

**SB**

**77**

## SENATE COMMITTEE REPORT First Committee of Referral

DATE: 2/9/07

FURTHER: Labor and Commerce

Date of 5-Day Notice: \_\_\_\_\_  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

State Affairs Committee considered SENATE BILL NO. 77

SB 77 USING UNION DUES FOR POLITICAL PURPOSES

"An Act prohibiting use of agency shop fees for political contributions or expenditures."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

**SENATE BILL:**  
 Same Title  
 New Title

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**HOUSE BILL:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	02/04/08			✓	

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	STURM	X			
	Bunde	✓			
	Green	✓			
<b>CHAIR:</b>	McBire	✓			

# Alaska State Legislature

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## **Senate Bill 77 Sponsor Statement Using Union Dues for Political Purposes**

Senate Bill 77 prohibits the unauthorized use of agency (shop) fees for political reasons, whether it be a political campaign or committee or other political activity by a union. An agency fee is a fee (or dues) paid to an organization by a non-union member. This bill would require that the employee would have to "opt in", or choose affirmatively, to have his/her dues used for these specific purposes.

Typically, a union is given authority to negotiate pay, contracts for their groups, etc, therefore having implied authority to use the agency fees for activities they deem suitable. However, it is fair to say that most non-union members may not be fully aware that the agency fees could possibly be used for activities they may not support. If SB 77 were implemented, the non-union member would be able to opt in, or choose, whether or not to support monetarily to the political activity(ies) proposed by the union.

In Alaska, private sector union issues are governed by the National Labor Relations Act, therefore, this legislation would not apply to them. Changes transpired by SB 77 would only apply to public employee union matters.

Recently, the United States Supreme Court overturned a Washington Supreme Court ruling (*Washington v. Washington Education Association and Davenport v. Washington Association*) decision, thereby barring unions from using non-member union dues for political activities without their approval.

I bring this legislation forward after hearing from constituents who said they did not know, until after the fact, that their agency fees were being used for political activities that, had they known, they would not have specifically supported. Giving the member a choice to "opt in" would protect their individual free speech rights and still allow the unions to represent the voices of the members who ask them to act on their behalf.

from the January 10, 2007 edition - <http://www.csmonitor.com/2007/0110/p03s02-usju.html>

## Free-speech dispute over union fees

### **US Supreme Court to look at how much permission unions need to put nonmembers' dues toward political causes.**

By **Warren Richey** | Staff writer of The Christian Science Monitor

#### **WASHINGTON**

The US Constitution forbids unions from using fees collected from nonunion workers to finance political activities unless the nonmembers grant permission.

Without consent, such action would raise the specter of nonmembers being dragooned into subsidizing political efforts they may not support. And that would violate the free speech and association clauses of the First Amendment.

But how much permission is necessary?

That's the question at the center of two consolidated cases set for oral argument Wednesday at the US Supreme Court.

The cases examine a Washington State campaign-finance law that pits a union's constitutional right to engage in politics on behalf of its like-minded members against a nonmember's right to disassociate from those activities.

The case arises amid a nationwide effort by a number of conservative groups to undercut the ability of union leaders to use compulsory union dues and fees to influence political campaigns without first obtaining the clear permission of those who contributed the money.

#### **Union fees**

The Supreme Court case revolves around fees collected by Washington State's teachers union. If you want to be a teacher in the state, you have to pay a fee to the union, even if you aren't a member. That's because the state Legislature assigned exclusive authority to the union to negotiate pay and other employment issues for all teachers. Nonunion teachers must agree to a payroll deduction equal to the union dues.

The provision requires nonunion members to help pay for benefits that accrue to all the state's teachers through the collective bargaining efforts of the Washington Education Association (WEA).

But this also provides a ready pool of cash to the union for political activities. And that has triggered allegations that the union's use of a portion of the fees for politics is forcing nonmembers to subsidize political speech that they do not support.

A 1992 state campaign-finance law mandates that the 80,000-member union obtain the consent of some 3,000 nonmember teachers before using a portion of their dues for politics. Union officials say they already obtain that consent by offering nonmembers the option of objecting to the political use of their fees.

But a group of current and former teachers say that's not enough. They say the state law requires prior authorization. If no such prior consent is given, the money is off limits for political purposes and must be refunded, they say.

In contrast, the union's current system relies on implied consent. Twice a year, the WEA mails a packet of information to nonmembers telling them they have a right to object to the use of their fees for politics. If they object, the money is refunded. If they do nothing, forget, or otherwise fail to return a form within the 30-day deadline, the union interprets it as permission to use the money for political purposes.

The state campaign-finance law requires the union to determine consent through an opt-in system, while the union insists that its current opt-out system provides nonmembers with enough protection against political coercion.

The Washington Supreme Court agreed with the union. It declared by a 6-to-3 vote that the state's tougher affirmative consent law violated WEA's right to use union funds for political advocacy without facing government-imposed restraints.

"The union's [opt-out] procedures amount to a constitutionally permissible alternative that adequately protects both the union and dissenters," the Washington Supreme Court declared.

Lawyers for the nonmember teachers argue in their brief to the US Supreme Court that the state high court "repeatedly misapplied and misinterpreted the First Amendment."

The case is about the free-speech rights of nonunion members, not the union itself, says Milton Chappell, a lawyer with the National Right to Work Legal Defense Foundation, which is representing a group of nonmember teachers in the case.

He says the union favors the opt-out system because it maximizes political dollars collected by the union. But, he says, it does little to ascertain whether nonmembers truly intend that their fees be used to support the political preferences of a labor organization they refuse to join.

"We are not against unions or anyone wanting to join them," Mr. Chappell says. "But for those people who have decided for whatever reason that they do not or cannot join or support a union, we believe that their rights should be protected."

#### **Response from the teachers union**

Debra Carnes, a spokeswoman for the WEA, says the legal battle is aimed at undercutting the power of unions. "This is much bigger than WEA and opt-in or opt-out," she says. "The goal is to dry up the money so unions have no collective voice."

Lawyers for the WEA say in their brief that the campaign-finance law hinders the union's ability to engage in political speech by imposing restrictions on the use of funds lawfully held in the union's treasury. The state law requires burdensome record-keeping and accounting procedures that undercut its ability to engage in political action, they say.

Overall, nonmember fees make up 4 percent of the union's total revenue, according to briefs in the case.

"Far from abridging unions' freedom of speech, Washington's opt-in requirement leaves unions free to speak on any topic of their choosing, at any time or place, and in any manner," writes Solicitor General Paul Clement, in a friend-of-the-court brief filed in support of the state.

He says federal campaign-finance laws bar unions from spending any union treasury funds to influence federal elections - even funds obtained by member dues. The courts have upheld the constitutionality of such restrictions in federal elections, so it follows that Washington State's more modest opt-in requirement is also constitutional, Mr. Clement says.

One potential key to the case may be how the high court interprets a clause contained in a 1961 Supreme Court decision. "Dissent is not to be presumed - it must affirmatively be made known to the union by the dissenting employee," the high court declared in a case called *Machinists v. Street*.

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**Supreme Court Limits Unions' Spending of Dues on Politics**

Author: Ryan Bedford

Published by: The Heartland Institute

Published in: *Budget & Tax News*

Publication date: August 2007

Labor unions must get permission from non-members before using mandatory dues for political purposes, according to a United States Supreme Court ruling that overturned the Washington Supreme Court's ruling in *Washington v. Washington Education Association* and *Davenport v. Washington Education Association* (WEA).

The June 14 ruling culminates a decade of work by concerned teachers and the Evergreen Freedom Foundation (EFF), a Washington state think tank. The Court's ruling could affect millions of union-represented workers nationwide.

**Bars Unauthorized Use**

The unanimous ruling, issued by Justice Antonin Scalia, says states may bar a labor union representing government employees from using non-union workers' dues for political causes if those workers have not explicitly consented to the expenditures.

"We are elated that the U.S. Supreme Court has honored the First Amendment rights of teachers by overturning the state Supreme Court's decision," said Bob Williams, president of the Evergreen Freedom Foundation. "The Court understood that the constitutional rights of teachers should be protected and are not superseded by the union's statutory rights. This ruling will help protect non-member teachers from having their agency fees used on union politics against their will."

At issue was a state law that required labor organizations to get permission from non-member workers before using mandatory dues for political purposes. "Non-members" are workers who are not members of the union but are forced to pay collective bargaining fees as a condition of employment.

**Maneuvering to the End**

Even while the U.S. Supreme Court was considering the case, the WEA and state government were trying to maneuver around the law. On May 11 Washington State Gov. Christine Gregoire (D) signed the union-backed House Bill 2079, which permits unions to spend non-member fees on politics as long as they have enough member dues to cover the expenditure.

That arrangement would virtually guarantee that, as one union official put it, "only in very extraordinary circumstances would the statute be violated" and unions have to ask non-members before spending their fees on politics.

That charade was ruled unconstitutional by the U.S. Supreme Court nearly 50 years ago. In *International Association of Machinists v. Street* (1961) and *Abood v. Detroit Board of Education* (1977), the High Court said designating member dues for politics and non-member fees for administrative costs unconstitutionally shifts a disproportionate share of collective bargaining costs to

non-members.

Having been signed into law, however, H.B. 2079 is now in effect, but it will probably be challenged when the WEA cases are remanded back to state court. The Supreme Court ruled the new law does not moot the *Davenport* case and that its decision stands.

"It still matters whether the Supreme Court of Washington was correct to hold that [the earlier law] was inconsistent with the First Amendment. Our analysis of whether §760's affirmative-authorization requirement violates the constitutional rights of respondent is not affected by the amendment."

### **Desperate Ploy**

Why change a law the U.S. Supreme Court was considering at the time? Union officials claimed the existing law, which was just 42 words long, was murky and they couldn't understand how to comply with it.

But the WEA had admitted to the Public Disclosure Commission that it had intentionally spent non-member dues on politics in violation of the law. The Public Disclosure Commissioners said the violations were "the largest campaign finance violation" in state history, and in 2001 a court fined the union \$590,000.

Also, a trial court had given the union detailed instructions on how to comply with the law.

Experts almost unanimously agreed the U.S. Supreme Court would rule against the union. The June 14 ruling proved them correct.

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*Ryan Bedford ([rbedford@effwa.org](mailto:rbedford@effwa.org)) is a labor analyst with the Evergreen Freedom Foundation in Olympia, Washington.*

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### **For more information ...**

The U.S. Supreme Court ruling in the combined cases *Washington v. Washington Education Association* and *Davenport v. Washington Education Association* is available through *PolicyBot*™, The Heartland Institute's free online research database. Point your Web browser to <http://www.policybot.org> and search for document #21565.

# FISCAL NOTE

**STATE OF ALASKA**  
**2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: SB 77  
 ( ) Publish Date: \_\_\_\_\_

Identifier (file name): SB077-DOA-APOC-2-4-08 Dept. Affected: Administration  
 Title: "An Act prohibiting use of agency shop fees for political ..." RDU: AK Public Offices Commission  
 Component: AK Public Offices Commission  
 Sponsor: Senator Bunde  
 Requester: Labor and Commerce Component Number: 70

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

**POSITIONS**

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**ANALYSIS:** (Attach a separate page if necessary)

This bill provides that a labor organization or employee association may not use shop fees collected from a public employer to make a campaign contribution or expenditure as defined in AS 15.13.400. Nothing in this bill requires that APOC enforce its provisions, and no new provisions are added to the campaign disclosure law, thus, it will not fiscally impact APOC.

Prepared by: Brooke Miles  
 Division: Alaska Public Offices Commission  
 Approved by: Rachael Petro, Deputy Commissioner  
Department of Administration

Phone 907-334-1726  
 Date/Time 2/4/08 12:00 AM  
 Date 2/4/2008