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Bradley A. Smith: Don’t copy Washington state’s union dues law

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The U.S. Supreme Court last week articulated what should have been obvious: Unions do not have a First Amendment right to spend on politics the forced dues taken from nonunion employees. But right-of-center activists would be unwise to embrace the misguided law that the high court just upheld.

In Washington v. Washington Education Association (WEA) and Davenport v. WEA -- cases brought by attorneys for the state of Washington and the National Right to Work Foundation -- the court unanimously slapped down a dangerous ruling by the Washington State Supreme Court.

In writing the opinion of the high court, Justice Antonin Scalia wrote unequivocally, "unions have no constitutional entitlement to the fees of nonmember employees."

If the rationale of the Washington court ruling was allowed to stand, state right-to-work laws that prohibit compulsory unionism would have been in jeopardy. But while correcting the lower court's twisting of the First Amendment, the U.S. Supreme Court had no choice but to uphold a state campaign finance provision misleadingly called "paycheck protection."

"Paycheck protection" laws generally require union officials to get permission before spending workers' forced dues on certain political activities. Sounds fair, doesn't it? After all, there is a real injustice present in the laws of more than 25 states. Except in states with right-to-work laws, union officials may force workers to pay dues to a union, and hundreds of millions of dollars in compulsory dues are used for politics.

In reality, however, these paycheck protection laws have not lived up to their advertising or returned a material amount of funds to employees.

In fact, so-called paycheck protection was originally introduced primarily as a rhetorical device to help slow efforts by the political left to enact sweeping new regulation of political speech. Opponents of the McCain-Feingold campaign finance legislation offered different forms as "poison pill" amendments throughout the 1990s.

A few activists, however, are now touting last week's U.S. Supreme Court holding that this regulatory approach is not inherently unconstitutional as a validation of its effectiveness. This would be taking away the wrong lesson. More than a decade of experience proves these regulations simply don't work. Like so many things, the devil is in the details.

Because paycheck protection laws are generally written under the auspices of campaign finance law, they are dramatically limited in their reach and scope. For starters, they only cover express

advocacy of a candidate's election or defeat -- which is a fraction of union political expenditures. Moreover, state campaign finance laws do not apply to federal election activity.

The impact is therefore negligible. In fact, WEA union officials collected and spent more money than ever to play politics after the paycheck protection law was passed. By changing accounting practices and slightly modifying the nature of their spending, the union collected and spent 60 percent more money on politics, broadly defined, the year after the law went into effect. Of course, the law left intact the union's core privilege of forced union dues, so nothing stopped union officials from jacking up the dues even higher.

However, the problem of ineffectiveness is not the only reason why paycheck protection is a blind alley. By embracing the campaign finance regulatory approach, its promoters are trying to use the tools of the political left -- that is, government regulations -- to solve a problem caused by government. This path is fraught with danger and could continue to backfire, as it nearly did in Washington state.

The real problem is that forcing employees to pay any dues -- for politics or anything else -- is fundamentally unjust. The Davenport ruling made it even clearer that states can prohibit this practice by passing right-to-work laws. As Scalia noted in the unanimous opinion, "it is undeniably unusual for a government agency to give a private entity the power, in essence, to tax government employees."

The real solution is to end, not regulate, compulsory unionism. Only elimination of unions' "extraordinary benefit" (as Scalia called it) to force workers to pay any union dues or fees will protect employee free speech.

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