury left him paralyzed. With tremendous strength of spirit, Lidia helped nurse her
son through his physical and emotional pain while simultaneously caring for her daughter who was dying from cancer.

When it comes to her other homecare clients, Lidia provides the same level of care and attention she gives her own family. She often works additional unpaid hours for her clients just to make sure they are doing well. She even decorated the home of her 73-year-old client, Barbara, just to make her smile. Lidia says she works to make others happy, because she is grateful for her life, and that’s enough for her.

**Alantris Muhammad**

Life took an unexpected turn for Alantris, a mother of five from Chicago. One afternoon, she got a call from her sister that their mother had been in a third car accident and was in the hospital with a traumatic brain injury. They learned the accidents were the result of small strokes and that Alantris’s mother would need dedicated care for the rest of her life.

Alantris struggled to provide care for her mother, who wanted to stay at home instead of a nursing facility. The cost of caregivers was just too high. So, Alantris quit her job in the insurance industry to take care of her mom full time. Now, she struggles to pay the bills and put food on the table. A proud mother of five sons, she wants her fourth to finish college and for her youngest to have a chance at higher education, too.

**Dorian Warren**

Dorian Warren is a Fellow at the Roosevelt Institute, MSNBC contributor, and the host and Executive Producer of *Nerding Out* on MSNBC’s digital platform, shift.msnbc.com. He has taught at the University of Chicago and Columbia University, where he was Co-Director of the Columbia University Program on Labor Law and Policy. His published works include pieces on organizing in a racialized society, the political benefits of a strong labor movement, and case studies on the labor movement’s successes and setbacks.

**Bradley Whitford**

Bradley Whitford is best known for his role as an aid to the president on *The West Wing*, but he is also politically active off-screen. A Madison native, Whitford traveled to Wisconsin to rally with public service workers in 2011 when Governor Scott Walker severely limited the bargaining power of public sector unions. Whitford has also spoken on many college campuses about the importance of political engagement and voting. Whitford is an
active member of the Screen Actors Guild, now part of SAG-AFTRA. He won his second Emmy Award in 2015.

**Legal Background and the Supreme Court Cases**

*The Right to Unite* vividly depicts what’s at stake for working Americans who could see the Supreme Court limit their right to organize. At the center of these legal attacks is an attempt by corporate interests to weaponize the First Amendment—using it to claim that state laws that allow for effective organizing and collective bargaining violate the free speech rights of union opponents. That argument is not new—indeed it has been considered and rejected by the Supreme Court many times before—but it has been renewed by powerful interests who hope the Court’s current majority will continue to favor corporate rights over those of everyone else.

Under the law, unions are required to represent all employees within a collective bargaining unit, not just union members. This is called a “duty of fair representation,” and it means that, when working to raise wages or improve training or secure benefits, a union must treat members and nonmembers the same. To pay for the costs of this representation, unions collect “fair share fees” from all the employees they represent. Union members pay these fees as part of their dues; nonmembers just pay the fee. These fees cover only the costs of bargaining, and cannot be used to pay for political activity.

Over the last half-century, fair share fees have been repeatedly upheld by the Supreme Court. In 1977, the Court unanimously rejected a First Amendment challenge to fair share fees in the public sector. In reliance on that decision, public employers and unions around the country have entered into thousands of contracts involving millions of workers. But this term corporate interests are asking the Roberts Court—a Court with a long record of favoring (and in some cases creating) corporate rights—to overturn this longstanding precedent and undermine the ability of working people to have a voice on the job.

At stake are not just the livelihoods of public workers and their families—people like teachers, firefighters, police officers, nurses, and librarians—but the quality public services on which all Americans depend. It is through effective public unions that our communities get smaller classrooms, safer streets, clean parks, and well-trained professionals who provide care to the elderly and people with disabilities. But the corporate interests behind these legal attacks do not care about the public good. They care only about pushing their own agenda—and they’re using the courts to do it.

*Abood v. Detroit Board of Education* (1977): The Court upholds the right of working people to organize

In *Abood*, the Court unanimously held that public unions can collect fair share fees from the employees they represent. The Court emphasized two points: First, it is both logical and fair for the costs of representation to be distributed among all those who benefit from it. Without such support, employees would have an incentive to take the benefits but pay nothing, making it harder for unions to work effectively, and forcing other employees to bear the financial burden. This is commonly called the “free rider problem.” Second, the Court explained that fair share
fees protect a union’s “exclusive representation” of employees within a workplace. Exclusive representation, the Court pointed out, benefits management because it prevents the conflict of union rivalries, allows employers to negotiate with only one bargaining agent, and avoids the confusion and costs of following multiple bargaining agreements.

The Court also held that the First Amendment prohibits unions from using fair share fees to pay for political activity. On several occasions since Abood, the Court has reiterated this basic distinction between the costs of representation and the costs of political activity. In one case, Justice Scalia, joined by Justice Kennedy, explained how fair share fees are permissible with this distinction in place. “Where the state creates in the nonmembers a legal entitlement from the union,” he wrote “it may compel them to pay the cost.” He explained that if employees could simply choose not to pay, then “they [would be] free riders whom the law requires the union to carry—indeed, requires the union to go out of its way to benefit, even at the expense of its other interests.”

Knox v. SEIU (2012): Alito signals disagreement with Abood

Knox, a labor case decided in 2012, presented a narrow technical issue that did not require the Court to address Abood or the propriety of fair share fees. Yet Justice Alito went beyond the question presented and wrote a broad opinion that revealed his desire to weaken unions and overrule precedent. He called Abood “something of an anomaly,” that “approach[es], if [it does] not cross, the limit of what the First Amendment can tolerate.” Justice Alito’s opinion served as call to arms for conservative and wealthy corporate interests, who responded with new litigation to challenge the decades-old precedent protecting workers’ rights. Writing in The American Prospect, legal commentator Garrett Epps said of Knox: “the conservative majority on the Supreme Court delivered an unsubtle warning to public employee unions: You are living on borrowed time.”

Harris v. Quinn (2014): The Court limits the rights of home care providers, but Alito can’t overturn Abood

Just two years after Knox, Justice Alito and the Court’s conservative majority cut the rights of working people in Harris v. Quinn (2014). In Harris, anti-union activists asked the Court to overturn Abood in a challenge to the fair share fees paid by home care providers.

In many states, Medicaid covers the in-home care of the elderly and people with disabilities who would otherwise require more expensive institutional care. In fundamental ways, home care providers are like any other public employees. They are paid by the state, and the state sets their wages, benefits, and employment requirements. For these reasons, home care providers enjoyed the same rights to organize and bargain collectively as other public employees. Indeed, unions are especially valuable to home care providers, who are spread out across thousands of individual homes without a centralized office or workplace to interact with colleagues.

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1 Lehnert v. Ferris Faculty Ass’n, 500 U.S. 507, 556 (1991) (Scalia, J., dissenting).
Yet that wasn’t enough for the Court to simply apply *Aboord* to home care providers and recognize their right to organize. Instead, Alito and the conservative majority found that home care providers are not really public employees at all (he used the term “quasi-public employees”) and are therefore not entitled to the bargaining rights protected by *Aboord*. For the majority, home care providers are not “full-fledged” employees of the state because their clients, to account for the personal nature of home care, are permitted to make certain decisions about their care and the work of their caregivers. For that reason, the Court held that unions cannot collect fair share fees from home care providers, thus undermining the collective bargaining power they have used to secure higher wages, benefits, and training.

The only good news from *Harris* is that it left *Aboord* intact for other public employees. But again Alito gratuitously attacked the precedent, calling its analysis “questionable on several grounds.” As law professor Samuel Bagenstos observed when the decision came down, “even more so than in *Knox*, Justice Alito’s majority opinion . . . expresses doubts about *Aboord*’s continuing vitality.” In dissent, Justice Kagan saw Alito’s opinion for what it was, writing: “Readers of today’s decision will know that *Aboord* does not rank on the majority’s top-ten list of favorite precedents. . . . Yet they will also know that the majority could not . . . come up with reasons anywhere near sufficient to reverse the decision.”

**Friedrichs v. California Teachers Association**: The power of working Americans is on the line

This term, *Friedrichs v. California Teachers Association* presents the same First Amendment challenge to fair share fees the Court rejected in *Aboord*. The plaintiffs (represented by the conservative Center for Individual Rights) are employees who have benefitted from union representation, but do not want to pay for those benefits. They can win only if the Supreme Court overturns long-settled precedent. Knowing this, the plaintiffs rushed the case through the lower courts, asking both the trial and appellate courts to rule against them so they could get to the Supreme Court. The choice for the Court in this case should be easy: apply the law and rule in favor of public unions. As Justice Kagan explained in her *Harris* dissent, there is no legitimate reason to do otherwise.

*Friedrichs* presents something of an esoteric, albeit settled, legal question. But there’s more at stake than legal precedent. Throughout our history, strong unions have helped create the revered American middle class, serving as a bulwark against corporate greed and ensuring that working people are treated fairly. Today, with an economy that increasingly favors the wealthy few over everyone else, unions and the labor movement continue to fight back—pushing for fair wages, free higher education, affordable healthcare, and quality public services for all. That is why unions—and the right of all working Americans to unite—have become the target of corporate interests and the top 1%. And that is the real reason *Friedrichs* is before the Supreme Court this term.

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