

CHECKOFF BAN NOT VIOLATION OF FIRST AMENDMENT, SUPREME COURT RULES

The Supreme Court rules that an Idaho law banning local government employers from allowing payroll deductions for political activities does not violate unions' First Amendment free speech rights. Writing for the majority, Chief Justice John G. Roberts observes that the First Amendment prohibits government abridgement of speech but "does not confer an affirmative right to use government payroll mechanisms for the purpose of obtaining funds for expression."

The Idaho legislature in 2003 enacted the Voluntary Contributions Act (VCA), amending the state Right to Work Act and deleting a provision allowing payroll deductions to be made to a political committee if the employee annually provides a written authorization. The VCA covered public employers and private employers not covered by the National Labor Relations Act or the Railway Labor Act. The VCA banned unions from using dues for political activities, required unions to pay for political activities out of separate segregated funds, placed restrictions on union's solicitations for donations to such funds, banned payroll deductions for political activities even if authorized by the employees, and imposed criminal penalties for violations. The law defined "political activities" to include "electoral activities, independent expenditures, or expenditures made to any candidate, political party, political action committee, or political issues committee or in support of or against any ballot measure."

A group of unions representing state and local employees in the state sued to challenge the VCA. State officials conceded that most of the provisions were unconstitutional but defended the prohibition on payroll deductions for political activities. The federal district court upheld the prohibition as applied to state employers, finding that the state had no "obligation to subsidize speech by providing, at its own expense, payroll deductions," but held that it violated the First Amendment as applied to local governments and private employers whose payroll systems the state does not control.

The unions did not appeal the ruling regarding state employers, and Idaho did not appeal the ruling regarding private employers. The Ninth Circuit affirmed that the prohibition on payroll deduction as applied to local government employers violates the First Amendment because it is a content-based restriction for which the state has no compelling justification. The appeals court found that the state does not subsidize or have a proprietary interest in the local governments' payroll systems.

Roberts disagrees with the unions that the ban treats political speech differently. "While in some contexts the government must accommodate expression, it is not required to assist others in funding the expression of particular ideas, including political ones." He points out that Idaho "is not constitutionally obligated to provide payroll deductions at all."

"While publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, Idaho is under no obligation to aid the unions in their political activities," Roberts states. "And the State's decision not to do so is not an abridgement of the unions' speech; they are free to engage in such speech as they see fit. They simply are barred from enlisting the State in support of that endeavor."

"Idaho's law does not restrict political speech, but rather declines to promote that speech by allowing public employee checkoffs for political activities," Roberts says. Applying rational-basis review, he finds that the restriction "is reasonable in light of the State's interest in avoiding the appearance that carrying out the public's business is tainted by partisan political activity."

The decision is available at <http://op.bna.com/dircases.nsf/r?Open=smgk-7pklqt>.

(Source: *Ysursa v. Pocatello Educ. Ass'n.*, U.S., No. 07-869, February 24, 2009, as reported in BNA, *Daily Labor Report*, No. 65, February 25, 2009, pp. AA1-AA2, E1- E8.)