The Burger Court Opinion Writing Database

Abood v. Detroit Board of Education

431 U.S. 209 (1977)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1977

PERSONAL

Re: 75-1153 - Abood v. Detroit

Dear Harry:

My thinking on state action to compel a public employee to join a union or pay some contribution to a union as a condition of employment is undergoing change. The direction of the change is implicit in the above.

I hope you will "hang loose" until I can formulate a memo.

Regards,

WEB

Mr. Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1977

Re: 75-1153 - Abood v. Detroit

MEMORANDUM TO THE CONFERENCE:

I have had a great deal of difficulty with this case from the outset, and I have finally concluded that my difficulty stems basically from the proposition that any compulsory membership in a union or any compulsory payment of union dues or the equivalent as a condition of public employment is not simply unwise and against all of our traditions, but it is violative of the Constitution. This has not been considered in this case except as it is buried in Mr. Petro's verbose brief (218 pages).

The compulsion here on the public employee does not result from a collective bargaining contract reached by traditional consensual processes or by an election of a bargaining agent. Rather it is one imposed by state power and in that sense, for me, state action is clearly present. The consequence of the state action is to take "property" from each public employee without due process or just compensation; there is also the element of state interference with the right of association if the employee is terminated for non-payment of the "tribute" exacted. That this may be done with private employees is not enough for me here.

The really basic issues I see in this case presented by compulsory union membership (or dues equivalent) of public employees has not been adequately presented or argued in any case coming before us, and surely not in this one.

I must, therefore, alter the position I took at the Conference and will develop more complete treatment along these lines. What I would prefer to do is set this case for reargument with a focus on these issues and with competent counsel or Amici, but I have no serious thought that there would be four others who would join in a motion to reargue.

This is but one of a number of cases coming before the Court in the years since the filings have trebled and the dispositions have nearly doubled, in which the Court is "flying blind" in the sense of (a) inadequate presentation and (b) inadequate consideration following argument.

Regards,

WRB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 20, 1977

Re: 75-1153 Abood v. Detroit Board of Education

Dear Lewis:

Please show me as joining your concurring opinion.

Regards,

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 10, 1977

RE: No. 75-1153 Abood v. Detroit Board of Education

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75–1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[January —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

The State of Michigan has enacted legislation authorizing a system for union representation of local governmental employees. A union and a local government employer are specifically permitted to agree to an "agency shop" arrangement, whereby every employee represented by a union—even though not a union member—must pay to the union, as a condition of employment, a service fee equal in amount to union dues. The issue before us is whether this arrangement violates the constitutional rights of government employees who object to public sector unions as such or to various union activities financed by the compulsory service fees.

I

After a secret ballot election, the Detroit Federation of Teachers (the Union) was certified in 1967 pursuant to Michigan law as the exclusive representative of teachers employed by the Detroit Board of Education (the Board).[1]

[1] The election and certification were authorized by Mich. Comp. Laws § 423.211, which provides:

"Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 14, 1977

No. 75-1153 - Abood v. Detroit Board

Dear Lewis,

Thank you for your letter. As you have no doubt inferred from Part II B of the opinion, I was unable to conclude that, in the light of our precedents, there are principled distinctions between the public and private sector in terms of the constitutionality of requiring compulsory support for union collective bargaining activities.

I am not sure what you mean by greater governmental "coercion" in the public sector. In Hanson, were it not for the Railway Labor Act, the employees would have been free to withhold any payments from the union without losing their jobs; here, were it not for the 1973 amendment to the Michigan law, the appellants would enjoy the same freedom. But in both cases, the statutes in question use the threat of loss of employment as "coercion" with which to obtain payments to the unions.

It may be you are suggesting that the existence of governmental action is clearer here than in Hanson; I certainly agree. But Hanson, rightly or wrongly, found governmental action to exist under the RLA. Perhaps that analysis was questionable, but the case was clearly decided as a "governmental coercion" case -- and under the First Amendment itself, not the Fourteenth. I therefore cannot see how there can be greater "coercion" in this case.

I am also not entirely sure precisely what you have in mind in arguing that the public sector issue implicates rights more at the "core" of the First Amendment. It is true that the

views of dissenting public employees about union policy can be termed "political," in the sense that they relate to governmental decisionmaking. But calling them political rather than economic, philosophical, ethical, or social, does not lead to any difference under the First Amendment. Last Term in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, we reiterated that although "[t]he interests of the contestants in a labor dispute are primarily economic, . . . both the employee and the employer are protected by the First Amendment when they express themselves on the merits of the dispute in order to influence its outcome." That statement was merely a reflection of longstanding precedents. E.g., AFL v. Swing, 312 U.S. 321, 325-326; NLRB v. Virginia Electric & Power Co., 314 U.S. 469, 477; NLRB v. Gissel Packing, 395 U.S. 575, 617-618. And we continued in Virginia Pharmacy by noting that "[w]e know of no requirement that, in order to avail themselves of First Amendment protection, the parties to a labor dispute need address themselves to the merits of unionism in general or to any subject beyond their immediate dispute."

In short, the First Amendment protects the expression of ideas, not just those that can in one sense or another be characterized as "political." And although our cases have on occasion suggested that speech about political matters could not be more central to the purposes of the First Amendment, e.g., Buckley v. Valeo, 424 U.S. 1, 14-15; Monitor Patriot Co. v. Roy, 401 U.S. 265, 271-272, such language does not mean -- and I know of no case holding -- that the expression of ideas about art, literature, family life, religion, public morals, economic affairs, or other "non-political" matters is not protected to exactly the same degree. I cannot, therefore, see any basis for suggesting that the interests of the employees here are "closer to the core" than those of the employees in Hanson.

Based upon my conference notes and my memory, these were the views expressed by a majority at our Conference discussion. It was upon that understanding that the opinion was

written as it is. I shall, of course, be glad to consider any modifications that may be necessary in order to achieve a Court opinion, which I think is particularly desirable to achieve here if we are to give intelligible guidance to the fifty States and the countless local governments in the conduct of their ongoing affairs.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

pp. 29-30 + technical changes throughout

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75–1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[January —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

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After a secret ballot election, the Detroit Federation of Teachers (the Union) was certified in 1967 pursuant to Michigan law as the exclusive representative of teachers employed by the Detroit Board of Education (the Board).[1]

[1] The certification authorized by Mich. Comp. Laws § 423.211, which provides:

"Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

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Recirculated: FEB 3 1977

Technical Changes
pp. 19-30
pp. 2, 7, 8, 11-16, 18-19, 20, 21, 23-24, 25, 26, 27, 29-30

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[January —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

The State of Michigan has enacted legislation authorizing a system for union representation of local governmental employees. A union and a local government employer are specifically permitted to agree to an "agency shop" arrangement, whereby every employee represented by a union—even though not a union member—must pay to the union, as a condition of employment, a service fee equal in amount to union dues. The issue before us is whether this arrangement violates the constitutional rights of government employees who object to public sector unions as such or to various union activities financed by the compulsory service fees.

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[1] The certification was authorized by Mich. Comp. Laws § 423.211, which provides:

"Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for

Footnotes after 12 renumbered
pp. 9, 16, 20-21, 25, 29, 30, 32

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

Recirculated: MAY 11 1977

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[February —, 1977]

MR. JUSTICE STEWART delivered the opinion of the Court.

The State of Michigan has enacted legislation authorizing a system for union representation of local governmental employees. A union and a local government employer are specifically permitted to agree to an "agency shop" arrangement, whereby every employee represented by a union—even though not a union member—must pay to the union, as a condition of employment, a service fee equal in amount to union dues. The issue before us is whether this arrangement violates the constitutional rights of government employees who object to public sector unions as such or to various union activities financed by the compulsory service fees.

I

After a secret ballot election, the Detroit Federation of Teachers (the Union) was certified in 1967 pursuant to Michigan law as the exclusive representative of teachers employed by the Detroit Board of Education (the Board).[1]

[1] The certification was authorized by Mich. Comp. Laws § 423.211, which provides:

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

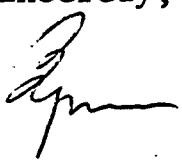
January 10, 1977

Re: No. 75-1153 - Abood v. Detroit Board of Education

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 13, 1977

Re: No. 75-1153, Abood v. Detroit Board of Education

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 27, 1977

Re: No. 75-1153 - Abood v. Detroit Board of Education

Dear Potter:

For the moment, I shall await Lewis' writing.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 10, 1977

Re: No. 75-1153 - Abood v. Detroit Board of Education

Dear Lewis:

I would be pleased to have you join me in your opinion concurring in the judgment.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 10, 1977

Re: No. 75-1153 - Abood v. Detroit Board of Education

Dear Lewis:

I would be pleased to have you join me in your opinion concurring in the judgment.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

[to Justice Powell only]

P.S. It is barely possible that we might have a suggestion or two. This, however, does not negate my joinder in any way. If we come up with a suggestion, my clerk will consult yours, but please don't grow impatient waiting for it.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 13, 1977

No. 75-1153 Abood v. Detroit Board

Dear Potter:

Although I agree with much of what you have written and expect to join Parts I and IIC, I do have reservations about the other parts of the opinion.

I do not think it necessary to read the Railway Labor Act cases as expansively as you apparently do in Parts IIA and IIB. Although those cases went quite far in permitting intrusion on First Amendment rights, they did so in a context that differs substantially from the public employment context presented here. As I indicated at Conference, I think there is a principled and substantial distinction between permitting the union shop in private employment and compelling its support as a condition of public employment. In the public sector, both the degree of governmental coercion and the likelihood of infringement of "core" First Amendment interests are magnified.

These differences may well not be sufficient to justify abandoning the framework of analysis established in Hansen and Street. But I think they do justify taking greater care to assure that public unions do not coerce nonmembers into providing financial support for political activities to which they are opposed. I would, at least, place the burden on a municipal union of proving explicitly that the fees that nonmembers are required to pay are used only to support the costs of contract negotiation and administration and not to finance - directly or indirectly - "political" activities of the union.

I agree that this is not the case for fully articulating the line between collective bargaining and "political" activities.

But I would recognize that there may be some aspects of collective bargaining in the public section that are themselves so fundamentally controversial and so important as to be classed as "political" activities for which the union cannot exact involuntary nonmember support.

I probably will not have an opportunity to work on a separate opinion until we conclude the January argument sessions.

Sincerely,

L Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 18, 1977

No. 75-1153 Abood v. Detroit Board

Dear Potter:

I appreciate your responding to my letter so fully, but I must say that your elaboration increases my concern.

Rather than extend the discussion at this time, perhaps it is best for me to write something. I will attempt to distinguish and restrict the reach of the RLA cases, at least to the extent that those cases deal with remedies, as I am convinced that there is a principled distinction between the public and private sector in terms of compelling support for union activities.

Your letter suggests, as I read it, that there can be no distinction in First Amendment analysis between, say, economic and political issues. In general theory, this may be true. But no First Amendment right is absolute, and in the balancing process that often must be applied I think we have weighted the scales more favorably where political speech is concerned. Indeed, I read your opinion as doing just that in this case. Nonassenting employees would be compelled to support economic activity by the union but not political activity. The crucial question is how the line is to be drawn, both procedurally and in substance.

We are together on the importance of the opinion in this case, and of providing "intelligible guidance to the 50 states and the countless local governments" in the conduct of municipal collective bargaining that now is becoming so common. The decision will certainly affect the political power of the public sector unions, and particularly their power to persuade state and local governments (and perhaps even the national government) to endorse the right to strike against the public. The implications of such a

right to strike are among the considerations which suggest to me that the balance between the type of interests that were involved in the RLA cases and those potentially involved here is quite different.

In any event, I will see how my tentative views "write", and then we can explore the possibility of narrowing or even eliminating what now seem to be our differences.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: MAY 3 1977

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, v. Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[May —, 1977]

MR. JUSTICE POWELL, concurring in the judgment.

The Court today holds that a State cannot constitutionally compel public employees to contribute to union political activities which they oppose. On this basis the Court concludes that "the general allegations in the complaint, if proven, establish a cause of action under the First and Fourteenth Amendments." *Ante*, at 25. With this much of the Court's opinion I agree, and I therefore join the Court's judgment remanding this case for further proceedings.

But the Court's holding and judgment are but a small part of today's decision. Working from the novel premise that public employers are under no greater constitutional constraints than their counterparts in the private sector, the Court rules that public employees can be compelled by the State to pay full union dues to a union with which they disagree, subject only to a possible rebate or deduction if they are willing to step forward, declare their opposition to the union, and bear the burden of proving that some portion of their dues has been spent on "ideological activities unrelated to collective bargaining." *Ante*, at 24. Such a sweeping limitation of First Amendment rights by the Court is not only unnecessary on this record; it is in my view unsupported by either precedent or reason.

May 13, 1977

No. 75-1153 Abood v. Detroit Board of Education

Dear Harry:

As I indicated in our recent telephone talk, I am making a few changes in my concurring opinion in the above case. Apart from essentially editorial changes, the additions are footnotes addressed to the changes Potter made in his opinion and to Bill Rehnquist's reference to Elrod.

I enclose a Xerox of the "master" that I am sending to the printer this afternoon. If these changes trouble you in any way, I will accommodate your views.

I appreciate your joining me.

Sincerely,

Mr. Justice Blackmun

LFP/lab

1-3, 5-6, 9-13, 19-20

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT

Recirculated: MAY 17 1977

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. } On Appeal from the Court of Appeals of Michigan.

[May —, 1977]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, concurring in the judgment.

The Court today holds that a State cannot constitutionally compel public employees to contribute to union political activities which they oppose. On this basis the Court concludes that "the general allegations in the complaint, if proven, establish a cause of action under the First and Fourteenth Amendments." *Ante*, at 25. With this much of the Court's opinion I agree, and I therefore join the Court's judgment remanding this case for further proceedings.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 13, 1977

Re: No. 75-1153 - Abood v. Detroit Board

Dear Potter:

I have told you orally that I had some reservations about parts of your opinion in this case, but that it also seemed to me to reflect the majority view of the Conference and probably the views which I had expressed there. Since Lewis now proposes to write a separate opinion, I shall await that before casting my vote.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[May —, 1977]

MR. JUSTICE REHNQUIST, concurring.

Had I joined the plurality opinion in *Elrod* v. *Burns*, 427 U. S. 347 (1976), I would find it virtually impossible to join the Court's opinion in this case. In *Elrod*, the plurality stated:

> "The illuminating source to which we turn in performing the task [of constitutional adjudication] is the system of government the First Amendment was intended to protect, a democratic system whose proper functioning is indispensably dependent on the unfettered judgment of each citizen on matters of political concern. Our decision in obediance to the guidance of that source does not outlaw political parties or political campaigning and management. Parties are free to exist and their concomitant activities are free to continue. We require only that the rights of every citizen to believe as he will and to act and associate according to his beliefs be free to continue as well." 427 U. S. 347, 372.

I do not read the Court's opinion as leaving intact the "unfettered judgment of each citizen on matters of political concern" when it holds that Michigan may, consistently with the First and Fourteenth Amendments, require an objecting member of a public employees' union to contribute to the funds necessary for the union to carry out its bargaining activities.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: JAN 27 77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[February —, 1977]

MR. JUSTICE STEVENS, concurring in the judgment.

Although I join the portions of the Court's opinion explaining why the complaint alleges a cause of action under the First and Fourteenth Amendments, I would postpone discussion of the appropriate remedy until after the facts have been fully developed at trial.* Arguably, the Union should not be permittted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance political activities unrelated to collective bargaining. But issues of remedy as difficult as those which may arise in this case can best be analyzed if and when the need for judicial relief has been proved.

*The case is before us on the equivalent of a motion to dismiss. *Ante*, at 3 n. 4. Our knowledge of the facts is limited to a bald assertion that the Union engages "in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve. . . ." *Ante*, at 3, and n. 3. What, if anything, will be proved at trial is a matter for conjecture.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

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Recirculated: MAY 10 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[May —, 1977]

MR. JUSTICE STEVENS, concurring.

By joining the opinion of the Court, including its discussion of possible remedies, I do not imply—nor do I understand the Court to imply—that the remedies described in *Street* and *Allen* would necessarily be adequate in this case or in any other case. More specifically, the Court's opinion does not foreclose the argument that the Union should not be permitted to exact a service fee from nonmembers without first establishing a procedure which will avoid the risk that their funds will be used, even temporarily, to finance political activities unrelated to collective bargaining. Any final decision on the appropriate remedy must await the full development of the facts at trial.*

*The case is before us on the equivalent of a motion to dismiss. *Ante*, at 3 n. 4. Our knowledge of the facts is limited to a bald assertion that the Union engages "in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve. . . ." *Ante*, at 3, and n. 3. What, if anything, will be proved at trial is a matter for conjecture.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Mr. Justice Stevens

Circulated: _____

3rd DRAFT

Recirculated: 5/19/77

SUPREME COURT OF THE UNITED STATES

No. 75-1153

D. Louis Abood et al., Appellants, *v.* Detroit Board of Education et al. | On Appeal from the Court of Appeals of Michigan.

[May —, 1977]

MR. JUSTICE STEVENS, concurring.

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*The case is before us on the equivalent of a motion to dismiss. *Ante*, at 3 n. 4. Our knowledge of the facts is limited to a bald assertion that the Union engages "in a number and variety of activities and programs which are economic, political, professional, scientific and religious in nature of which Plaintiffs do not approve. . . ." *Ante*, at 3, and n. 3. What, if anything, will be proved at trial is a matter for conjecture.