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Supreme Court Will Hear Cases On Union Political Activities

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If New York City's top labor union leaders aren't planning to be at the U.S. Supreme Court on Wednesday, they may want to rethink their schedules. The court will be hearing oral arguments in two related cases involving the First Amendment rights of unions to fund political candidates. Although the cases involve a Washington State law, the court could use the opportunity to issue a ruling that would make it more difficult for unions nationwide to collect money from employees they represent.

But unions generally also have much to gain. The legal issues at stake have strong implications for campaign finance law, especially if the court issues a union-friendly ruling. Such a ruling could undermine long-established regulations banning unions from making direct contributions to candidates in national elections, a lawyer who is following the case said. Thus, a pro-union ruling could conceivably raise even higher the stature unions possess as political actors on the national stage.

The case involves a dispute between the teachers' union of Washington State and a group of nonunion teachers who are required to pay the union for the representation it provides. The nonunion teachers claim that the union is using some of their fee money without their permission to fund political candidates who they do not wish to support.

For the lead plaintiff in one of the two cases, a class action on behalf of nonunion teachers, the case involves the simplest of principles. "Unless you have permission you shouldn't spend other people's money," the lead plaintiff, Gary Davenport, told *The New York Sun* yesterday. "It's an easy concept and one that most citizens have to abide by. Unions shouldn't have a hard time abiding by it."

Mr. Davenport, 32, taught high school history at Kentwood High School for two school years. As a nonunion teacher, he paid the required annual fees - called "agency fees" - of more than \$500, he said. The union, the Washington Education Association, provides nonunion teachers like Mr. Davenport the opportunity to collect a refund of their fees. It sent mailings to the 3,500 nonunion teachers twice a year advising them that they can apply for a refund of the portion of their fees that was used for political purposes, which in past years has been between \$44 and \$76, according to court documents. Teachers who did not return the mailings were viewed as having given their consent.

A Washington State law from 1992 requires that the union only use such nonmember money for political purposes with the expressed authorization of the nonmembers. Few, if any other states, have such a law.

The right to opt out of paying for union political activities was established nationally by the U.S. Supreme Court in the 1988 case *Communications Workers v. Beck*, although that ruling left unspecified the logistics of opting out.

The office of the Attorney General in Washington took the union to state court in 2000, claiming that union was failing to get the required authorization. Last year a majority of the Washington State Supreme Court ruled that the law was unconstitutional, because it placed an administrative burden on the union so extreme as to violate the First Amendment rights of union members to support causes.

In a strongly worded dissent, three judges on the state supreme court said the majority opinion had turned the First Amendment "on its head." Although the statute is narrow, the court could write a broad decision that places hurdles in the way of union fee collection.

At an extreme, the court can go beyond the issue of nonmember fees and cast doubt on a union's authority to spend even union money for political purposes without the expressed consent of members. But even if the court confines itself to the question on nonmember fees, it could say the unions everywhere, not only in Washington, must receive affirmative approval from nonunion employees who pay dues before the union spends those dues for political purposes.

Lawyers for the National Right to Work Foundation, which represents the nonunion teachers suing for a refund, are urging the court to do just that, according to its brief.

On the other hand, unions stand to gain much if the Supreme Court agrees with the pro-union ruling from the state supreme court. One attorney who filed a friend-of-the-court brief in the case, argues that the teachers' union, the Washington Education Association, has claimed First Amendment protections that it doesn't legitimately have.

The lawyer, Paul Ryan of the Campaign Legal Center in Washington, D.C., described that union's claim in the case to be that it possesses "a First Amendment constitutional right to use any money it can get its hands on for political expenditures, absent an explicit objection from nonmembers."

A strong ruling in favor the teachers union, Mr. Ryan said, could encourage future union lawsuits challenging the long-established federal ban on direct contributions from the organized labor in national elections.

Unions get around that restriction by soliciting funds from individual members and union officials through political action committees. The restriction on direct gifts by unions to campaigns, Mr. Ryan said, would be "constitutionally vulnerable" in the wake of a strong pro-union ruling in the Washington case.

The Solicitor General filed a brief urging the court to rule against the union in favor of the nonunion teachers.

The two cases are Davenport v. Washington Education Association and Washington v Washington Education Association.

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