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Via email to Chris.Boyd@canyoncounty.id.gov and AGLabrador@ag.idaho.gov

Re: Violations of the Public Integrity in Elections Act and Right-to-Work Law by the Caldwell, Kuna, Marsing, Middleton, and New Plymouth School Districts' use of public payroll systems to deduct IEA/NEA dues from teachers' paychecks

Messrs. Boyd and Labrador,

On behalf of the Freedom Foundation,¹ I write to bring to your attention apparent violations of the Public Integrity in Elections Act (PIEA), Title 74, Chapter 6, Idaho Statutes, and the Right-to-Work Law (RTWL), Title 44, Chapter 20, Idaho Statutes, by the Caldwell, Kuna, Marsing, Middleton, and New Plymouth School Districts ("the Districts") stemming from the Districts' use of public payroll systems and personnel to deduct union dues from teachers' paychecks and to transmit the funds to their respective local affiliates of the Idaho Education Association/National Education Association, as a portion of the dues so deducted are used to support or oppose candidates for office, political committees, and ballot measures.

I. Factual Background

Idaho law currently requires school districts to engage in collective bargaining with a teachers union if a majority of district educators select union representation.² Of the 117 traditional public-school districts in Idaho,³ approximately 83 currently negotiate with a teachers union.⁴

¹ The Freedom Foundation is a nonprofit policy advocacy and public interest litigation organization dedicated to promoting individual liberty, free enterprise, and limited, accountable government. Founded in 1991 in Olympia, Wash., today the organization operates around the country, with staff and supporters in Idaho. Despite the similarity in names, it is not affiliated with the *Idaho* Freedom Foundation, which was formed in 2009.

² Idaho Statutes § 33-1271.

³ <https://www.idaho.gov/education/school-districts/>

⁴ Idaho School Boards Association. "ISBA Searchable Master Agreements." <https://www.idsba.org/contracts/>

Local teachers unions in Idaho are generally affiliated with the Idaho Education Association (IEA), itself an affiliate of the National Education Association (NEA), the largest teachers union in the country. The NEA's headquarters in Washington, D.C., specifically encourages its affiliates to prioritize certain "essentials to a strong union contract" that involve securing special legal privileges at taxpayers' expense.⁵

One of the NEA's top priorities for its local affiliates is getting school districts to collect union dues by deducting the funds from teachers' paychecks and transmitting them to the NEA's local affiliate which, in turn, pays a fixed portion of the dues to the IEA and NEA.⁶ Under the NEA's unified dues structure, members' dues are calculated by adding the dues rate set by the NEA headquarters to the dues rates established by the applicable state and local affiliates.⁷ Generally, local affiliates receive the full dues from individual members and forward the requisite portions to the state affiliate, which in turn forwards the required amounts to the NEA headquarters.⁸ During the 2023-24 school year, \$208 of the dues paid by each member of an NEA affiliate were forwarded to the NEA headquarters.⁹

Of the 83 Idaho school districts with known teachers unions, at least 52 deduct union dues from educators' paychecks and forward the funds to a teachers union. Over the course of a year, these districts collect about \$4.4 million in dues from over 5,000 teachers, about \$1.1 million of which is ultimately forwarded to the NEA and used to advance its political advocacy. The total cost to taxpayers of school districts' dues collection for teachers unions could run tens of thousands of dollars.¹⁰

Unions prefer government-administered payroll deduction of union dues because it frees them from bearing the administrative costs associated with collecting members' dues payments—such as credit card processing fees or creating and managing systems to handle electronic payments. Instead, payroll deduction offloads the work and costs of dues collection to public employees and taxpayer-funded payroll systems.¹¹

Government-run dues collection also facilitates more coercive union membership solicitations, up to and including outright forgery. With payroll deduction, unions do not need to ask for or obtain employees' bank account or credit card information; to get paid, all a union must do is get an employee to sign a membership form or, in some cases, sign it for them. Freedom Foundation attorneys have represented nearly 20 unionized public employees from West Coast states whose

⁵ National Education Association. "8 essentials to a strong union contract without fair-share fees." <https://www.freedomfoundation.com/wp-content/uploads/2018/03/NEA-8Essentials.pdf>

⁶ *Ibid.*

⁷ The NEA's dues are determined by Article 2-7 of the NEA's bylaws. <https://www.nea.org/sites/default/files/2023-07/nea-bylaws-2023-2024.pdf>

⁸ See Article 2-9 of the NEA's bylaws: <https://www.nea.org/sites/default/files/2023-07/nea-bylaws-2023-2024.pdf>

⁹ Washington Education Association. "How my dues are spent."

<https://www.washingtonea.org/membership/join/how-are-your-dues-allocated/>

¹⁰ Maxford Nelsen and Maddie Dermon. "Free Ride: How Idaho Tax Dollars Support Teachers Unions." Freedom Foundation. January 2024. <https://www.freedomfoundation.com/wp-content/uploads/2024/01/Free-Ride-How-Idaho-Tax-Dollars-Support-Teachers-Unions-digital-booklet.pdf>

¹¹ Flavin, Patrick, and Michael T. Hartney. "When Government Subsidizes Its Own: Collective Bargaining Laws as Agents of Political Mobilization." *American Journal of Political Science*, vol. 59, no. 4, 2015, pp. 896–911. JSTOR, <http://www.jstor.org/stable/24582955>

signatures have been forged on union membership forms by union organizers in recent years, triggering dues deductions from their paychecks by their government employers.¹²

Additionally, school district collection of teachers union dues results in taxpayer-funded payroll systems being used to support the NEA's political advocacy.

During the 2023-24 school year, at least \$25.78 of the \$208 in NEA dues paid by full-time teachers was allocated to, "Strengthen Public Education as the Cornerstone of Democracy," by using,

"...all available means, including organizing, collective action, policy, legal, legislative and electoral, to safeguard the rights of students, communities and educators; to advance economic justice; to protect the future of public education; and to ensure that students are prepared in a learner-centered environment to participate fully in our democratic society."¹³

Another \$1.37 per teacher per year was reserved for "contingencies" in the event of "[political] emergencies at the national, state or local levels."¹⁴

Additionally, according to the NEA's annual LM-2 financial reports to the U.S. Department of Labor, about 10-20 percent of the funds spent by the NEA in a typical year are for "political activities and lobbying," including direct political contributions and expenditures on candidates and ballot measures.

Excluding the sale and purchase of various investments, the NEA reported spending a total of about \$374 million in the 2020-21 school year, of which \$66 million (17.7 percent) was for "political activities and lobbying."¹⁵ The NEA's disclosure for the 2021-22 academic year showed that it spent \$375 million, excluding the sale and purchase of securities, of which \$42 million (11.1 percent) went towards "political activities and lobbying" including, for example, \$500,000 in "ballot initiative support grants" to the Idaho Education Association and a \$150,000 contribution to pro-choice PAC Emily's List.¹⁶ Most recently, NEA's LM-2 covering the 2023-34 academic year indicated that it spent \$39 million on "political activities and lobbying" — including a \$150,000 "ballot initiative support grant" to the IEA and another \$148,000 IEA grant for "Legis state pro-ed issues" — constituting 10 percent of its total expenditures that year (excluding the sale and purchase of investment securities).¹⁷

Each year, the NEA transfers millions of dollars in revenue, derived from members' dues collected by its local affiliates and forwarded to the NEA, into the NEA Advocacy Fund, a separate

¹² Freedom Foundation. "Federal Lawsuits Against Government Unions for Forging Signatures on Membership Forms." <https://www.freedomfoundation.com/wp-content/uploads/2022/04/Union-forgery-handout.pdf>

¹³ Washington Education Association. "How My Dues Are Spent." <https://www.washingtonnea.org/membership/join/how-are-your-dues-allocated/>

¹⁴ *Ibid.*

¹⁵ National Education Association Form LM-2 for FY 2021. <https://olmsapps.dol.gov/query/orgReport.do?rptId=788587&rptForm=LM2Form>

¹⁶ National Education Association Form LM-2 for FY 2022. <https://olmsapps.dol.gov/query/orgReport.do?rptId=849363&rptForm=LM2Form>

¹⁷ National Education Association Form LM-2 for FY 2023. <https://olmsapps.dol.gov/query/orgReport.do?rptId=900357&rptForm=LM2Form>

segregated fund the NEA controls and which is registered with the Internal Revenue Service¹⁸ as a “political organization,” the purpose of which is to support and oppose candidates for elected office.¹⁹

According to the NEA Advocacy Fund’s disclosures filed with the Federal Election Commission, the NEA transferred \$15 million in general fund (dues) revenue to the Advocacy Fund in the 2017-18 election cycle,²⁰ \$25 million in the 2019-20 election cycle,²¹ \$31 million in the 2021-22 election cycle,²² and \$28 million in the 2023-24 election cycle.²³

Since 2018, the NEA and the NEA Advocacy Fund have contributed more than \$1.5 million in dues paid by NEA members, including those in Idaho, to Idaho political committees and organizations to support and/or oppose ballot measures and candidates for office and to lobby the Idaho State Legislature.

Dues-Funded IEA/NEA Political Contributions in Idaho						
Contributor	Date	Amount	Recipient	Description	Source	Source URL
NEA Advocacy Fund	9/30/2024	\$20,000	Idaho Students First	Idaho political committee	ID SoS campaign finance report	https://www.freedomfoundation.com/wp-content/uploads/2024/10/Idaho-Students-First-timed-contribution-report.pdf
NEA	2/28/2024	\$148,000	Idaho Education Association	Political activities and lobbying – “Legis state pro ed issues”	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=900357&rptForm=LM2Form
NEA	12/18/2023	\$150,000	Idaho Education Association	Political activities and lobbying – “Ballot Init support grant”	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=900357&rptForm=LM2Form

¹⁸ The NEA Advocacy Fund’s most recent IRS Form 8871, “Political Organization Notice of Section 527 Status,” is available here: <https://forms.irs.gov/app/pod/basicSearch/downloadFile?formId=60389&formType=e8871>. The form describes the NEA Advocacy Fund as, “a separate segregated fund, registered and filing with the Federal Election Commission, maintained to engage in exempt function advocacy.”

¹⁹ “Political organization” is defined by 26 U.S.C. § 527(e)(1) as,

“...a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.”

26 U.S.C. § 527(e)(1) defines “exempt function” as,

“...the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.”

²⁰ <https://www.fec.gov/data/committee/C00489815/?tab=raising&cycle=2018>

²¹ <https://www.fec.gov/data/committee/C00489815/?tab=raising&cycle=2020>

²² <https://www.fec.gov/data/committee/C00489815/?tab=raising&cycle=2022>

²³ <https://www.fec.gov/data/committee/C00489815/?tab=raising>

NEA	3/21/2023	\$161,590	Idaho Education Association	Political activities and lobbying - "Legis state pro-ed issues"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=875354&rptForm=LM2Form
NEA	1/27/2023	\$161,590	Idaho Education Association	Political activities and lobbying - "Legis state pro-ed issues"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=875354&rptForm=LM2Form
NEA	8/31/2022	\$48,000	Idaho Education Association	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=849363&rptForm=LM2Form
NEA	4/25/2022	\$101,000	Idaho Education Association	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=849363&rptForm=LM2Form
NEA	3/22/2022	\$250,000	Idaho Education Association	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=849363&rptForm=LM2Form
NEA	1/10/2022	\$101,000	Idaho Education Association	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=849363&rptForm=LM2Form
NEA	2/17/2021	\$50,000	Idaho Education Association	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=788587&rptForm=LM2Form
NEA	4/8/2020	\$30,000	Idaho Education Association	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=737973&rptForm=LM2Form
NEA	2/20/2020	\$10,000	Idaho Education Association	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=737973&rptForm=LM2Form
NEA	2/20/2020	\$61,000	Votes Idaho Company	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=737973&rptForm=LM2Form
NEA	11/18/2019	\$5,000	Votes Idaho Company	Political activities and lobbying - "Mshp communication strategy"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=737973&rptForm=LM2Form
NEA	4/25/2019	\$57,500	Votes Idaho Company	Political activities and lobbying - "Ballot Init support grant"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=712161&rptForm=LM2Form
NEA	10/18/2018	\$250,000	Idaho Education Association	Political activities and lobbying - "Mshp communication strategy"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=712161&rptForm=LM2Form
NEA Advocacy Fund	5/10/2018	\$30,000	Independent Republicans of Idaho	Idaho political committee	ID SoS campaign finance report	https://archive.sos.idaho.gov/ELECT/Finance/2018/Pre-Primary/10068_48Hr2.pdf

					ID SoS campaign finance report	https://archive.sos.idaho.gov/ELECT/Finance/2018/Post-Primary/10068.pdf
					U.S. FEC campaign finance report	https://docquery.fec.gov/pdf/373/201807129115387373/201807129115387373.pdf
NEA Advocacy Fund	4/24/2018	\$75,000	Independent Republicans of Idaho	Idaho political committee	ID SoS campaign finance report	https://archive.sos.idaho.gov/ELECT/Finance/2018/Pre-Primary/10068.pdf
					U.S. FEC campaign finance report	https://docquery.fec.gov/pdf/373/201807129115387373/201807129115387373.pdf
IEA	4/24/2018	\$76,950	Independent Republicans of Idaho	Idaho political committee	ID SoS campaign finance report	https://archive.sos.idaho.gov/ELECT/Finance/2018/Pre-Primary/10068.pdf
NEA	2/2/2018	\$60,000	Idaho Education Association	Political activities and lobbying - "Mshp communication strategy"	U.S. DoL Form LM-2	https://olmsapps.dol.gov/query/orgReport.do?rptId=685545&rptForm=LM2Form
Total		\$1,846,630				

Just as in Idaho, the NEA similarly distributes dues money paid by members of its local affiliates to engage in electoral political activity in other states, including some of Idaho’s neighbors. In September 2024, for example, the NEA contributed \$380,110 to Utahns for Student Success,²⁴ a Utah political committee formed to combat a ballot proposition that would give the legislature more flexibility over the appropriation of income tax revenue.²⁵

In short, school district-administered payroll deduction of union dues costs Idaho taxpayers tens of thousands of dollars to send millions of dollars to the NEA, at least hundreds of thousands of dollars of which are used to engage in electoral political activity in any given year.

There is no practical or legal need for school districts to collect dues for teachers unions. For those teachers who sincerely want to join a union, paying dues absent payroll deduction need not be any more difficult than signing up for Netflix. Indeed, because some Idaho school districts currently do not collect dues for teachers unions, the IEA has already set up “IEA AutoPay,” which it describes as an “easy” process for teachers to pay the union directly online using their bank account or credit card.²⁶ As an added benefit, teachers would have more control over their membership

²⁴ Utahns for Student Success. Campaign finance report. September 30, 2024. <https://www.freedomfoundation.com/wp-content/uploads/2024/10/Utahns-For-Student-Success-September-2024-contributions-report.pdf>

²⁵ Lisa Riley Roche. “The nation’s largest teachers union just contributed nearly \$400,000 to help fight Utah’s Amendment A.” *Deseret News*. October 2, 2024. <https://www.yahoo.com/news/nation-largest-teachers-union-just-213634927.html>

²⁶ Idaho Education Association. “My Membership.” <https://idahoea.org/members/my-membership/>
Idaho Education Association. “VIDEO: Just How Easy Is It to Sign Up for IEA AutoPay? Ask Oliver Gunther!” July 18, 2024. <https://idahoea.org/news/video-just-how-easy-is-it-to-sign-up-for-iea-autopay-ask-oliver-gunther/>

with a union and the worst union practices, such as forging signatures on membership forms, would no longer be possible.

Caldwell School District

In response to a Freedom Foundation request for public records under Title 74, Chapter 1, Idaho Statutes, the Caldwell School District reported that it deducted \$8,564.61 in dues for the Caldwell Education Association from the wages of 138 teachers in April 2023 alone. Annually, this amounts to about \$102,775.32. The 2024-25 negotiated agreement between the Caldwell School District and the Caldwell Education Association does not authorize or require the collection of union dues via payroll deduction.²⁷

Kuna School District

In response to a Freedom Foundation request for public records under Title 74, Chapter 1, Idaho Statutes, the Kuna School District reported that it deducted \$8,719.89 in dues for the Kuna Education Association from the wages of 148 teachers in April 2023 alone. Annually, this amounts to about \$104,638.68. Article IV(A)(d) of the 2024-25 negotiated agreement between the Kuna School District and the Kuna Education Association provides, “The district agrees to allow reductions for KEA dues at any time during the year.”²⁸

Marsing School District

In response to a Freedom Foundation request for public records under Title 74, Chapter 1, Idaho Statutes, the Marsing School District reported that it deducted \$734.26 in dues for the Caldwell Education Association from the wages of 12 teachers in April 2023 alone. Annually, this amounts to about \$8,811.12. The 2024-25 negotiated agreement between the Marsing School District and the Marsing Education Association does not authorize or require the collection of union dues via payroll deduction.²⁹

Middleton School District

In response to a Freedom Foundation request for public records under Title 74, Chapter 1, Idaho Statutes, the Middleton School District reported that it deducted \$5,424.38 in dues for the Middleton Education Association from the wages of 85 teachers in April 2023 alone. Annually, this amounts to about \$65,092.56. The 2024-25 negotiated agreement between the Middleton School District and the Middleton Education Association does not authorize or require the collection of union dues via payroll deduction.³⁰

²⁷ <https://idahosba.wpenginepowered.com/contracts/wp-content/uploads/sites/5/2025/02/Caldwell-Final-2024-2025-MASTER-AGREEMENT-finalized-8052024-302pm.pdf>

²⁸ <https://idahosba.wpenginepowered.com/contracts/wp-content/uploads/sites/5/2025/02/Kuna-Master-Contract-2024-25-1.pdf>

²⁹ <https://idahosba.wpenginepowered.com/contracts/wp-content/uploads/sites/5/2025/02/Marsing-FY25-MJSD-363.pdf>

³⁰ <https://idahosba.wpenginepowered.com/contracts/wp-content/uploads/sites/5/2025/02/Middleton-2024-2025NegotiatedAgreement-accessible-1.pdf>

New Plymouth School District

In response to a Freedom Foundation request for public records under Title 74, Chapter 1, Idaho Statutes, the New Plymouth School District reported that it deducted \$1,872.51 in dues for the New Plymouth Education Association from the wages of 30 teachers in April 2023 alone. Annually, this amounts to about \$22,470.12. Article 4.6.2 of the 2024-25 negotiated agreement between the New Plymouth School District and the New Plymouth Education Association provides, “The Board agrees to allow payroll deductions from the salaries of Professional Employees for Association dues...”³¹

II. No Idaho law permits school districts to collect union dues via payroll deduction.

As the U.S. Supreme Court acknowledged in a prior decision upholding Idaho’s authority to regulate or prohibit union payroll deductions, school districts have only those powers delegated to them by state law. *See Yursa v. Pocatello Ed. Assn.*, 555 U.S. 353 (2009) (“Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities.” *Reynolds v. Sims*, 377 U. S. 533, 575 (1964). They are instead ‘subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions.’ *Ibid.*; *see also Louisiana ex rel. Folsom v. Mayor and Administrators of New Orleans*, 109 U. S. 285, 287 (1883) (‘Municipal corporations are instrumentalities of the State for the convenient administration of government within their limits’). State political subdivisions are ‘merely ... department[s] of the State, and the State may withhold, grant or withdraw powers and privileges as it sees fit.’ *Trenton v. New Jersey*, 262 U. S. 182, 187 (1923).”)

In Idaho, the powers and duties of each school district’s board of trustees are established by statute. *See Idaho Statutes § 33-512* (“The board of trustees of each school district shall have the following powers and duties... To govern the school district in compliance with state law and rules of the state board of education...”).

However, no law requires or authorizes school districts to deduct union dues from teachers’ paychecks and transmit the funds to a labor union.

The Districts may be tempted to argue that Idaho Statutes § 44-2004(1) creates a right to employer-administered dues collection via payroll deduction, but it does not. The statute reads:

“It shall be unlawful to deduct from the wages, earnings or compensation of an employee any union dues, fees, assessments, or other charges to be held for, transferred to, or paid over to a labor organization, unless the employee has first presented, and the employer has received, a signed written authorization of such deductions, which authorization may be revoked by the employee at any time by giving written notice of such revocation to the employer.”

However, this language does not require or independently authorize employer-sponsored union dues collection; it simply regulates any such deductions that may be authorized by any other

³¹ <https://idahosba.wpenginepowered.com/contracts/wp-content/uploads/sites/5/2025/02/New-Plymouth-2024-2025-MASTER-CONTRACT.pdf>

applicable law. No such law authorizes school districts to deduct union dues from teachers' paychecks.

In construing a written authorization statute similar to Idaho Statutes § 44-2004(1), Michigan Courts declined to interpret it as providing independent authorization for political deductions:

“MCL 408.477 has absolutely nothing to do with whether a ‘public body’ may administer a payroll deduction plan for the benefit of the MEA–PAC [Michigan Education Association—Political Action Committee]. Rather, the statute describes the approval required for an employer to deduct a portion of an employee's wages and states that in order to deduct wages from an employee, the employer must obtain the employee's voluntary consent... The most that can be discerned from this statute as it pertains to the instant case is that, if the school district is to deduct wages from its employees, it must obtain the employees' voluntary consent unless the deduction is expressly permitted by law or a collective-bargaining agreement. However, neither MCL 408.477 nor any other statute provides *authority* for a ‘public body’ to administer a payroll deduction plan that contributes money to a *political action committee*... [N]o statute gives the school district this authority and the school district only has the authority granted to it by statute.”

Michigan Educ. Ass'n v. Sec'y of State, 489 Mich. 194, 226–27, 801 N.W.2d 35, 53 (2011).

When presented with similar questions, authorities in other states have concluded that school districts may not collect union dues via payroll deduction absent statutory authorization. *See for example* 1979 WL 43011, at *1–2 (S.C.A.G. May 21, 1979) (“School districts may not deduct dues from employees' compensation for the purpose of paying dues to organizations to which the employees belong. Statutory authorization is required in order to validly make such deductions.”)

Given the lack of any statutory authorization for school districts to collect membership dues for a private membership organization, the practice may run afoul of the public purpose doctrine.

As Idaho courts have explained,

“It is a fundamental constitutional limitation upon the powers of government that activities engaged in by the state, funded by tax revenues, must have primarily a public rather than a private purpose. A public purpose is an activity that serves to benefit the community as a whole and which is directly related to the functions of government.”

Idaho Water Res. Bd. v. Kramer, 97 Idaho 535, 558, 548 P.2d 35, 59 (1976)

However, school districts' deduction of union dues from teachers' paychecks benefits only the teachers union to which the funds are transmitted; the public or “community as a whole” in no way benefits from the arrangement.

Further, the Idaho Attorney General has determined that, in the context of the state constitution's “public purpose doctrine” governing the expenditure of public funds, use of public facilities or time qualifies as an expenditure of state funds even though no money changes hands: “Clearly,

sharing public facilities rent-free or allowing state employees to work for a charitable foundation is an expenditure of state funds.” Idaho Attorney General Opinion 95-07. There’s no reason the same would not be true of public-school facilities used to collect and transmit union dues to teachers unions.

III. The Public Integrity in Elections Act prohibits school districts from using public payroll systems and personnel to collect union dues via payroll deduction when, as here, a portion of the deducted funds are used to advocate for or against candidates or ballot measures.

The PIEA governs school district administered payroll deductions.

In enacting the PIEA, the legislature concluded that, “...it is against the public policy of the state of Idaho for public funds, resources or property to be used to advocate for or against a candidate or ballot measure.” *See* Idaho Statutes § 74-602.

Accordingly, the PIEA sharply limits the use of public funds, resources or property for political advocacy:

“Unless specifically required by law, and except as provided in this chapter:

(1) Neither a public entity nor its employees shall make, nor shall a public official make or authorize, an expenditure from public funds to advocate for or against a candidate or a ballot measure.

(2) Neither a public entity nor any of its employees shall use, nor shall a public official authorize or use, public property or resources to advocate for or against a candidate or a ballot measure.”

See Idaho Statutes § 74-604.

Further, the PIEA applies broadly to the state and its political subdivisions, including school districts. *See* Idaho Statutes § 74-603(6). It also governs the use of public resources or property to support or oppose both candidates for federal office as well as state and local office. *See* Idaho Statutes § 74-603(3) (“‘Candidate’ means and includes every person for whom it is contemplated or desired that votes be cast at any political convention, primary, general, local, or special election and who either tacitly or expressly consents to be so considered.” (Emphasis added)).

For the purposes of the PIEA, school district payroll systems are “resources or property” that may not be used for the benefit of a political committee or to advocate for or against a candidate or ballot measure:

“‘Property or resources’ means goods, services, equipment, computer software and hardware, college extra credit, other items of intangible property, or facilities provided to or for the benefit of a candidate, a candidate’s personal campaign committee, a political issues committee for political purposes, or advocacy for or against a ballot measure or candidate. Public property or resources that are available to the general public, at such times and in such manner as they are available to the general public, are exempt from this exclusion and may be used by a political party as defined in section 34-109, Idaho Statutes,

provided that all political parties are given equal and fair access.”

(Emphasis added). *See* Idaho Statutes § 74-603(5).

While the PIEA’s application to school district payroll systems is clear on its face, authorities in other states, such as Michigan, have construed laws similar to the PIEA as applying to payroll systems used to process contributions to union political funds. For instance, the Michigan Supreme Court held:

- “As a public-employee labor organization, the MEA [Michigan Education Association] has entered into collective bargaining agreements with various public school districts across the state. Some number of these agreements... require that a school district administer a payroll deduction plan for the contributions of MEA members to the MEA–PAC. Administration of the payroll deduction plan requires the school district to distribute payroll deduction forms; collect, enter, and monitor the data of participating MEA members; and record, track, and transmit payroll deductions to the MEA–PAC.”
- “Charged to preserve the ‘purity of elections’ and to ‘guard against abuses of the elective franchise,’ the Legislature enacted MCL 169.257, commonly referred to as § 57 of MCFA. Section 57 prohibits a ‘public body’ from using public resources ‘to make a contribution or expenditure’ for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. The clear purpose of § 57, as reflected in its language, is to mandate the separation of the government from politics in order to maintain governmental neutrality in elections, preserve fair democratic processes, and prevent taxpayer funds from being used to subsidize partisan political activities.”
- “MCL 169.257(1) provides, in pertinent part:
‘A public body or an individual acting for a public body shall not use or authorize the use of funds, personnel, office space, computer hardware or software, property, stationery, postage, vehicles, equipment, supplies, or other public resources to make a contribution or expenditure or provide volunteer personal services that are excluded from the definition of contribution under [MCL 169.204(3)(a)].’”
- “Through administration of a payroll deduction plan that remits funds to a partisan political action committee, a school district makes both a ‘contribution,’ because public resources are being used to advance the political objectives of the committee, and an ‘expenditure,’ because public ‘services’ and ‘facilities in assistance of’ these same political objectives are being provided. Thus, the school district’s payroll deduction plan is prohibited by MCL 169.257.”

Michigan Educ. Ass’n v. Sec’y of State, 489 Mich. 194, 801 N.W.2d 35, 37 (2011).

While school districts’ deduction of union dues from teachers’ paychecks might be permitted by the PIEA if the practice were “specifically required by law,” Idaho Statutes § 74-604, no legal authority specifically permits—much less requires—Idaho school districts to deduct union dues from teachers’ wages, as noted above.

The PIEA's prohibition on the use of school district payroll systems to advocate for or against candidates or ballot measures applies to the deduction of union dues from teachers' paychecks.

While the issue has not previously been confronted by Idaho courts, the PIEA's prohibition on the use of public resources or property, including payroll systems, for any kind of electoral political advocacy is broad and clear.

Further, authorities in other states have interpreted comparable statutes in a manner that supports the view that the PIEA applies to union dues deducted from teachers' paychecks when some of the funds deducted are used for electoral politics.

- **Alabama**

Alabama Educ. Ass'n v. State Superintendent of Educ., 746 F.3d 1135, 1141–43 (11th Cir. 2014).

The State Comptroller implemented a policy to cease processing contributions via payroll deduction to political committees run by several labor unions representing state employees, through the Comptroller continued to deduct union dues on behalf of the affected unions via payroll deduction.

This prompted the Alabama Education Association “to inquire of the comptroller whether a similar policy change in deductions would be made as to the salaries of State employees who elected to have contributions deducted for the benefit of the AEA.” In the course of his investigation, the Comptroller learned “that a portion of the [dues] deductions then being made for the benefit of the AEA were in turn contributed by the AEA to A–VOTE [AEA's political-action committee, Alabama Voice of Teachers for Education].”

The Comptroller subsequently “ceased executing all salary deductions designated for the AEA,” citing two Alabama statutes quite similar to Section 74-604, Idaho Statutes.

The first statute provided:

“It shall be unlawful for any officer or employee of the State of Alabama to use or to permit to be used any state-owned property of any character or description, including stationery, stamps, office equipment, office supplies, automobiles or any other property used by him, in his custody or under his control for the promotion or advancement of the interest of any candidate for the nomination or election to any public office of the State of Alabama.”

And the second statute relied on by the Comptroller provided that “[n]o person in the employment of the State of Alabama... shall use any state... funds, property, or time, for any political activities.”

Before the Comptroller's actions and interpretations were litigated, however, the legislature explicitly codified them in the underlying law, which was amended to read:

“(a) No person in the employment of the State of Alabama, a county, a city, a local school board, or any other governmental agency, whether classified or unclassified, shall use any state, county, city, local school board, or other governmental agency funds, property, or time, for any political activities.

(b) No person in the employment of the State of Alabama, a county, a city, a local school board, or any other governmental agency may arrange by salary deduction or otherwise for any payments to a political action committee or arrange by salary deduction or otherwise for any payments for the dues of any person so employed to a membership organization which uses any portion of the dues for political activity....”

Under the amended law, in order to benefit from public employer-administered payroll deduction of membership dues, the requesting organization had to,

“...certify to the appropriate governmental entity that none of the membership dues will be used for political activity. Thereafter, at the conclusion of each calendar year, each organization that has arranged for the collection of its membership dues from persons employed by the State of Alabama, a county, a city, a local school board, or any other governmental agency shall provide the appropriate governmental entity a detailed breakdown of the expenditure of the membership dues of persons employed by the State of Alabama, a county, a city, a local school board, or any other governmental agency and collected by the governmental entity.”

The Alabama Education Association challenged the new law in federal court as unconstitutional but was unsuccessful.

- **Washington**

While Washington law does not prohibit public employers from using their payroll systems to process employee political contributions via payroll deduction, it does regulate such deductions by prohibiting all employers from “withhold[ing] or divert[ing] a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions” absent the employee’s written consent. *See* RCW 42.17A.495.

In applying the statute to the deduction of union dues from teachers’ paychecks by school districts, the Washington State Supreme Court held that,

“When an employer has notice that the funds deducted are for the use of a political committee or candidate, the employer may not then make that deduction without specific annual authorization. However, when the employer makes [union dues] deductions under the Education Employment Relations Act, RCW 41.59.100, and the Public Employees Collective Bargaining Act, RCW 41.56.110, and the employer is not made aware of the specific intended use of the funds, the employer has no legal obligation or authority to seek annual written authorization.”

State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass'n, 140 Wn.2d 615, 999 P.2d 602 (2000).

If statutorily authorized, school district administered union dues deductions can be *regulated* because part of the funds are “for use as political contributions,” then such deductions can also be *prohibited* on the same basis when, as in Idaho, the law does not authorize such deductions and prohibits the use of public property or resources for political advocacy.

- **Texas**

Bexar Cnty., Texas v. Deputy Sheriff's Ass'n of Bexar Cnty., 429 S.W.3d 673, (Tex. App. 2014)

Unions may point to this case to support the position that government may collect union dues via payroll deduction even when part of the dues are used for politics. However, the court’s conclusion is justified by the significant differences between Idaho and Texas law. If anything, the case supports the above analytical framework by proving its converse.

Texas law specifically authorized, but did not require, local governments to implement payroll deduction for “payment of membership dues in a labor union or a bona fide employees association.”

In *Bexar County*, a labor union representing certain county employees offered two membership tiers: a \$40/month basic dues rate, and a \$50/month dues rate for those employees who authorized the union to deposit \$10 per month in the union’s political committee on their behalf.

While the County permitted payroll deduction of union dues, it objected to processing deductions of more than \$40/month, arguing that the extra \$10 was a separate political contribution it was not statutorily authorized to process.

The court rejected the county’s argument, concluding instead that,

“...the Legislature did not intend ‘membership dues in a labor union or bona fide employees association’ to include only the minimum amount required to maintain membership in the union or association. Rather, that term may include any amount paid in exchange for the status or benefits of membership, including different amounts associated with different tiers of membership.”

Unlike in Idaho, however, (1) no Texas law prohibited the use of public resources or property for political activity, and (2) state law *did* specifically authorize the county to collect union dues via payroll deduction. Consequently, the court’s holding was justified under Texas law but not applicable to Idaho, where use of public resources for politics is strictly prohibited and payroll deduction of union dues not specifically authorized.

Collectively, these cases establish the following principles: (1) where state law authorizes public employers to collect union dues via payroll deduction, such deductions can occur so long as they harmonize with any applicable campaign finance or ethics laws; and (2) where, as in Idaho, state law neither authorizes nor requires government employers to collect union dues but *does* prohibit the use of public facilities for political purposes, a public employer may not collect union dues when some of the deducted funds are used for electoral political activity.

State	Payroll deduction of union dues statutorily authorized?	Payroll deduction of political contributions statutorily authorized?	Payroll deduction of political contributions statutorily regulated?	Use of public facilities for politics statutorily prohibited?	Conclusion
Alabama	Yes	No	No	Yes	Payroll deduction of union dues prohibited by statute barring use of public facilities for electoral political activity when some of the dues are used for such activity.
Michigan	Yes	No	No	Yes	Payroll deduction of political contributions prohibited by statute barring use of public facilities for electoral political activity.
Washington	Yes	No	Yes	Yes	Payroll deduction of union dues must comply with law governing deductions for electoral political activity when part of the dues are used for such activity.
South Carolina	No	No	No	N/A	Payroll deduction of union dues not permitted.
Texas	Yes	No	No	No	Payroll deduction of union dues permitted even when some of the funds are used for electoral political activity.
Idaho	No	No	No	Yes	Payroll deduction of union dues prohibited by statute barring use of public facilities for electoral political activity when some of the dues are used for such activity?

County prosecuting attorneys have sole jurisdiction to prosecute school districts for violations of the PIEA.

Idaho Statutes § 74-606(4) provides that, while the Attorney General enforces the PIEA with respect to “public agencies of state government,” enforcement of the PIEA “in relation to local public agencies,” including school districts, falls to “the prosecuting attorneys of the various

counties.” Public officials or employees who violate the PIEA are subject to a civil penalty of not more than \$250, while knowing violations may incur civil penalties of up to \$1,500. Idaho Statutes § 74-606(2)-(3).

IV. Idaho’s Right-to-Work Law also prohibits school districts from making “deductions for political activities” from employees’ wages.

In addition to the PIEA, Idaho’s RTWL provides that, “Deductions for political activities as defined in chapter 26, title 44, Idaho Statutes, shall not be deducted from the wages, earnings or compensation of an employee.” Idaho Statutes § 44-2004(2). “Employee” is not defined in Title 44, Chapter 20. As the term is not limited, however, it presumably applies to all kinds of employees, including public school teachers.

For the purposes of the RTWL, “political activities” is broadly 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.” Idaho Statutes § 44-2602(1)(e). These terms are not defined in a way that limits the statute’s application to candidates, political parties, or political action committees *in Idaho*.

Because part of IEA/NEA members’ dues are contributed to the NEA Advocacy Fund, a federal political action committee, and expended directly by the NEA to support or oppose ballot measures, Idaho school districts’ deduction of such dues from teachers’ paychecks violates Idaho Statutes § 44-2004(2).

County prosecuting attorneys and the Attorney General have a duty to investigate and prosecute violations of the Right to Work Law.

Idaho Statutes § 44-2009 provides that,

“It shall be the duty of the prosecuting attorneys of each county and of the attorney general of this state, to investigate complaints of violation or threatened violations of this chapter and to prosecute all persons violating any of its provisions, and to take all means at their command to ensure its effective enforcement.”

Violations of the RTWL constitute misdemeanors punishable by a fine of up to \$1,000 and/or up to 90 days’ imprisonment. Idaho Statutes § 44-2007.

V. Idaho Statutes § 33-1271 does not permit school districts to collect IEA/NEA dues.

The Districts may contend that their use of public facilities to collect union dues for the IEA/NEA, part of which are used for electoral political activity, is justified by their authority to enter into negotiations agreements with teachers unions pursuant to Idaho Statutes § 33-1271.

Although the statute obligates schools districts and teachers unions — in those districts in which a union operates as the teachers’ exclusive representative — to “negotiate in good faith on those matters specified in any such negotiation agreement,” this general authorization does not permit

the Districts to trespass over the specific boundaries laid down by the legislature against the use of public facilities for political purposes or deductions from employees' wages for political activities. See *Jones v. Lynn*, 169 Idaho 545, 564–65, 498 P.3d 1174, 1193–94 (2021), citing *Valiant Idaho, LLC v. JV L.L.C.*, 164 Idaho 280, 289, 429 P.3d 168, 177 (2018) (“A basic tenet of statutory construction is that the more specific statute or section addressing the issue controls over the statute that is more general. Thus, the more general statute should not be interpreted as encompassing an area already covered by one which is more specific.”)

While Idaho Statutes § 33-1271 does not limit the scope of issues over which school districts and unions may collectively bargain, state courts have only upheld challenged provisions of such negotiated agreements when they “are not in conflict with any statutory provisions.” *Hunting v. Clark Cnty. Sch. Dist. No. 161*, 129 Idaho 634, 639, 931 P.2d 628, 633 (1997).

And, in any event, Idaho Statutes § 33-1271 cannot justify the collection of IEA/NEA dues by the Caldwell, Marsing and Middleton School Districts because these districts' negotiated agreements do not authorize or obligate them to deduct union dues from teachers' paychecks in the first place.

VI. Prohibiting the use of public resources or property for political activities does not violate the constitution.

While unions have attempted to argue that state laws limiting government collection of union dues or political contributions via payroll deduction are unconstitutional, such arguments have been soundly rejected by federal courts.

As the U.S. Supreme Court explained,

“Banning payroll deductions for political speech similarly furthers the government's interest in distinguishing between internal governmental operations and private speech. Idaho's decision to allow payroll deductions for some purposes but not for political activities is plainly reasonable... The ban on political payroll deductions is by its terms not limited to any particular type of political contribution. Nothing in the record suggests that public employers permit deductions for some political activities but not for those of unions. Idaho's attorney general—charged with enforcing the ban—explicitly confirmed that it ‘applies to all organizations, to any deduction regarding political issues, applies regardless of viewpoint or message, applies to all employers, and it does not single out any candidates or issues.’”

Ysursa v. Pocatello Ed. Assn., 555 U.S. 353 (2009).

Since *Ysursa*, lower federal courts have continued to reach similar conclusions:

- *Alabama Educ. Ass'n v. State Superintendent of Educ.*, 746 F.3d 1135 (11th Cir. 2014)

“A properly conceived ban on salary deductions to organizations engaged in political activity would be constitutional... Every member of the Alabama Supreme Court agreed that the language in question, in the context of the entire Act, prohibits only the use of state

mechanisms to support politically active organizations. The Act does not prohibit ‘private forms of payment, i.e., forms of payment not facilitated by the government.’ *Id.* at —, 2013 WL 5763283, at *7. This compels the conclusions that the Act only declines to promote speech, rather than abridging it, and that the Act does not implicate any constitutionally protected conduct, much less a substantial amount.”

- *S.C. Educ. Ass'n v. Campbell*, 883 F.2d 1251, 1256 (4th Cir. 1989)

“...[T]here is no constitutional right to payroll deductions. *City of Charlotte v. Local 660, International Association of Firefighters*, 426 U.S. 283, 96 S.Ct. 2036, 48 L.Ed.2d 636 (1976).”

- *Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307, 322 (6th Cir. 1998)

“Ohio's wage checkoff ban satisfies rational basis scrutiny given the state's professed interest in removing partisan politics from places of public employment. The Ohio legislature rationally could have determined that ending wage checkoffs would remove a minor vestige of partisan politics from places of public employment.”

VII. Conclusion

Given that Idaho school districts lack specific legal authority to use public payroll systems and personnel to collect union dues for the IEA/NEA via payroll deduction, and in light of Idaho laws prohibiting employer deductions and the use of public facilities for electoral political purposes, we respectfully request that your office investigate the Districts’ payroll deduction practices for teachers and, if appropriate, take any enforcement action necessary to ensure compliance with applicable Idaho laws designed to protect employees and taxpayers from exploitation by politically-active, private special interests.

If we can be of any assistance to your offices in this matter, please do not hesitate to contact us.
Respectfully,



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