

SUPREME COURT RULES THAT STATES MAY PROHIBIT DUES DEDUCTIONS FOR UNIONS' POLITICAL ACTIVITIES

Insights

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On February 24, 2009, the U.S. Supreme Court upheld the right of the state of Idaho, which has a right-to-work law generally permitting payroll deductions for union dues, to prohibit such deductions for union political activities. This decision underscores the rights of states to separate the operation of government from partisan politics, even in the context of local governments having public-union labor contracts with dues check-off provisions. *Ysura v. Pocatello Education Association*.

Background

The State of Idaho's Right to Work Act allows public employees to elect to have a portion of their wages deducted and paid to their union but, since 2003, has not permitted any portion of this remittance to go to the union's political action committee. Just prior to the effective date of the 2003 prohibition, a group of public-sector unions sued state officials, alleging that the law violated the Free Speech provisions of the First and Fourteenth Amendments to the U. S. Constitution.

A federal district court in Idaho rejected the unions' claim, concluding that the First Amendment does not compel a state to "subsidize" speech by providing payroll deductions, "at its own expense." But the district court nevertheless struck down the law insofar as it applied to local governments and private employers, because the state had not identified any subsidy that it provided to such employers to administer payroll deductions.

Idaho's state officials appealed the decision to the U.S. Court of Appeals for the 9th Circuit, arguing that the state law's ban could be constitutionally applied to local government employees as well as to employees of the state. The 9th Circuit, however, affirmed the district court's decision that the law could not be applied to union-dues payroll deductions from the local government employees, agreeing with

the district court's reasoning, i.e., that, although the state of Idaho has ultimate control over its local governmental units, it does not actually operate or control the payroll deduction systems of those governments; thus, the 9th Circuit applied strict scrutiny to the state's decision to prevent the local-government employers from allowing payroll deductions for political purposes, holding the statute unconstitutional as applied at the local level.

The case was once again appealed by the Idaho officials, this time to the U.S. Supreme Court. As the lower courts had upheld the Idaho law insofar as it applied to employees of the state, the only issue presented to the Supreme Court on appeal was whether the prohibition could be constitutionally applied to deductions from the paychecks of local government employees.

The Supreme Court Decision

Under the First Amendment, restrictions by governmental entities on the content of speech are "presumptively invalid" and subject to the strict scrutiny of the courts. Nevertheless, while the First Amendment generally prevents governmental "abridgement" of speech, the Constitution does not require governments to "subsidize" the right to free speech or, as the Court in *Ysura* observed, "to listen, to respond, or even to recognize [a labor] association and bargain with it."

Considering this, the Supreme Court noted that Idaho's law does not expressly ban, or in any way restrict, political speech by a union. Under the law, unions are free "to engage in speech as they see fit. . . . [t]hey are simply barred from enlisting the State in support of that effort," i.e., by insisting that local governments collect the funds they intend to use for political purposes via a dues check-off mechanism. Under this reasoning, the Court held that Idaho's statute was not a violation of the First Amendment and, as applied to local government dues check-off provisions, was a reasonable exercise of the state's legitimate interest in separating public employment from political activities.

Clearly this decision was a victory for the State of Idaho and, as well, for any state contemplating the enactment of a law that might be challenged as a violation of the rights of unions to use union dues for political purposes. In addition, while the *Ysura* decision does not directly impact the legal status of most private-sector employers, the reasoning of the opinion does suggest that in its future decisions, the Supreme Court, at least as presently constituted, will not be generally hostile to the interests of employers, or to the interests of states which, through their elected representatives, have chosen to enact right-to-work laws.

For more information contact any Fisher Phillips attorney.

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