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Laboring against free speech

By George Leef

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The U.S. Supreme Court today is scheduled to hear oral arguments in *Davenport v. Washington Education Association*, a case with important implications for employee rights. It's a clash between individuals who desire neither union representation nor being forced to pay for union politicking -- and union officials who want to seize every dollar they can.

The case arose out of an attempt in Washington state to regulate the use of forced union dues for certain political purposes. In 1992, voters approved a campaign-finance law that included a provision compelling government union officials to obtain prior consent from nonmembers who must accept unionization as a condition of employment.

Union officials are adept at evading such "paycheck protection" regulations because the definition of politics covered is extremely narrow. After slight changes to their accounting and spending practices, union bosses can continue business as usual, and Washington's experience proved no exception.

In 2001, National Right to Work Foundation attorneys filed a class-action suit on behalf of more than 4,000 teachers who had refused formal membership in the WEA and seek a refund of $10 to $25 the union had spent without their consent on the electioneering activity actually covered by the law.

When the case reached the Washington Supreme Court, it held that the law's employee consent requirement was invalid. Its tortured reasoning was that the law violated the First Amendment rights of the union.

In dissent, Justice Richard Sanders wrote that the majority's ruling "turns the First Amendment on its head." Indeed so. The First Amendment protects the rights of individuals and organizations to freely associate and express themselves, but it equally protects their rights not to associate and against being compelled to support expression they oppose.

It's important that the U.S. Supreme Court set this matter straight because of its broad implications. There should no more be a constitutional right for unions to use nonmembers' money for political purposes than for any other sort of private organization to dip into the pockets of people who haven't voluntarily joined or contributed to it.

If the high court were to agree that unions are constitutionally entitled to spend nonmembers' money on partisan politics, the result could even give union

lawyers ammunition to attack our nation's 22 state right-to-work laws. Those laws, which ban forced union dues, protect workers who don't think unionization serves their interests.

In its misreading of the relevant case law, the Washington Supreme Court fastened upon six words from the Supreme Court's 1961 decision in *Machinists v. Street* -- a case involving both union members and nonunion members forced to join or pay dues.

Ever since *Street,* union officials have pointed to the words "dissent is not to be presumed" as justification for their imposition of onerous procedures for nonmembers to opt out of paying for union spending on politics, lobbying and public relations.

But dissent should be presumed for people who have refused formal membership in a union. Such workers shouldn't have to register their opposition to paying for union political expenditures during narrow "window periods" year after year.

A clear ruling from the Supreme Court that the act of refusing union membership shows sufficient "dissent" would have the effect of providing an automatic refund or non-collection of forced dues spent on politics. Union officials could no longer seize the money from nonmembers and refund it only to those who have the "gall" to demand it back.

The principle here is critical and the amounts substantial. In previous cases, courts have found that unions often spend a majority of their money on things that aren't related to collective bargaining. In the U.S. Supreme Court's 1988 *Beck* case (won by National Right to Work Foundation attorneys), only 21 percent of the union's spending was legally chargeable to nonmembers.

Forced speech is just one of the problems growing out of laws that sanction compulsory unionism. Those laws should be repealed or struck down. Workers ought to be free to sign up and pay for union representation if they want to, but equally free to say "no thanks" just as they can to any other offer.

In Davenport, the Supreme Court can't strike at the root of the problem. But it can prevent it from getting worse.

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