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U.S. Supreme Court Upholds Idaho Law Prohibiting Payroll Deductions for Union Political Activities

By Dylan A. Eaton

It is common for employees to authorize automatic paycheck deductions to pay labor union membership dues. In 2003, however, an Idaho law was enacted that prohibits automatic paycheck deductions to collect union dues if the dues are spent on political activities. A group of unions representing Idaho public employees challenged this Idaho law as violating First Amendment constitutional rights to free speech. The case went all the way to the U.S. Supreme Court, and confirms the constitutionality of the law and its applicability to state, local government and private employees.

Idaho's Right to Work Act

Idaho's Right to Work Act declares that the right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of, a labor organization or on refusal to join, affiliate with, or financially or otherwise support a labor organization. As part of that policy, the Act prohibits any requirement for the payment of dues or fees to labor organizations as a condition of employment, but authorizes employers to deduct union fees from an employee's wages with the employee's signed written authorization. The term "labor organization" means any organization of any kind, or agency or employee representation committee or union, which exists for the purpose, in whole or in part, of dealing with employers concerning wages, rates of pay, hours of work, other conditions of employment, or other forms of compensation. Idaho's Right to Work Act provides that it covers all employees, including all employees of the state and its political subdivisions.

Prior to 2003, employees could authorize both a payroll deduction for general union dues and a payroll deduction for union political activities conducted through a political action committee. In 2003, however, the legislature passed the Voluntary Contributions Act ("VCA"), which amended the Right to Work Act, in part, providing that deductions for political activities may not be deducted from the wages, earnings or compensation of an employee. The term "political activities" is defined as "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." Violations of the VCA are punishable as a crime.

Background Regarding *Ysursa v. Pocatello Education Association Case*

A group of labor unions sued the Bannock County prosecuting attorney, the Idaho Secretary of State, and the Idaho Attorney General in their official capacities, alleging that the ban on political payroll deductions in the VCA was unconstitutional under the First and Fourteenth Amendments to the United States Constitution. This case is known as *Ysursa v. Pocatello Education Association*. The district judge

presiding over this case ruled that the political payroll deduction ban was (1) constitutional as to the state, (2) unconstitutional as to local governments, and (3) unconstitutional as to private employees. The judge found that the political payroll deduction ban did not apply to local governments and private employers because the State had failed to identify any subsidy it provided to such employers to administer payroll deductions. None of the parties challenged the court's ruling that the VCA was constitutional as to the state employees and unconstitutional as to private employees. The state defendants did appeal, though, contending that the ban on political payroll deductions may be constitutionally applied to local government employees. This issue reached the U.S. Supreme Court. On February 24, 2009, the U.S. Supreme Court issued its decision. What follows is a discussion of the U.S. Supreme Court's decision and its consequences for employers and employees.

The Ban on Mandatory Political Payroll Deductions for State Employees is Valid

The U.S. Supreme Court ruled that Idaho's prohibition on political payroll deductions is constitutional as applied to state employees. It reasoned that while publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, the State of Idaho is under no obligation to aid the unions in their political activities. In other words, prohibiting political payroll deductions is not suppressing speech, but merely declining to assist that speech through government means. The U.S. Supreme Court further held that in establishing the ban on political payroll deductions, the State's interest in avoiding the reality or appearance of government favoritism or entanglement with partisan politics is a justified reason. The prohibition on political payroll deductions plainly serves the State's interest in separating public employment from political activities. Therefore, the ban in the VCA on political payroll deductions by state employees is still valid.

The Ban on Mandatory Political Payroll Deductions for Local Government Employees is Valid

The main issue in the U.S. Supreme Court decision in *Ysursa v. Pocatello Education Association* was whether Idaho's ban on political payroll deductions applied to employees of local governments, such as counties and cities. The unions argued that, as to such employees, the State is no longer declining to facilitate speech through its own payroll system, but obstructing speech in the local governments' payroll systems. The Supreme Court did not agree with the unions. It concluded that political subdivisions of the state, such as counties and cities, are not sovereign entities and are created by the state to assist in the carrying out of state governmental functions. Furthermore, the Idaho Legislature intended to withhold from *all* public employers the power to provide payroll deductions for political activities. Therefore, the ban in the VCA on political payroll deductions properly applies to all public employers at whatever level of government, including county and city employees.

Ban on Private Corporation Employee Political Payroll Deductions is Not Valid

The question arises as to whether Idaho's ban on political payroll deductions applies to private companies. The Supreme Court in *Ysursa* distinguishes private corporations from political subdivisions, such as a county or city. The U.S. Supreme Court held that a private corporation enjoys constitutional protections, while a political subdivision has no privileges or immunities under the federal constitution, which it may invoke in opposition to the state. A private corporation is subject to the government's legal authority to regulate its conduct. The fact that the government regulates a private company, however, does not necessarily mean that a ban on political payroll deductions applies to private companies. In fact, all of the parties in the *Ysursa* case agreed that Idaho's ban on payroll deductions for political activities violates First Amendment limitations as applied to the private sector.

Consequences of Court's Decision in *Ysursa v. Pocatello Education Association*

Due to the U.S. Supreme Court's recent ruling in *Ysursa v. Pocatello Education Association*, state and local government employees cannot contribute to political activities through payroll deductions. Accordingly, individual public employees will have to contribute to political organizations through means other than payroll deductions. As mentioned above, however, Idaho's ban on payroll deductions for political activities violates First Amendment limitations as applied to the private sector.