



January 14, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Edward C. Starr, City Manager

**SUBJECT:** CITY MANAGER'S WEEKLY REPORT: January 14, 2016

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## **CITY MANAGER/ADMINISTRATIVE SERVICES DEPARTMENTS**

- This past Monday, the U.S. Supreme Court heard oral arguments on a case that could significantly change the landscape of political power in California and beyond.

*Friedrichs v. California Teachers Association* centers on the question of whether union dues are inherently political—and if they are, as plaintiffs argue, whether represented employees who are not union members can be compelled to pay them.

The California Teachers Association (CTA) and other public sector unions are significant political players in politics in both California and nationally, and losing the case could hollow out their membership ranks and financial standing. Approximately 7.2 million public sector employees belong to unions nationwide, working in diverse occupations including library services, teaching, health care, job training, public safety, street maintenance, administration, sanitation, building maintenance, and many other fields.

The Center for Individual Rights is representing Rebecca Friedrichs, a longtime Orange County elementary school teacher who, along with teachers from other districts, object to mandatory fees charged by their respective teachers associations, of which they are not active members. In 2013, the California Teachers Association collected \$173.9 million in what Friedrichs characterized as "dues." Individual union fees for a teacher in California can exceed \$1,000 annually.

In its 1977 decision, *Aboud v. Detroit Board of Education*, the Supreme Court upheld arrangements that require service fees or dues from employees who choose not to be part of a union—i.e., agency shop fees. The rationale for that decision rested in large part on the benefit employees receive from a union's role in negotiating contracts and representing workers with grievances. Though unions do engage in

political activity, the Court, in *Abood*, determined that the First Amendment rights of individual workers are not interfered with if they are required to pay service-related fees. California, like some 22 other states and the District of Columbia, authorizes agency shop fees for public-sector unions.

Friedrichs argues everything a public employee union does—even collective bargaining—is inherently political and, therefore, employees should be able to opt out. Friedrichs contends that because any raise in a public teacher's salary is funded by tax dollars, forcing teachers to fund negotiations is compelling them to identify with a public policy cause, a violation of their First Amendment rights. Were it not for California's agency shop arrangement, Friedrichs argues she would not pay fees to otherwise subsidize the teachers' union, and thus objects to California's forced subsidization policy.

Friedrichs and her fellow plaintiffs want the court to overrule the *Abood* decision and strike down laws requiring nonunion employees to pay service fees in the 25 states that have agency shop statutes on the books.

The state of California, the CTA, and allies argue that a ruling in favor of Friedrichs could undermine the entire system of public employee collective bargaining here and nationwide. Unions argue that if nonmembers can be represented without paying any fee, there would be a strong incentive to become a "free rider" and not join the local union. Fewer paying members, they argue, could weaken unions at the negotiation table. Unions urge that alternatively, dissatisfied members should voice their displeasure with union decisions by electing new leaders.

The Supreme Court will also consider a second question that has direct implications for the political weight of public sector unions: Currently, teachers in California have the ability to **opt out** of funding the union's political activities. If they decide that they don't want to give the union money to support political causes including candidates, ballot measures, and legislative lobbying, they will receive a refund for that portion of their dues.

Friedrichs, however, wants the court to change the **opt out** process and make **opting in** the default option under the law. Such a system would require union members to fill out a form and agree to pay dues. Unions argue that any decline in their ability to direct dues toward political purposes may have an adverse effect on their ability to affect the political process.

The door to the *Friedrichs* challenge was opened in the 2012 case [Knox v. SEIU](#), when Justice Samuel Alito wrote in his decision that the union model requiring nonmembers to contribute was an "anomaly" not seen in other associations of doctors, professors, or even neighbors. Other Supreme Court justices have also suggested they are primed to throw out *Abood*. In [Harris v. Quinn](#), a 2014 ruling concerning Illinois' home-care workers, Justice Alito opined that the *Abood* reasoning was "troubling" and "questionable on several grounds." Four other justices joined him in that opinion.

- Governor Jerry Brown, issuing a \$170.6 billion state spending plan last Thursday, proposed billions of dollars in new funding for schools, climate change programs, and services for the elderly and disabled.

But the fourth-term governor, who took office amid a crippling recession, repeatedly warned of the possibility of another economic downturn, rejecting calls for more robust spending increases. Governor Brown also criticized ballot measures seeking to extend temporary tax increases he championed in 2012, faulting them for exempting revenue from Proposition 2, the budget reserve voters approved in 2014.

The spending plan formally opens months of budget negotiations at the Capitol, an annual exercise characterized in recent years by conflict between Governor Brown and the more liberal, democratic-controlled Legislature about how much money to spend on health and human service programs.

Governor Brown's proposal would increase school spending to \$10,591 per student, more than \$3,600 more than at the tail end of the recession. But Brown expressed reservations about a \$9 billion bond measure to pay for school and community college facilities, suggesting he will seek to negotiate an alternative with the Legislature.

The budget release serves as a reflection of the governor's priorities, and Brown on Thursday reintroduced two major proposals for which he failed to secure funding last year: a multibillion-dollar plan to fund road repairs and a modified expansion of a tax on health plans to help generate about \$1 billion for Medi-Cal.

Governor Brown also proposed using Cap-and-Trade funds (money polluters pay to offset carbon emissions) to fund programs to reduce petroleum use in motor vehicles. The proposal comes less than a month after Governor Brown returned from international climate talks in Paris.

As part of a \$3.1 billion spending plan for Cap-and-Trade, Governor Brown proposed \$1 billion to reduce emissions in the transportation sector, including funding for mass transit and incentives for zero-emission vehicles.

The road-repair package Governor Brown offered Thursday is in line with the mix of taxes, fees, and Cap-and-Trade money he previously proposed to generate about \$3.6 billion annually for roads, including a \$65-per-vehicle highway user fee.

But Governor Brown overhauled his health plan tax after his initial effort stalled amid opposition from health plans and legislative republicans opposed to tax increases. An existing tax expires June 30.

In an effort to win republican votes and the support of health plans, Governor Brown cast the tax plan Thursday as a net gain for the plans and promised increased funding for the developmentally disabled if it is approved.

Governor Brown said his new health plan tax would draw \$1 billion in federal matching dollars, while generating additional money to help pay for in-home care workers and other programs.

The budget includes more than \$80 million for the state's network of regional centers, which arrange services for people with autism and other developmental disabilities, and would increase payments for the blind, elderly, and disabled.

The governor's proposal comes amid ongoing improvement in the state budget since the last recession.

The nonpartisan Legislative Analyst's Office projected in November that the state will end the current fiscal year in June with \$7.9 billion in reserve, \$3.3 billion more than lawmakers expected last year.

Governor Brown included billions of dollars in one-time spending in his plan. State parks would receive some of the \$500 million set aside for parks, levees, and other maintenance work at state public works around California. Schools would get a one-time increase of \$1.2 billion to use however they want.

The budget is the second since California voters approved a new reserve fund meant to cushion sharp swings in revenue and spending. Governor Brown proposed shifting \$3.5 billion into the reserve, \$2 billion more than required by Proposition 2.

Even before the budget's release, activists were urging the state to restore recession-era cuts to programs affecting the state's neediest people.

In a pre-budget salvo earlier last week, Senate democrats proposed a \$2 billion bond to build housing for homeless people with mental illnesses and said they will push for \$200 million in general fund revenue over four years to pay for rent subsidies for homeless people.

- Getting into the University of California (UC) just got even more competitive. The system announced on Monday that it received a record number of applications for the 12th consecutive year, topping 200,000 for the first time.

Among the 206,339 students who applied to at least one of UC's 9 undergraduate campuses for admission in fall 2016, 166,380 are freshman and 39,959 are transfers.

The increase was once again driven largely by a surge in nonresidents. While 4.4 percent more Californians sought admission than last year, the number of applications was up by 10.9 percent among out-of-state students and 10.6 percent among international students.

As UC was pushed to look for alternative sources of revenue during the deep budget cuts of the economic recession, recruiting higher-paying nonresident students became a popular practice for campuses. Many continue to see tremendous benefits. The number of international freshman applicants grew by more than a fifth at Santa Cruz, Irvine, Santa Barbara, and Davis this year.

The University of California Los Angeles (UCLA) remained the most popular campus overall, jumping by almost 6 percent to 119,326 freshman and transfer applications. But for the first time in 5 years, San Diego surpassed Berkeley, drawing 102,692 applications to Berkeley's 101,655.

Four campuses saw increases of more than 10 percent in total applications, including Santa Barbara, Irvine, and Riverside. Merced led the way with a 13.5 percent bump, though its 22,632 applicants are still less than half of what any other UC school receives.

At Davis, the total number of applications grew by 7.6 percent to 86,041, of whom 68,519 were freshman and 17,522 were transfers. The largest gains came from about 3,000 additional out-of-state and international freshman applicants, as well as 1,756 more California students seeking transfer admission.

The good news for California applicants? UC has already promised to add 5,000 new slots for resident students next year, though it has not yet specified how many each campus will take.

## **FIRE DEPARTMENT**

- On Monday, Captain Sergio Mejia conducted a CPR Recertification Training for C-Shift Suppression crews at Montclair Fire Station No. 151. Recertification training is crucial for maintaining and complementing first responders' ever-evolving knowledge, and is meant to provide the most up-to-date CPR guidelines and training.

The American Heart Association explains that Basic Life Support training reinforces healthcare professionals' understanding of the importance of early CPR and defibrillation, basic steps of performing CPR, relieving choking, and using an Automated External Defibrillator.

## **POLICE DEPARTMENT**

- Congratulations go to Police Chief Mike deMoet and Environmental Manager Nicole deMoet on the birth of their daughter, Piper Hannah, on January 10. Piper weighed in at 6 pounds 12 ounces and is 19 inches long. Nicole and Mike are over the moon with their healthy, beautiful baby girl!

## **SUCCESSOR REDEVELOPMENT AGENCY/ MONTCLAIR HOUSING CORPORATION**

- Macy's announced plans last Wednesday to lay off about 4,350 employees and close more than 40 stores nationwide. Macy's said about 3,000 sales associates will be impacted (three to four per Macy's and Bloomingdale's locations). The company expects that about half of the affected store associates will be placed in other positions. Another 1,350 employees in back office and service center positions will be impacted by the cost-cutting moves. Some of those workers are also expected to be reassigned to other positions.

Upper management is also being impacted, with Macy's implementing a voluntary separation opportunity for about 165 senior executives.

The retailer also announced plans to close more than 40 stores including 2 locations in California: Macy's at the Irvine Spectrum, which opened in 2002; and a store at the Country Club Plaza in Sacramento, which opened in 1961. Macy's hopes to save about \$400 million to help offset its disappointing 2015 sales results.

It was fresh evidence of the struggles at Macy's. The company said sales in the critical November and December period slumped by a worse-than-expected 5 percent. Profits are also expected to miss the company's own targets.

Like other retailers, Macy's blamed the historically warm weather in northern climates. Macy's said about 80 percent of its sales declines can be attributed to shortfalls in cold-weather goods. Macy's also pointed to the impact of the strong U.S. dollar, which has caused international tourists to spend less.

Recently, the company listed 36 stores slated to close early this spring, including ones in Los Angeles, Buffalo, and Fort Worth. Macy's expects the cost-cutting moves to hurt fourth-quarter profits by \$200 million.

- A few years ago, Uniqlo was planning to dominate America. The brand and its parent company, Fast Retailing, were praised for Uniqlo's Heatech apparel and its coats. Fast Retailing was even slated to acquire J. Crew. at one point, but the plans fell through.

Lately, the company's global-domination plans have been met with a setback: Asia's largest retailer can't pick up enough steam in the US. In its latest set of results for the first quarter of fiscal 2016, the company said that Uniqlo's international results fell short of expectations.

In October, the company also announced that its results had fallen short of expectations in the US; its expansion plans had been met with an underwhelming response from American consumers. At the time, the company blamed the problem on the fact that American consumers were not familiar enough with the brand.

This quarter, the company said that it planned to remedy that with a new strategy focusing on new stores opening and expanding in ecommerce sales. The company said it plans to open flagship stores in Chicago and in Boston in order to boost awareness of the Uniqlo brand.

Fast Retailing blamed its most recent international troubles on the unseasonably warm weather, singling out the US, China (including Hong Kong and Taiwan), and South Korea.

Bloomberg has reported that CFO Tadashi Okazaki has said the company would respond to this issue by releasing apparel that's less "weather-sensitive" and by delivering its spring clothing earlier than it usually would.

The company isn't the only retailer to struggle amid the weather. Banana Republic and Macy's have both stated that the warm weather has negatively affected business.

This is telling of a larger problem in the apparel business—those that can't move quickly enough might be doomed for failure.

The only safe retailers, then, are those that can adapt rapidly, such as fast-fashion company Zara, the arguable winner in the apparel industry. Zara is also on trend and rapidly churns out runway-esque designs.

Uniqlo's clothes are generally basics. Right now, its lineup looks like it could belong at Land's End or The Gap, the latter of which has been suffering from consistently plummeting sales.

ECS:spa

"The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy."

~ Martin Luther King, Jr.

# JANUARY 2016



18	Martin Luther King Jr. Day – City Offices Closed	
19	Real Estate Committee Meeting City Hall Conference Room	5:30 p.m.
19	Code Enforcement/Public Safety Committee Meeting City Hall Conference Room	6:15 p.m.
19	City Council Meeting Council Chambers	7:00 p.m.
20	Safety Committee Meeting City Hall Conference Room	10:30 a.m.
21	Public Works Committee Meeting City Hall Conference Room	4:00 p.m.
25	Planning Commission Meeting Council Chambers	7:00 p.m.
26	City Manager's Staff Meeting City Hall Conference Room	9:00 a.m.