

Foundation Takes Free Speech Fight to the Supreme Court

'Paycheck protection' battle could cause collateral damage to employees' rights

SEATTLE, WA – Responding to an outrageous Washington State Supreme Court ruling that created a supposed “constitutional right” for union officials to spend political funds seized from nonunion employees, National Right to Work Foundation attorneys in mid-June appealed to the U.S. Supreme Court.

If the High Court does not take up the appeal and reverse the ruling, it could open the door for union legal attacks against America's 22 state Right to Work laws.

Using tortured reasoning and, as the dissent pointed out, “turn[ing] the First Amendment on its head,” the 6-3 ruling by the state court struck down the last remnants of Washington State's so-called “paycheck protection” law, a campaign finance regulation that sought to require union officials to obtain permission from nonmember public employees before spending their mandatory union dues on union political activities.

Although wrongheaded, the ruling has helped to bring into focus difficulties with the paycheck protection regulatory approach – and how it has created an opening for activist court rulings to damage employee rights and perhaps ultimately undermine state Right to Work laws.

“The real solution is to attack forced unionism at its roots, rather than regulate its ill effects,” said Stefan Gleason, vice president of the National Right to Work Foundation. “But we have an obligation to try to reverse the damage to the First Amendment caused by this ruling.”

'Paycheck protection' opened door to court mischief

Immediately after the passage of Washington State's campaign finance



The U.S. Supreme Court has an opportunity to reverse the Washington State Supreme Court majority that “turned the First Amendment on its head.”

measure in 1992, also known as Initiative-134 (which included language now dubbed “paycheck protection” language), union officials ultimately raised even more political funds than they could before the statute took effect. Union accountants merely juggled the books and changed the way they accounted for political funds. Later, the Washington courts interpreted the law not to apply to full union members.

Foundation attorneys agreed to help a group of Washington teachers who were not union members secure the law's application to them. A lawsuit was filed in 2001 in a county Superior Court against the Washington Education Association (WEA) union for more than 4,000 nonmember teachers who are forced to pay union dues.

That court ruled favorably that the teachers had an implied right of action under a state statute to recover the fees the WEA union had taken, without their authorization, for political purposes. The trial court also certified the case as a class-action for the thousands of

nonmember teachers who had not consented to the union using their money on political activities.

State Right to Work laws endangered by court decision

But the long-awaited Washington high court ruling in mid-March upheld an appellate court's decision – thereby overturning the trial court and ruling the last remaining union fees provisions in I-134 unconstitutional. The court opined that union groups had constitutional rights that totally overshadowed the rights of nonmembers forced to pay union dues – a novel theory that conflicts with numerous legal principles established by the nation's courts.

“The state supreme court has now created an even larger problem by construing the First Amendment in a fashion that opens the door for outright attacks on Right to Work laws,” stated Gleason. 