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Justices to hear teacher's lawsuit – WEA opponents challenge dues

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In what both sides describe as a battle to protect their free-speech rights, the U.S. Supreme Court will hear arguments this morning over whether Washington's teachers union needs permission from nonmembers before it can spend their money on politics. "No one should be forced to have money taken out of their paycheck for politics they don't support," said former Spokane school speech pathologist Cindy Omlin. Omlin now heads Northwest Professional Educators, a teachers' association intended as an alternative to the far larger Washington Education Association.

The clash pits the state and several dissenting teachers against the WEA, with Attorney General Rob McKenna arguing the state's side today in his first appearance before the high court. But it's also the latest clash in a years-long legal battle between the Washington Education Association and the Evergreen Freedom Foundation, a conservative group based in Olympia. So far, the WEA's been winning most of those court contests.

The Evergreen Freedom Foundation, WEA spokesman Rich Wood said Tuesday, is simply trying to "stymie the political voice of school employees." The many friend-of-the-court briefs filed in the case, he noted, include several anti-union groups.

Unlike in Idaho, Washington teachers who don't want to join their union are still required to pay union fees nearly equal to the dues paid by regular members. Those fees - about $700 a year for an average teacher according to Wood - pay for collective bargaining costs that benefit members and nonmembers alike.

The vast majority of teachers simply join the 80,000-strong union. Wood said non-members number about 3,000. Those who file for a rebate, he said, get back about 25 percent of their fee. That includes political spending and other non-contract costs, such as public-relations work.

Among that small minority: Rogers High School business teacher Scott Carlon.

"This is a very tough issue for me, because I greatly appreciate the work of the union," said Carlon, who lives in Spokane. "But traditionally, they've had a very liberal social agenda that I personally believe is not in the best interest of education."

"I think it's almost un-American to take dues and use them for something you don't believe in," said Tedd Nealey, a substitute teacher in the Cheney and Spokane schools. "I ran for the Legislature. They might even have funded my opponent."

In 1992, Washington voters overwhelmingly passed Initiative 134. It requires unions to get an "affirmative authorization" from nonmembers before spending their dollars on campaign donations, ads or other political costs.

For years, however, the WEA has maintained that it's sufficient to simply allow people to say no and get a refund of those costs. And the union sends out annual notices that allow the nonmembers to do just that.

"Under federal law," Wood said, "they have an easy and simple way of opting out."

To reverse the system and require thousands of nonmembers to annually say yes, he said, would create a logistical and accounting burden that would unnecessarily hamper the union's political clout.

Seven years ago, the state sued the WEA, saying it had been violating the law for years. The state won the first round, in which a superior court judge fined the WEA nearly $600,000. The fine, however, was thrown out on appeal.

In 2001, that case was joined with a similar lawsuit filed by five school employees - Gary Davenport, Martha Lofgren, Walt Pierson, Susannah Simpson and Tracy Wolcott - unhappy that their money was supporting the union's politics.

In a 6-3 ruling on both cases last May, the state Supreme Court ruled I-134's "opt-in" rule unconstitutional.

"Dissenters may not silence the majority by the creation of too heavy an administrative burden," wrote Justice Faith Ireland, saying that it would be "extremely costly" to force the union to get consent from thousands of nonmembers. And just because people choose not to join the union, she said, it would be a mistake for the court to assume that means they disagree with the union's political goals.

"There are numerous and varied reasons why employees choose not to join a union," Ireland wrote. The court let stand the union's opt-out practices, which Ireland called "a less-restrictive, constitutionally permissible alternative."

In a blistering dissent, Justice Richard Sanders said the court had "turn(ed) the First Amendment on its head." Quoting Thomas Jefferson, he wrote "that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical."

No ruling is expected from the high court for months.