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“When Work Follows You Home” – Ohio Court Invalidates Law Prohibiting Unions From Picketing Private Homes and Businesses of Representatives of Public Employers

An Ohio appeals court has declared Ohio’s law prohibiting unions from supporting the picketing of the homes or private businesses of representatives of public employers during labor relations disputes unconstitutional. The court in *Portage County Educators Association for Developmental Disabilities – Unit B, OEA/NEA v. State Employment Relations Board*¹ held that the law’s prohibition against supporting picketing was an unlawful limitation on the free speech rights of unions and their members in violation of the First Amendment to the United States Constitution.

At issue, in this case, were the actions of the Portage County Educators Association (“Association”) and its members during a labor dispute with the Portage County Board of Developmental Disabilities (“Board”). As part of a labor strike, the association encouraged its members to picket outside of the residences of six board members and one board member’s place of private employment. This led the Board to file charges of unfair labor practices against the Association. The Board alleged that the Association had violated R.C. 4117.11(B)(7), which prohibits unions from inducing or encouraging their members from picketing at the homes and places of private employment of representatives of a public employer. Enacted in 1984, this provision is part of Ohio’s Public Employees Collective Bargaining Act. The Association responded to the charges by arguing that the prohibition against picketing was an unconstitutional infringement on its free speech rights.

The State Employment Relations Board refused to rule on the constitutionality of the statute and determined that the Association had violated Ohio’s prohibition against encouraging the picketing of

private homes and businesses of the board members. However, on appeal, the Eleventh District Court of Appeals held that the statute was unconstitutional and therefore unenforceable.

In coming to this conclusion, the court emphasized that picketing is a constitutionally protected form of speech which can only be limited if the state has a sufficiently strong justification. At issue was whether the prohibition was a content-neutral time, place, and manner restriction or a content-based restriction. Time, place, and manner restrictions require only that the restriction be reasonable to serve a significant governmental interest. On the other hand, content-based restrictions, because of the danger of the government censoring unpopular opinions or topics, require that the government have a compelling governmental interest. Here, the court determined that the prohibition on picketing private homes and businesses of board members was a content-based prohibition on speech because it only applies to speech "in connection with a labor relations dispute." As a content-based restriction, to survive judicial scrutiny, the law must be narrowly tailored to a compelling state interest. The court held that the law did not meet this standard. It concluded that the state's reasons for the law—to maintain the privacy of public employer representatives, encourage people to serve as public officials, and preserve labor peace—were not sufficiently weighty to justify the restriction. For this reason, the court struck down the law.

In light of this opinion, two Ohio Court of Appeals have now held R.C. 4417.11(B)(7) unconstitutional, the Eight and the Eleventh Districts, and one court has upheld the provision, the Seventh District. With this growing district court split, this issue is likely to come before the Ohio Supreme Court in the future. In the meantime, public employers should carefully consider these cases as they evaluate how to respond to certain picketing activities of unions and their members.

If you have any questions about this case or about public-sector labor and employment issues, please do not hesitate to contact [Joe Scholler](#), [Alex Ewing](#), [Christopher Thomas](#), or any member of Frost Brown Todd's [Government Services](#) Practice Group.

¹Available at
<https://www.supremecourt.ohio.gov/rod/docs/PDF/11/2020/2020-Ohio-7004.pdf>

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