

IN THE
Supreme Court of the United States

DAVENPORT, *et al.*,

Petitioners,

v.

WASHINGTON EDUCATION ASSOCIATION,

Respondent.

WASHINGTON,

Petitioner,

v.

WASHINGTON EDUCATION ASSOCIATION,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF *AMICI CURIAE* EVERGREEN FREEDOM FOUNDATION,
CASCADE POLICY INSTITUTE, COMMONWEALTH FOUNDATION FOR
PUBLIC POLICY, EXCELLENT EDUCATION FOR EVERYONE, GRASSROOT
INSTITUTE OF HAWAII, GEORGIA PUBLIC POLICY FOUNDATION, JAMES
MADISON INSTITUTE, JOHN LOCKE FOUNDATION, NEVADA POLICY
RESEARCH INSTITUTE, PACIFIC RESEARCH INSTITUTE, PIONEER
INSTITUTE FOR PUBLIC POLICY RESEARCH, SMALL BUSINESS HAWAII,
AND COMPETITIVE ENTERPRISE INSTITUTE
IN SUPPORT OF PETITIONERS

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generally applicable regulations that do not burden any particular viewpoint. Among those regulations is a simple requirement that non-union members cannot be forced to support financially and thus associate with the political viewpoints of a union without their express consent. While most regulated entities have found no difficulty in both continuing their political activities and adhering to the law, the WEA refuses to comply.

B. Enforcement of the Statute Protects Individual Rights Without Unduly Restricting the WEA's Ability to Spend Money in Political Campaigns

Amici support the rights of individuals and organizations to participate in the political process and do not advocate any rule that would prevent that participation so long as it is funded by truly voluntary contributions. While the WEA implies that prohibiting use of non-member dues for political purposes would have a devastating effect on the WEA's right to political speech, the facts belie this claim. Based on the WEA's submissions to the court below, the limitations of Wash. Rev. Code §42.17.760 will uphold the individual rights of teachers and not burden the union's ability to advocate on behalf of informed teachers who voluntarily contribute to its political efforts.

The provision at issue prohibits collection of money to be used for political purposes only from non-union members who have not given permission for such use. The fees from union members are not at issue, and the union can still collect from non-members with the non-members' consent. The WEA has approximately 70,000 members and fewer than 3,500 non-member fee payers.²⁰ Even if every non-member declined to opt-in to the use of dues for political purposes,

²⁰ Trial Exhibits ("Ex.") 57-61; Report of Proceedings ("RP") 178-80; Clerk's Papers ("CP") 105.

the impact to the WEA would amount to less than $\frac{1}{4}$ of 1% of the WEA's total expenditures.²¹

For the 2004-05 school year, WEA dues were \$318.²² Of that, 27%, or \$85.86, went towards all “non-chargeable” purposes.²³ Assuming that not one of the 5% of non-member employees would opt-in to the non-chargeable expenses, the total loss of revenue to the WEA would be only 27% of the 5% of total dues collected from non-members – a net of 1.35% of dues. In fact, because the WEA “collects significant revenues from other sources,”²⁴ and because the amount spent on political activities represents less than 5% of the WEA's total expenditures,²⁵ the actual percentage of revenue collected from non-union members and used for political purposes is actually much smaller. Such a miniscule drop in funds available for political purposes hardly has the crippling effect complained of by the WEA and is a small price to pay to protect teachers from forced support of political speech with which they disagree.

II. An Opt-In Procedure Does Not Present an “Insurmountable Hurdle”

The WEA repeatedly argues that implementation of an opt-in procedure for non-members presents an “insurmountable” administrative burden. The truth is otherwise. The requirements of the Fair Campaign Practices Act can readily be implemented by adapting the existing

²¹ Opening Brief of Appellant, Washington Education Association, Washington State Court of Appeals, No. 28264-0-II.

²² In addition, dues of \$137 were charged for membership in the National Education Association and additional dues were charged for membership in local and regional dues. See letter, appendix A.

²³ See letter, appendix A. That percentage is similar to previous years. CP 175.

²⁴ Ex. 156. See also, Opening Brief of Appellant to Washington State Court of Appeals, No. 28264-0-II.

²⁵ Id.