

ANSWER TO QUESTION No. 14

(1) **Standing:** Because the federal courts only have the authority under Article III, §2, of the United States Constitution to decide "cases" and "controversies," they will not decide a constitutional challenge unless the person making the challenge has "standing" to raise the issue as part of a live "case" or "controversy." Accordingly, a litigant must meet a three-part test to establish standing: (1) the plaintiff must have suffered or be in imminent harm of suffering an "injury in fact;" (2) there must be a causal connection between the injury and the challenged action of the defendant (causation); and (3) it must be likely that the injury would be remedied by a favorable court decision (redressibility). See *Lujan v Defenders of Wildlife*, 504 US 555, 560-561 (1992).

Here, because the challenged law is causing injury directly to the unions by prohibiting a method by which unions can collect money for political activities, even from willing members, the unions have established an injury in fact. Moreover, there is a causal connection between the governmental action and the claimed injury because it is a result of a governmental statute that is preventing the unions from making a certain type of collection from its members. Finally, the injury complained of is redressible, since the court could strike down the law as unconstitutional and allow the unions to collect contributions for their political activities. Therefore, the unions have standing to challenge the law. See *Babbitt v United Farm Workers Nat Union*, 442 US 289, 299 n.11 (1979) (union had a "sufficient personal stake" to present a "real and substantial controversy" to satisfy standing requirements.)

2. Constitutionality of the Statute: The expenditure of funds to support a political campaign is "speech;" monetary contributions constitute "political expression at the core of our electoral process and of the First Amendment freedoms." *Buckley v Valeo*, 424 US 1, 39 (1976). As a fundamental right, limitations on the expenditure of political funds are subject to "strict scrutiny," and may only be upheld if the restriction furthers a compelling government interest and is narrowly tailored to achieve that interest. *Citizens United v Federal Election Conlin*, 130 S Ct 876 (2010). However, in contrast to restrictions on a political campaign's expenditures, restrictions on political contributions towards campaigns have been treated as "marginal" speech restrictions under the First Amendment "because contributions lie

closer to the edges than to the core of political expression." *Federal Election Comin v Beaumont*, 539 US 146, 161 (2003). Therefore, limitations on election contributions are not subject to strict scrutiny; rather, limitations are permissible if the regulation is "closely drawn" to match a "sufficiently important interest." *Nixon v Shrink Missouri Government PAC*, 528 US 377 (2000).

Additionally, it is presumptively unconstitutional for the government to place burdens on speech based on the content of the speech. Content-based restrictions on speech are subject to strict scrutiny review, and may only be upheld if necessary to serve a compelling state interest and are narrowly tailored to achieve that interest. *Davenport v Washington Educational Association*, 551 US 177 (2007). Thus, if strict scrutiny review applied to the Michichusetts law, the law would likely be deemed unconstitutional because of the difficulty satisfying the requisite standard.

However, in *Ysursa v Pocatello Education Association*, 555 US 353 (2009), the Supreme Court concluded that rational basis review rather than strict scrutiny review applied to a nearly identical case. There, the Supreme Court concluded that a state does not infringe upon the exercise of First Amendment rights by failing to assist a party in the exercise of its political activities. The state did not suppress or place any restrictions on the unions' political expression; at most, the inability to use payroll deductions made it more difficult for the unions to collect funds for political speech. While payroll deductions would undoubtedly assist the unions, the state was not constitutionally obligated to provide payroll deductions, nor was it otherwise compelled to assist the unions' political activities. Because the unions were free to engage in political speech, the state's decision to decline to provide assistance did not abridge the unions' right to speech and was not subject to "strict scrutiny" under the Fist Amendment. Rather, the court reviewed the law under the "rational basis" standard of review. Under the rational basis standard, the government's decision is upheld unless it bears no rational relationship to any legitimate government interest. The court held that the ban on payroll deductions for political activities survived rational basis review because it reasonably furthered the state's legitimate interest in distinguishing between internal governmental operations and private speech. Therefore, under the analysis articulated in *Ysursa*, the Michichusetts statute is constitutional.