NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 BRADDOCK ROAD, SUITE 600, SPRINGFIELD, VIRGINIA 22160 · (703) 321-8510

U.S. Supreme Court to Review Controversial Ruling Handing Union Officials a 'Right' to Forced Union Dues for Politics

Briefing on the National Right to Work Foundation's pending case,
Davenport v. Washington Education Association

For its 2006-2007 term, the U.S. Supreme Court has taken up an appeal filed by National Right to Work Foundation staff attorneys asking the High Court to overturn a Washington State Supreme Court ruling that struck down an ineffective state campaign finance law and opened a Pandora's Box in the process. Foundation attorneys filed Davenport v. Washington Education Association (WEA) *for more than 4,000 Washington teachers who are not formal union members, but nonetheless are forced to pay dues or be fired.*

What is the central issue before the U.S. Supreme Court? *Davenport* is a legal rescue mission that should never have been necessary. The central issue to be decided is whether Big Labor has a First Amendment right to spend on politics union dues seized from employees who are not union members, but who are forced to pay union dues or fees as a condition of employment.

What are the implications if the Washington State Supreme Court ruling is upheld? If union officials have constitutional rights that trump the rights of nonmembers who are forced to pay dues, this dangerous precedent could be used to cause severe damage to workers' rights across America, even opening the door for new attacks on the constitutionality of state Right to Work laws (which make dues payment and union affiliation strictly voluntary). But through a long string of U.S. Supreme Court rulings won by Foundation attorneys, the High Court has made it quite clear that the First Amendment affords protections to nonunion workers forced to pay dues to a union, rather than vice versa. Although the underlying law at issue is ineffective, the National Right to Work Foundation believes it is absolutely critical that the *Davenport* ruling be overturned by the U.S. Supreme Court because of the harm the ruling could inflict on employee rights across America.

Even though this is a defensive battle, is there any opportunity to actually *advance* the cause of employee rights? Fortunately, yes. In addition to seeking a return to the *status quo* by vigorously attacking the Washington State Supreme Court's outrageous ruling that, as the dissent pointed out, "turns the First Amendment on its head," Foundation attorneys have gone on the offensive. Accordingly, the U.S. Supreme Court is being asked to clarify that its 45-year-old "dissent is not to be presumed" statement does not apply to nonmembers. Exploiting this phrase from a 1961 Supreme Court ruling, *Machinists v. Street*, involving different circumstances, union officials have decreed that employees who resign union membership must take the *additional affirmative step* of objecting annually in order to limit their forced union dues to cover only activities related to collective bargaining. As a result, employees nationwide face a series of window periods and must jump through other hoops every year to reclaim money that would otherwise be spent on the union officials' political agenda, union organizing, and other non-bargaining activities.

Davenport fortunately provides this positive line of attack and the potential for substantially greater relief for teachers and other union-abused employees than could ever be realized through the limited campaign finance law. If the High Court clarifies that an employee registers sufficient "dissent" through the act of becoming

and remaining a nonmember, every nonmember forced to pay dues in America will *automatically* be entitled to a rebate of all non-bargaining expenses, including all costs attributable to politics, lobbying, and organizing – going a quantum leap beyond the narrowly defined state and local political expenditures covered by Washington's campaign finance law. A victory on this argument could multiply by a factor of ten the aggregate rebates of forced dues received by employees across America.

How did the Washington State Supreme Court ruling occur? The decision resulted from related cases brought by Washington's Attorney General and National Right to Work Foundation staff attorneys seeking to enforce the remaining provision of a Washington campaign finance law – often called "paycheck protection" – that sought to require union officials to ask the consent of nonunion public employees before spending their dues on certain narrowly defined political activities.

How come the underlying "paycheck protection" law never actually provided its much-hyped relief to union-abused employees? Union officials easily evaded the intent of the law due to the severe limitations of the campaign finance reform regulatory approach. Not only was the definition of "politics" narrowly defined, but also union officials easily shifted their accounting methods and slightly modified the nature of their political activities so that they fell outside the regulation's scope. At most, about $25 of a teacher's $700 annual dues is covered, and, in most years, the amount covered by the regulation has been roughly $10. Yet the union officials have admitted they spend as much as $300 per teacher on politics and other non-bargaining activities each year.

Moreover, because union officials in Washington have the government-granted power to collect forced union dues in the first place, the WEA union has had no difficulty in raising *even more* funds for political and ideological activity than before the campaign finance law was passed in 1992! Then *Seattle Times* columnist Michelle Malkin called the law "workaroundable" and found that, in the first year after Washington's "paycheck protection" law took effect, the WEA union actually *increased* the amount it spent to influence politics by 60 percent. Numerous other independent analysts reached the same conclusions. Regrettably, the situation in Washington has been similar in the intervening years.

Proponents of "paycheck protection" have correctly diagnosed one symptom of a problem, but a record of more than ten years of experience in Washington and several other states has made it clear that this government regulatory approach falls short of providing employees real relief.

Because "paycheck protection" regulation is so ineffective, what works? The root problem is that federal and state laws force 12 million American workers to fork over part of their hard-earned paychecks to unions or be fired from their jobs. Yet polls consistently show that roughly 80 percent of Americans believe it's wrong to force employees to join or pay dues to a union against their will.

The problem can only be addressed meaningfully by attacking Big Labor's legislatively granted special privilege to seize forced union dues in the first place. Experience shows that adding additional layers of government regulation has not succeeded in providing real relief to employees.

In the meantime, however, it is absolutely imperative that the U.S. Supreme Court overturn the Washington State Supreme Court ruling which has responded to the ineffective "paycheck protection" law by creating an even larger problem – a perversion of the long-standing interpretation of the First Amendment as applied in the context of forced unionism.

For more information, contact Justin Hakes, Legal Information Director, National Right to Work Legal Defense Foundation, 703-770-3317 or jah@nrtw.org