

STRIKERS DECLARED INELIGIBLE FOR FOOD STAMP BENEFITS: *LYNG V. INTERNATIONAL UNION*

INTRODUCTION

Congress enacted the Food Stamp Act of 1964 (the "Food Stamp Act") in order to allow all low-income American households a chance for more nutritious diets.¹ Less than twenty years later, as part of a larger budget cutting plan, Congress amended the food stamp law to exclude strikers and their households from obtaining benefits under the Food Stamp Act, this amendment is hereinafter referred to as the "Striker Amendment."² In *Lyng v. International Union*,³ the United States Supreme Court, was confronted with the issue of whether the Striker Amendment violated the associational and expressive rights of the strikers under the first amendment and whether the striker provision violated the fifth amendment's guarantee of equal protection.⁴

This Note discusses *International Union*, including how the striker amendment affected four individuals and their families.⁵ Next, the history of the food stamp program is discussed, including the evolution of the Striker Amendment.⁶ This Note further explores the first amendment objections of the strikers as well as their equal protection claims.⁷ Finally, this Note analyzes the holding in *International Union*, which is an extension of the reasoning in three United States Supreme Court decisions: *Ohio Bureau of Employment Services v. Hodory*,⁸ *Lyng v. Castillo*,⁹ and *Harris v. McRae*.¹⁰

FACTS AND HOLDING

The plaintiffs-appellees in *Lyng v. International Union*¹¹ were two labor unions, four striking union members, members of the households of the individual strikers, and a class of similarly situated

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1. See *infra* notes 54-65 and accompanying text.
 2. See *infra* notes 54-65 and accompanying text.
 3. 108 S. Ct. 1184 (1988).
 4. *Id.* at 1187.
 5. See *infra* notes 11-30 and accompanying text.
 6. See *infra* notes 54-65 and accompanying text.
 7. See *infra* notes 75-248 and accompanying text.
 8. 431 U.S. 471 (1977). See *infra* notes 167-75 and accompanying text.
 9. 477 U.S. 635 (1986). See *infra* notes 136-66 and accompanying text.
 10. 488 U.S. 297 (1980). See *infra* notes 105-14 and accompanying text.
 11. 108 S. Ct. 1184 (1988).

households (the "Strikers").¹² In 1984, the Strikers brought suit in the United States District Court for the District of Columbia against the Secretary of Agriculture, Lyng, in his official capacity as the government official accountable for the administration of the food stamp program.¹³ The Strikers challenged the constitutionality of the 1981 Striker Amendment which mandates the exclusion of persons on strike from receiving food stamp benefits.¹⁴ The Striker Amendment disqualifies households from obtaining food stamps if the household contains a person on strike.¹⁵

The following facts concerning four union members and their families in *International Union* illustrate the operation of the Striker Amendment.¹⁶ Mary Berry had been on strike since September 1980, the time of the expiration of the labor agreement between her union, United Auto Workers ("UAW"), and her employer, until after she filed this lawsuit.¹⁷ In April 1981, because of financial difficulties, Berry moved from her apartment to a rooming house and relinquished custody of her son.¹⁸ In 1984, she applied for food stamps and her application was turned down the same day solely due to her status as a striker.¹⁹

Johnie B. Blake was on strike for over eighteen months in response to demands for concessions and relocation by her employer.²⁰ There were seven members of Blake's household, including Blake's daughter, son and four grandchildren.²¹ Blake's application for food stamps for her grandchildren was denied due to Blake's striker status.²² Blake's daughter was further not allowed food stamp assistance after the strike began due to Blake's status as a striker.²³

Barm Combs and Mark Dyer were members of the United Mine Workers of America Union.²⁴ They went on strike in August of 1984 due to their employer's refusal to comply with the National Bituminous Coal Agreement.²⁵ The strike continued until a new agreement was signed in April 1985 at which time Combs and Dyer returned to

12. *International Union v. Lyng*, 648 F. Supp. 1234, 1241-42 (D.D.C. 1986), *rev'd*, 108 S. Ct. 1184 (1988).

13. *Id.* at 1242.

14. *Id.* at 1241.

15. *Id.* See *infra* notes 54-65 and accompanying text.

16. See *infra* notes 16-30 and accompanying text.

17. *International Union*, 648 F. Supp. at 1242 n.1.

18. *Id.*

19. *Id.*

20. Brief for Appellee at 8, *International Union*, 108 S. Ct. at 1184 (No. 86-1471).

21. *Id.*

22. *Id.*

23. *Id.*

24. Brief for Appellee at 9, *International Union*.

25. *Id.*

work.²⁶ After two months of striking and two denials of food stamp applications due to his status as a striker, Combs accepted an offer to work at a non-union mine.²⁷ During the strike, Dyer also requested food stamp assistance.²⁸ Like the others, Dyer was denied food stamps due to his status as a striker.²⁹

The dispute in *International Union* focused on whether the Striker Amendment was constitutional.³⁰ The United States District Court for the District of Columbia declared the Striker Amendment unconstitutional on the grounds that it interfered with the Strikers' associational and expressive rights under the first amendment, and also violated the equal protection clause of the fifth amendment.³¹

The Secretary of Agriculture appealed the district court's decision directly to the United States Supreme Court.³² The Supreme Court reversed the district court's decision and upheld the constitutionality of the Striker Amendment.³³ Justice White wrote the opinion of the Court which held that the statute did not infringe upon the Strikers' associational and expressive rights as guaranteed under the first amendment.³⁴ The Court reasoned that even if the first amendment included a constitutionally protected right to strike, the federal government was not obligated to fund the exercise of that right.³⁵

After finding no infringement of the Strikers' first amendment rights, the Court engaged in a detailed analysis of the Strikers' equal protection claims.³⁶ According to the Court, the Striker Amendment's classification of household was not drawn on lines of race, alienage, natural origin or gender.³⁷ Furthermore, the Court had previously recognized that "households" are neither a suspect class nor a quasi-suspect class.³⁸ In addition, the Court had determined that the Striker Amendment did not impinge on any fundamental right.³⁹ Therefore, the Court determined that the rationality test

26. *Id.*

27. *Id.*

28. Brief for Appellee at 10, *International Union*.

29. *Id.* When the strike ended and Combs returned to his original position, he re-joined the union but was required to pay a new initiation fee. *Id.*

30. *International Union*, 648 F Supp. at 1235.

31. *Id.*

32. *International Union*, 108 S. Ct. at 1188. As provided in 28 U.S.C. § 1252 (1982), the United States Supreme Court accepted direct appellate jurisdiction pursuant to Federal Question Jurisdiction.

33. *International Union*, 108 S. Ct. at 1188.

34. *Id.* at 1189-91.

35. *Id.* at 1190.

36. *Id.* at 1191-92.

37. *Id.*

38. See *infra* notes 136-49 and accompanying text.

39. *International Union*, 108 S. Ct. at 1191-92. See *supra* notes 136-56 and accompanying text.

was the proper degree of judicial scrutiny to be applied to the Striker Amendment.⁴⁰

The rationality test allows the courts to give broad deference to the choices of Congress, "the appropriate representative body through which the public makes democratic choices among alternative solutions to social and economic problems."⁴¹ The Supreme Court stated that under the rationality review courts "seek only the assurance that the classification at issue bears some fair relationship to a legitimate public purpose."⁴²

The Supreme Court found that Congress enacted the Striker Amendment pursuant to three particular governmental objectives: (1) to cut federal expenditures; (2) to use the limited funds of the food stamp program for those whose need was the greatest; and (3) to promote government neutrality in labor disputes.⁴³ The Court stated that the Striker Amendment to the Food Stamp Act must be understood, "first and foremost, as part of a much broader economic strategy, intended to bring inflation to a halt and to reduce dramatically the growth of federal spending."⁴⁴ The Court noted that Congress, faced with substantial budget deficits and constant demands for federal funds, directed limited government resources to those most needy.⁴⁵ The Court stated that Congress "concluded, quite reasonably, that households whose members are on strike have greater access to the means of self-support than households whose members are entirely without employment opportunities."⁴⁶

The Court found that after thirteen years of debate and consideration regarding this sort of legislation, Congress' choice to enact the Striker Amendment was plainly rational.⁴⁷ The Court also found the Striker Amendment rationally related to the legitimate goal of attaining governmental neutrality in labor disputes.⁴⁸

40. *International Union*, 108 S. Ct. at 1191-92. See *supra* notes 136-49 and accompanying text.

41. *Schweiker v. Wilson*, 450 U.S. 221, 230 (1981).

42. *Plyler v. Doe*, 457 U.S. 202, at 216 (1982).

43. *International Union*, 108 S. Ct. at 1192.

44. Opening Brief for Appellant at 16, *International Union*. The food stamp program was not the only government program to be affected by the budget cuts. Brief for Appellee at 16 n.10, *International Union*. The President had proposed a plan designed to identify areas in virtually every government department or agency which could be reduced or eliminated. *Id.* This plan, for the most part, was contained in the OBRA legislation, which reflected the belief that the high rate of inflation in the American economy was attributed to the uncontrolled growth of government expenditures. *Id.* One part of this plan visualized restoring the food stamp program to its initial purpose, to help low income families purchase sufficient foods. *Id.*

45. See *supra* notes 55-66 and accompanying text.

46. Opening Brief for Appellant at 17, *International Union*.

47. *Id.*

48. *International Union*, 108 S. Ct. at 1192.

A strong dissent was voiced by Justice Marshall, with whom Justice Brennan and Justice Blackmun joined.⁴⁹ The dissent, “[a]fter canvassing the many absurdities that afflict the [S]triker [A]mendment,”⁵⁰ concluded that the amendment “fail[ed] to pass constitutional muster even under the most deferential scrutiny.”⁵¹ Justice Marshall disagreed with the conclusion reached by the majority, that the Striker Amendment is rationally related to a legitimate governmental objective.⁵² The dissent found fault with the brevity of the majority’s analysis of the Strikers’ equal protection claims: “the Court gives short shrift to appellees’ [e]qual [p]rotection challenge to the [S]triker [A]mendment even though this argument was the centerpiece of appellees’ case in their briefs and at oral argument.”⁵³

BACKGROUND

THE FOOD STAMP PROGRAM AND THE STRIKER AMENDMENT

Congress instituted the food stamp program with the passage of the Food Stamp Act.⁵⁴ The program, funded by the Department of Agriculture and administered through state agencies, was designed “to safeguard the health and well-being of the [n]ation’s population by raising levels of nutrition among low-income households.”⁵⁵ Accordingly, “[t]o alleviate such hunger and malnutrition, a food stamp program [was] authorized which [would] permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.”⁵⁶

Participating households receive food stamps which are used to purchase food at retail stores.⁵⁷ The maximum allotments of food stamps are based upon a “thrifty food plan.”⁵⁸ This plan, developed

49. *Id.* at 1194-1200 (Marshall, J., dissenting).

50. *Id.* at 1194 (Marshall, J., dissenting).

51. *Id.*

52. *Id.*

53. *Id.*

54. Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703 (codified as amended at 7 U.S.C. § 2015 (1982)).

55. 7 U.S.C. § 2011 (1977).

56. *Id.*

57. 7 U.S.C. § 2013(a) (1982).

58. 7 U.S.C. § 2012(o) (1982). “Thrifty food plan” is defined in the Food Stamp Act as follows:

“Thrifty food plan” means the diet required to feed a family of four persons consisting of a man and a woman twenty through fifty, a child six through eight, and a child nine through eleven years of age, determined in accordance with the Secretary’s calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall make household-size adjustments (based on the unrounded cost of such diet) taking into account economies of scale.

by the Department of Agriculture, is reviewed and updated annually to accurately reflect the cost of a diet for a family of four.⁵⁹ Over the years, the food stamp program has expanded into one of the nation's most costly public assistance programs.⁶⁰

Between 1968 and 1977, Congress considered several proposals aimed at containing the food stamp program within financially practicable limits. Several of these proposals were directed towards persons on strike.⁶¹

In 1981, the Striker Amendment became law in the Omnibus Budget Reconciliation Act of 1981 ("OBRA") as part of a collection of budget cuts throughout the federal government.⁶² The Striker Amendment generally prohibits persons on strike and their households from participation in the food stamp program.⁶³ However, if a household was eligible for food stamps before the strike began, the Striker Amendment prohibits an increase in that household's food

Id.

59. *Id.*

60. Opening Brief for Appellant at 3, *Lyng v. International Union*, 108 S. Ct. 1184 (1988) (No. 86-1471).

61. *Id.* at 4-5.

62. *International Union*, 108 S. Ct. at 1187.

63. 7 U.S.C. § 2015(d)(3) (1982). The Striker Amendment provides:

Notwithstanding any other provision of law, a household shall not participate in the food stamp program at any time that any member of such household, not exempt from the work registration requirements of paragraph (1) of this subsection, is on strike as defined in section 142(2) of Title 29, because of a labor dispute (other than a lockout) as defined in section 152(9) of Title 29: *Provided*, That a household shall not lose its eligibility to participate in the food stamp program as a result of one of its members going on strike if the household was eligible for food stamps immediately prior to such strike, however, such household shall not receive an increased allotment as the result of a decrease in the income of the striking member or members of the household: *Provided further*, That such ineligibility shall not apply to any household that does not contain a member on strike, if any of its members refuses to accept employment at a plant or site because of a strike or lockout.

Id. The term "household" is defined in the Food Stamp Act as follows:

"Household" means (1) an individual who lives alone or who, while living with others, customarily purchases food and prepares meals for home consumption separate and apart from the others, (2) a group of individuals who live together and customarily purchase food and prepare meals together for home consumption, or (3) a parent of minor children and that parent's children (notwithstanding the presence in the home of any other persons, including parents and siblings of the parent with minor children) who customarily purchase food and prepare meals for home consumption separate from other persons, except that the certification of a household as a separate household under this clause shall be reexamined no less frequently than once every 6 months; except that (other than as provided in clause (3)) parents and children, or siblings, who live together shall be treated as a group of individuals who customarily purchase and prepare meals together for home consumption even if they do not do so, unless one of the parents, or siblings, is an elderly or disabled member.

7 U.S.C. § 2012(i).

stamp allotment.⁶⁴ The 1981 Striker Amendment was enacted to promote three distinct goals: (1) to reduce the cost of the food stamp program; (2) to channel the available federal funds to those most needy; and (3) to promote government neutrality in labor disputes.⁶⁵

THE FIRST AMENDMENT AND THE RIGHT TO STRIKE

Whether the first amendment includes a constitutional right to strike is a question that has never been clearly answered by the United States Supreme Court.⁶⁶ The United States District Court for the District of Columbia, in *United Federation of Postal Clerks v. Blount*,⁶⁷ recognized that "at common law no employee had a right to strike with his fellow workers."⁶⁸ Judge Skelly Wright's views of the constitutional status of a right to strike differed from those of the majority, although he concurred in the result.⁶⁹ He found that it was not clear whether the right to strike is fundamental. However, Judge Wright noted that the right to strike is closely related to an already recognized constitutionally protected fundamental right: the right to form labor organizations.⁷⁰ Judge Wright noted that he was not suggesting that striking is equivocal with activities involved in forming labor organizations, but that "the right to strike is, at least, within constitutional concern and should not be discriminatorily abridged without substantial or 'compelling' justification."⁷¹

The United States Supreme Court addressed claims of first amendment encroachment in the case of *Abood v. Detroit Board of Education*.⁷² The *Abood* case involved a collective-bargaining agreement between the Detroit Federation of Teachers and the Detroit Board of Education.⁷³ Included in the provisions of the agreement was an "agency shop" clause, which strongly encouraged every

64. *International Union*, 108 S. Ct. at 1187.

65. *Id.* at 1192.

66. *Ledesma v. Block*, 825 F.2d 1046, 1050 (6th Cir. 1987). See generally Pope, *Labor and the Constitution: From Abolition to Deindustrialization*, 65 TEX. L. REV. 1071 (1987); Pope, *The Three-Systems Ladder of First Amendment Values: Two Rungs and a Black Hole*, 11 HASTINGS CONST. L.Q. 189 (1984); AMERICAN HOSP. ASSOC., 11 HEALTH LAW VIGIL, No. 12 (June 3, 1988).

67. 325 F Supp. 879 (D.D.C.), *aff'd mem.*, 404 U.S. 802 (1971).

68. *Id.* at 882.

69. *Id.* at 885 (Wright, J., concurring). Judge Wright's comments were aimed specifically at the validity of the ban on the employees' strikes under the fifth amendment. *Id.*

70. *Id.*

71. *Id.* While this case was only summarily affirmed by the United States Supreme Court on direct appeal, such a summary decision is binding on the lower courts. See *Hicks v. Miranda*, 422 U.S. 332, 344-45 (1975); *Whitlow v. Hodges*, 539 F.2d 582, 584 (6th Cir. 1976).

72. 431 U.S. 209 (1977).

73. *Id.* at 211-12. The Detroit Federation of Teachers, a union organization, was

teacher to become a member of the union within sixty days of hire.⁷⁴ If a teacher chose not to become a union member, that teacher was still required to pay the union a service charge equal to the usual dues paid by union members.⁷⁵ Nothing in the agreement actually required any teacher to join the union or participate in union activities, but a teacher refusing to join the union, and who failed to pay the service charge, was subject to discharge.⁷⁶

Certain teachers who had refused to pay the union dues or the service charge brought suit against the board, the union, and certain union officials.⁷⁷ The teachers contended that the "agency shop" clause was an unconstitutional infringement on their first amendment freedom of association.⁷⁸ The teachers claimed that a substantial part of the dues and service charges were used to support ideological, political and religious causes of which they did not approve.⁷⁹

The trial court granted the union's motion for summary judgment, holding that the "agency shop" clause did not violate the Constitution.⁸⁰ The Michigan Court of Appeals reversed the trial court's decision and held that the "agency shop" clause was constitutional on its face, but that the use of compulsory service charges to further political purposes which were unrelated to collective bargaining

certified in 1967 as the exclusive representative body for teachers employed by the Detroit Board of Education. *Id.*

74. *Id.* at 212.

75. *Id.*

76. *Id.*

77. *Id.* at 212. Some of the plaintiffs were union members who paid the fees under protest; others had refused to join the Union or pay the fees; and others had joined the Union and paid the fees without any protest. *Id.* at 212 n.2. The "agency shop" clause prohibits the firing of an employee who is engaged in litigation which concerns his fee-paying obligations, until his legal remedies have been completely exhausted and no efforts have been made to enforce the "agency shop" clause against any of the plaintiffs. *Id.*

78. *Id.* at 213.

79. *Id.*

80. *Id.* at 214. A grant of summary judgment under MICH. GEN. CT. R. 117.2(1) is equivalent to a dismissal under FED. R. CIV. P. 12(b)(6) for failure to state a claim upon which relief can be granted. *Id.* at 214 n.4. MICH. GEN. CT. R. 117.2(1) currently appears at MICH. CT. R. OF 1985 2.116(c) and provides:

The motion may be based on one or more of these grounds, and must specify the grounds on which it is based:

- (1) The court lacks jurisdiction over the person or property.
- (2) The process issued in the action was insufficient.
- (3) The service of process was insufficient.
- (4) The court lacks jurisdiction of the subject matter.
- (5) The party asserting the claim lacks the legal capacity to sue.
- (6) Another action has been initiated between the same parties involving the same claim.
- (7) The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, infancy or

could violate the teachers' constitutional rights.⁸¹ Nevertheless the Michigan Court of Appeals denied the teachers restitution for any portion of the service charges because the teachers had refused to disclose to the union those ideological or political causes to which the teachers objected.⁸² The Michigan Supreme Court denied review.⁸³

On appeal, the United States Supreme Court vacated the judgment of the Michigan Court of Appeals and remanded the case.⁸⁴ The Court held that the "agency shop" arrangement did not violate the first amendment freedom of expression and associational rights insofar as the service charges collected by the union were used to finance union expenditures for the purposes of collective bargaining, contract administration and grievance adjustments.⁸⁵ However, the Court was careful to point out that the use of service charges for political and ideological purposes which were unrelated to collective bargaining, and as to which an employee objected, was unconstitutional.⁸⁶ The Court based its decision on the observation that "at the heart of the [f]irst [a]mendment is the notion that an individual should be free to believe as he will, and that in a free society one's beliefs should be shaped by his mind and his conscience rather than coerced by the [s]tate."⁸⁷

The United States Court of Appeals for the Sixth Circuit in *Ledesma v. Block*⁸⁸ recognized the unsettled status of the right to strike. The *Ledesma* court held that the right to strike was not a constitutional right, at least for the purpose of determining whether

other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

(8) The opposing party has failed to state a claim on which relief can be granted.

(9) The opposing party has failed to state a valid defense to the claim asserted against him or her.

(10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

Id.

81. *Abood*, 431 U.S. at 215.

82. *Id.*

83. *Id.* at 216.

84. *Id.* at 242.

85. *Id.* at 221, 235.

86. *Id.* at 235-36.

87. *Id.* at 234-35. The Court concluded:

[T]he freedom of belief is no incidental or secondary aspect of the First Amendment's protections:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Id. at 235 (quoting *West Virginia Bd. of Educ. v. Barnett*, 319 U.S. 624, 642 (1943)).

88. 825 F.2d 1046 (6th Cir. 1987).

withholding food stamps dictates application of the strict scrutiny test in reviewing the Striker Amendment.⁸⁹ The *Ledesma* case involved a member of the Teamsters Union, Manuel Ledesma, who was on strike against his employer, Bil-Mar Foods, Inc. of Michigan.⁹⁰ The Ledesma household became ineligible for food stamps after the enactment of the Striker Amendment.⁹¹ Manuel's wife, Dorothy Ledesma, appealed the family's disqualification from the program to the Michigan Department of Social Services (the "Department").⁹² The Department held that the Ledesma household was disqualified from the program for two reasons: (1) Manuel Ledesma's status as a striker, and (2) the Ledesma household had not been eligible for food stamps before the strike.⁹³

The Ledesmas brought an action in the United States District Court for the Western District of Michigan alleging that the Striker Amendment was unconstitutional on the same three grounds later alleged in *International Union*.⁹⁴ First, by discriminating against strikers the Striker Amendment violates the striker's first amendment associational rights with the union.⁹⁵ Second, the Striker Amendment violates the family's right to associate with one another.⁹⁶ Finally, by creating irrational classifications, the statute violates the equal protection clause.⁹⁷

The Sixth Circuit affirmed the district court's holding that the Striker Amendment did not interfere with the right to strike.⁹⁸ The Sixth Circuit adopted the reasoning of the district court.⁹⁹ District court Judge Enslen "assumed for the purposes of his decision that there is a constitutional right to strike,"¹⁰⁰ yet held that the striker's complaint failed to establish that the Striker Amendment interfered with the right to strike.¹⁰¹ The Sixth Circuit noted Judge Enslen's differentiation between a *right* to strike and the *ability* to strike.¹⁰² "It is unquestioned that the government may not penalize an individ-

89. *Id.* at 1050.

90. *Id.* at 1049.

91. *Id.*

92. *Id.* The Michigan Department of Social Services is responsible under federal law for administering the Food Stamp Act in that state. *Id.* at 1049.

93. *Id.* at 1049.

94. *Id.* The Ledesmas alleged jurisdiction under 28 U.S.C. § 1331 (1982), which provides that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

95. *Ledesma*, 825 F.2d at 1049.

96. *Id.*

97. *Id.*

98. *Id.* at 1053.

99. *Id.* at 1049.

100. *Id.*

101. *Id.*

102. *Id.* See *infra* notes 105-14 and accompanying text.

ual for the exercise of constitutional rights.”¹⁰³ The court added that the government is also prohibited from obstructing an individual from exercising constitutional rights.¹⁰⁴

RIGHT/ABILITY DISTINCTION

The United States Supreme Court expanded on the right/ability distinction in the case of *Harris v. McRae*.¹⁰⁵ The *Harris* case dealt with the issue of whether the federal government has a duty to provide funding for the exercise of a fundamental right.¹⁰⁶ The Supreme Court upheld the federal government’s policy of excluding the funding for abortions from federal medical benefits programs, even when the woman’s physicians had determined that such abortion was necessary to safeguard the health of the woman.¹⁰⁷ The Court concluded that the “Hyde Amendment” virtually freed both state and federal governments of any duty to fund abortions that were not funded by the federal Medicaid program.¹⁰⁸

The Court analyzed previous decisions and found that only a fundamental right to choose to have an abortion without government interference had been established.¹⁰⁹ The fact that an indigent woman was not financially able to exercise that fundamental right “was of no concern to the [J]ustices, for her inability to exercise her freedom of choice was the result of her own lack of resources rather than government action.”¹¹⁰

The Court struck down the claim that failure to provide resources for exercising a fundamental right was actually a violation of that fundamental right.¹¹¹ The Court determined that “[b]ecause the failure to provide funds for such women did not deprive them of a fundamental right, the law was not to be tested by the [strict scrutiny test]” and the claim was dismissed.¹¹²

One commentator determined that unless a law specifically authorizes the exercise of a fundamental right according to economic status, the Court has refused to view the law with any heightened scrutiny.¹¹³ It further seems unlikely that the Court in the near fu-

103. *Id.*

104. *Id.*

105. 448 U.S. 297 (1980).

106. *Id.* at 300.

107. *Id.* at 301.

108. *Id.* at 305.

109. *Id.* at 312.

110. J. NOWAK, R. ROTUNDA & J. YOUNG, CONSTITUTIONAL LAW 710 (3d ed. 1986) [hereinafter NOWAK].

111. *Id.*

112. *Id.*

113. *Id.*

ture will hold that the government has a duty to provide funding for the exercise of a fundamental right, "for such a position seems contrary to the libertarian philosophy which currently holds sway on the Supreme Court."¹¹⁴

EQUAL PROTECTION

Levels of Constitutional Review

Equal protection principles generally require that all persons similarly situated be treated alike.¹¹⁵ The general rule regarding equal protection is that legislation is presumed valid and the statutory classification will be upheld if it is rationally related to any conceivable legitimate state interest.¹¹⁶ When the legislation involves social or economic issues, the equal protection clause provides the legislators wide latitude and the "Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes."¹¹⁷

Statutory classifications drawn on the lines of race, alienage or national origin, however, are subject to strict scrutiny by the courts.¹¹⁸ The use of these suspect classifications will be valid under the strict scrutiny test only if they are necessary to promote a compelling governmental interest.¹¹⁹ The Court will also employ the strict scrutiny test in reviewing legislation which limits a fundamental right.¹²⁰

Legislation based on quasi-suspect classifications, such as gender, calls for a heightened scrutiny.¹²¹ A gender based classification will be sustained only if it is substantially related to a sufficiently important governmental interest.¹²²

114. *Id.* at 711.

115. The Equal Protection Clause provides as follows: "No State shall deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. Equal protection under the fourteenth amendment applies to any state and includes all subdivisions and local governments within a state; however, "the due process clause of the fifth amendment imposes a similar equal protection guarantee upon the federal government." NOWAK, *supra* note 110, at 556.

116. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (1985).

117. *Id.*

118. *Id.*

119. NOWAK, *supra* note 110, at 530-31.

120. *Id.* at 531.

121. *Cleburne*, 473 U.S. at 440.

122. *See Craig v. Boren*, 429 U.S. 190, 197 (1976) (holding that the gender-based differential under an Oklahoma statute which prohibited the sale of 3.2% beer to males under the age of 21 and to females under the age of 18 violated the Equal Protection Clause); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 713, 730 (1982) (holding that a Mississippi statute which excluded males from a state-funded nursing school violated the Equal Protection Clause because it perpetuated the stereotyped view that nursing is an occupation exclusively for women).

The United States Supreme Court addressed equal protection principles in the recent case of *City of Cleburne v. Cleburne Living Center*.¹²³ The city of Cleburne, Texas denied a permit for the operation of a group home for mentally retarded persons, acting according to a zoning ordinance which required special permits for such homes.¹²⁴ The United States Court of Appeals for the Fifth Circuit found that mentally retarded persons comprised a quasi-suspect classification.¹²⁵ Accordingly, the Fifth Circuit found the city ordinance violated the equal protection clause because "it did not substantially further an important governmental purpose."¹²⁶ The United States Supreme Court reversed the Fifth Circuit's decision and denied the creation of an additional quasi-suspect classification.¹²⁷ The Supreme Court declared the rationality test to be the appropriate judicial standard to be applied to the statutory classification dealing with mentally retarded persons.¹²⁸ The Court found that the classification failed to meet the rationality test because it was not related to any conceivable legitimate state interest and therefore the ordinance was struck down as a violation of the equal protection clause.¹²⁹

In *Cleburne*, the Court reiterated its reluctance to expand the categories of suspect or quasi-suspect classifications.¹³⁰ In the earlier case of *Massachusetts Board of Retirement v. Murgia*,¹³¹ the Supreme Court refused to apply heightened scrutiny to a legislative classification based on old age, and stated that old age is not a discrete and insular group demanding special protection from the political process.¹³² The Court in *Murgia* held:

[Old age] marks a stage that each of us will reach if we live out our normal span. Even if the statute could be said to impose a penalty upon a class defined as the aged, it would not impose a distinction sufficiently akin to those classifications that we have found suspect to call for strict judicial scrutiny.¹³³

Are Households a Suspect Classification?

The Court has also expressed a hesitancy in applying heightened

123. 473 U.S. 432 (1985).

124. *Id.* at 435.

125. *Id.*

126. *Id.*

127. *Id.* at 442.

128. *Id.* at 446.

129. *Id.* at 448.

130. *Id.* at 446.

131. 427 U.S. 307 (1976).

132. *Id.* at 313.

133. *Id.* at 313-14.

scrutiny to household-based classifications.¹³⁴ The food stamp program determines eligibility and benefit levels on a "household" basis, rather than on an individual basis.¹³⁵ In the recent case of *Lyng v. Castillo*,¹³⁶ the Court interpreted the term "household" as it applies to the food stamp program.¹³⁷ The statutory definition of household generally treats parents, children and siblings who live together, as a single household, even if they do not purchase food together or prepare meals together.¹³⁸ The statute does not include more distant relatives or unrelated persons who live together as one household unless it is shown that they customarily purchase food together and prepare meals together.¹³⁹

Castillo was the consolidation of four separate cases, each involving family members living under the same roof, but generally purchasing their food and preparing meals separately.¹⁴⁰ Each family, fearful of either losing its benefits entirely or having its food stamp allotment decreased as a result of the Striker Amendment, brought suit in the United States District Court for the Southern District of Texas to invalidate the Striker Amendment under the equal protection guarantee of the fifth amendment.¹⁴¹ The district court found the statutory definition to be invalid after declaring that the definition was to be judged under a heightened scrutiny standard.¹⁴² On appeal, the United States Supreme Court reversed, finding that: (1) the statute did not invidiously discriminate against close relations so as to violate the equal protection clause,¹⁴³ (2) the district court erred in its application of "heightened scrutiny,"¹⁴⁴ and (3) the statute met the rational basis standard of judicial scrutiny.¹⁴⁵

The United States Supreme Court found that households consisting of close relatives were neither a "suspect" nor a "quasi-suspect" class.¹⁴⁶ Historically, classes comprised of parents, children and siblings have not been subject to discrimination; nor do they "exhibit obvious, immutable, or distinguishing characteristics that define them

134. *Lyng v. Castillo*, 477 U.S. 635 (1986). See *infra* notes 136-49, 153-66 and accompanying text.

135. 7 U.S.C. § 2012(i) (1982). For the definition of "household" as used in this section, see *supra* note 63.

136. 477 U.S. 635 (1986).

137. *Id.* at 636.

138. See *supra* note 135.

139. See *supra* note 135.

140. *Castillo*, 477 U.S. at 636-37.

141. *Id.* at 637.

142. *Id.*

143. *Id.* at 638.

144. *Id.*

145. *Id.* at 639.

146. *Id.* at 638.

as a discrete group."¹⁴⁷ Further, households are not considered a minority nor are they considered politically powerless.¹⁴⁸ The *Castillo* Court noted that "quite the contrary is true."¹⁴⁹

In *Castillo*, the Court considered the case of *Zablocki v. Redhail*,¹⁵⁰ which set out another criterion for determining whether heightened scrutiny is appropriate.¹⁵¹ The Court in *Zablocki* held that the statutory classification must "directly and substantially" interfere with the fundamental interest at hand.¹⁵² The majority opinion by Justice Marshall in *Zablocki* observed that reasonable regulations that do not significantly interfere with decisions to exercise fundamental rights may legitimately be imposed.¹⁵³

The *Castillo* Court utilized the *Zablocki* criterion of "direct and substantial interference" and determined that the statutory classification of households in the Striker Amendment did not directly and substantially hinder family living arrangements.¹⁵⁴ The Court stated "[t]he 'household' definition does not order or prevent any group of persons from dining together. Indeed, in the overwhelming majority of cases it probably has no effect at all."¹⁵⁵ The Court went on to conclude that "[i]t is exceedingly unlikely that close relatives would choose to live apart simply to increase their allotment of food stamps, for the cost of separate housing would almost certainly exceed the incremental value of the additional stamps."¹⁵⁶

The Court was very careful to distinguish its decision in *Castillo* from that of *United States Department of Agriculture v. Moreno*,¹⁵⁷ a case which also involved the constitutional classification of "households."¹⁵⁸ The definition of "household" in the 1971 amendment to the Food Stamp Act was held unconstitutional by the *Moreno*

147. *Id.*

148. *Id.*

149. *Id.*

150. 434 U.S. 374 (1978).

151. *Id.* at 386-87.

152. *Id.* at 386-87.

153. *Id.* at 388.

154. *Castillo*, 477 U.S. at 645.

155. *Id.* at 638.

156. *Id.* In *Eaton v. Lyng*, 669 F. Supp. 266 (N.D. Iowa 1987), the United States District Court for the Northern District of Iowa stated:

This Court recognizes that in some circumstances, the cost of separate housing may not be as great as the Supreme Court presumes it would be. Strikers may move in with each other or with their parents, or may move into their cars. The ultimate legal question, however, is whether the government has made these options so attractive that it 'directly and substantially' interferes with family relationships.

Id. at 271 (citing *Zablocki v. Redhail*, 434 U.S. 374, 386-87 (1978)).

157. 413 U.S. 528 (1973).

158. *Id.* at 530.

Court.¹⁵⁹ That definition differentiated between households composed entirely of persons who are related to one another and households containing one or more individuals who are not related to the rest.¹⁶⁰ Legislative history of the 1971 amendment indicated that it was intended to prevent "hippies" and "hippie communes" from taking part in the food stamp program.¹⁶¹

The *Moreno* Court held that the household definition could not be upheld by reference to this congressional purpose.¹⁶² The Court reasoned that "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* government interest."¹⁶³ The Court went on to conclude that such a classification supported only by a purpose to discriminate against "hippies," without reference to some other separate, legitimate governmental goal, cannot justify the 1971 amendment.¹⁶⁴ Therefore, the "unrelated person" provision was without any rational basis and was struck down as being invalid under the equal protection component of the due process clause.¹⁶⁵ Unlike the *Moreno* Court, the Court in *Castillo*, recognized the existence of legitimate government purposes behind the Striker Amendment and upheld that statutory definition.¹⁶⁶

Government Neutrality in Labor Disputes

In addition to the goal of effective allocation of limited financial resources, Congress sought also to effectively allocate government loyalties during labor disputes.¹⁶⁷ The United States Supreme Court, in *Ohio Bureau of Employment Services v. Hodory*,¹⁶⁸ recognized that governmental neutrality in labor disputes was a legitimate goal.¹⁶⁹ In *Hodory* the Ohio statute at issue called for the denial of

159. *Id.* at 538.

160. *Id.* at 529. As initially enacted, § 3(e) of the Food Stamp Act defined the term "household" as "a group of related or non-related individuals, who are not residents of an institution or boarding house, but are living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common." *Id.* at 530 n.1 (quoting Food Stamp Act of 1964, Pub. L. No. 88-525, 78 Stat. 703). In January 1971, Congress redefined "household" to include only groups of related individuals. *Id.* at 530 n.2 (quoting Food Stamp Act of 1964, Pub. L. No. 91-671, 84 Stat. 2048 (1971)).

161. *Id.* at 534.

162. *Id.*

163. *Id.*

164. *Id.* at 534-35 (citing *Moreno v. United States Dep't of Agric.*, 345 F Supp. 310, 314 n.11 (D.D.C. 1972)).

165. *Id.* at 538.

166. *Castillo*, 477 U.S. at 642-43.

167. *International Union*, 108 S. Ct. at 1192.

168. 431 U.S. 471 (1977).

169. *Id.* at 492.

unemployment benefits to employees who were out of work "due to a labor dispute other than a lockout."¹⁷⁰ Leonard Hodory was furloughed when the plant at which he worked was closed due to striking at the company's coal mines. He contended that the Ohio statute denying him unemployment benefits was irrational and invalid under the equal protection clause of the fourteenth amendment.¹⁷¹ The Supreme Court upheld the statute, finding that Ohio was constitutionally entitled to remain neutral in labor disputes.¹⁷² The Court reasoned that

Qualification for unemployment compensation thus acts as a lever increasing the pressures on an employer to settle a strike. The [s]tate has chosen to leave this lever in existence for situations in which the employer has locked out his employees, but to eliminate it if the union has made the strike move. Regardless of our views of the wisdom or lack of wisdom of this form of state "neutrality" in labor disputes, we cannot say that the approach taken by Ohio is irrational.¹⁷³

Although *Hodory* involved unemployment compensation and *International Union* involved food stamps, both cases deal with economic-related legislation and its effects on strikes.¹⁷⁴ In both cases, the legislature has sought to construct a statutory plan that would

170. *Id.* at 473. OHIO REV. CODE ANN. § 4141.29(D) (Baldwin 1983) provides in part:

Notwithstanding division (A) of this section, no individual may serve a waiting period or be paid benefits under the following conditions:

(1) For any week with respect to which the administrator finds that:

(a) His unemployment was due to a labor dispute other than a lockout at any factory, establishment, or other premises located in this or any other state and owned or operated by the employer by which he is or was last employed; and for so long as his unemployment is due to such labor dispute. No individual shall be disqualified under this provision if:

(i) His employment was with such employer at any factory, establishment, or premises located in this state, owned operated by such employer, other than the factory, establishment, or premises at which the labor dispute exists, if it is shown that he is not financing, participating in, or directly interested in such labor dispute; or

(ii) His employment was with an employer not involved in the labor dispute but whose place of business was located within the same premises as the employer engaged in the dispute, unless his employer is a wholly owned subsidiary of the employer engaged in the dispute, or unless he actively participates in or voluntarily stops work because of such dispute. If it is established that the claimant was laid off for an indefinite period and not recalled to work prior to the dispute, or was separated by the employer prior to the dispute for reasons other than the labor dispute, or that he obtained a bona fide job with another employer while the dispute was still in progress, such labor dispute shall not render the employee ineligible for benefits.

Id.

171. *Hodory*, 431 U.S. at 475.

172. *Id.* at 492.

173. *Id.*

174. *See supra* notes 11-48 and 168-73.

favor neither party in a labor dispute.¹⁷⁵

ANALYSIS

FIRST AMENDMENT PRINCIPLES

The United States Supreme Court in *Lyng v. International Union*¹⁷⁶ rejected the holding of the United States District Court for the District of Columbia.¹⁷⁷ The district court had held that the Striker Amendment contained in the Food Stamp Act violated the associational and expressive rights of the Strikers as well as their equal protection rights.¹⁷⁸ Instead, the Supreme Court upheld the constitutionality of the Striker Amendment finding that the correct level of deserved judicial scrutiny lay in the rationally related standard.¹⁷⁹

The *International Union* Court first addressed the first amendment claims of the Strikers.¹⁸⁰ The Court held that the statute does not "directly and substantially" interfere with the Strikers ability to associate.¹⁸¹ The right of individuals to come together and associate with one another for a common lawful goal has been long recognized as an important element in our society.¹⁸² However, after an examination of the Striker Amendment, the Court reasoned the amendment does not demand that workers refrain from associating with one another nor prevent them from doing so for the purpose of conducting a strike.¹⁸³ Again the Court concluded that it seems "exceedingly unlikely" that the Striker Amendment precludes workers from continuing to associate with one another in unions.¹⁸⁴ Thus, the Court correctly held the Strikers' first amendment claims were also without merit.¹⁸⁵

Clearly the Constitution grants the workers the right to come together and associate with one another and express their views on union matters.¹⁸⁶ However, constitutional rights and government funds to aid in the exercise of those rights are not a constitutionally mandated package deal.¹⁸⁷ The Court in *Harris v. McRae* spelled this

175. Opening Brief for Appellant at 18, *International Union*.

176. 108 S. Ct. 1184 (1988).

177. See *supra* notes 11-48 and accompanying text.

178. See *supra* notes 23-37 and accompanying text.

179. *Lyng*, 108 S. Ct. at 1191-92.

180. *Id.* at 1188-91.

181. *Id.*

182. See *supra* notes 66-71 and accompanying text.

183. *International Union*, 108 S. Ct. at 1189.

184. *Id.*

185. See *supra* notes 33-36 and accompanying text.

186. See *supra* notes 66-104 and accompanying text.

187. See *supra* notes 105-14 and accompanying text.

out rather clearly: the Constitution "does not confer an entitlement to such funds as may be necessary to realize all the advantages" of individual rights.¹⁸⁸

Furthermore the Striker Amendment does not deny workers their right to strike, nor does it force workers not to strike.¹⁸⁹ Employees remain free to gather with their fellow workers, associate and express themselves with their fellow workers, and strike with their fellow workers.¹⁹⁰ The provision simply makes clear the government will not subsidize the Strikers' choice not to work.¹⁹¹

Although *Harris* involved a woman's claim to federal funding of an abortion, it can be closely paralleled with the Strikers' claim to federal funding of their exercise of association.¹⁹² One could differentiate between the two cases based on the respective rights involved in each. *Harris* involved an established, yet controversial, judicially declared fundamental right: the right of a woman to choose to terminate her pregnancy.¹⁹³ Whereas, in *International Union*, the Court has been hesitant about adding a right to strike to their list of fundamental rights.¹⁹⁴

The status of the worker's right to strike remains in constitutional limbo.¹⁹⁵ It has been hypothesized that the Court's hesitancy in protecting labor protests and its tendency to play by Congress' rules in the labor game may reflect a deep rooted sensitivity to accusations of "Lochnerizing."¹⁹⁶ Accordingly, the Court has been less than enthusiastic about intervening in labor-management disputes, and has given broad deference to the legislature in this area.¹⁹⁷ One commentator summarizes the Court's practice in this area of constitutional law: "civil rights activists always win; corporations sometimes win; and unions and employees . . . almost always lose."¹⁹⁸

However, the *International Union* Court was not forced to decide whether the Strikers' right to strike should be deemed a fundamental right. All that was needed was a quick look at the *Harris* decision.¹⁹⁹ The *Harris* decision, applied to the *International Union*

188. *Harris v. McRae*, 448 U.S. 297, 317 (1980).

189. See *supra* notes 54-65 and accompanying text.

190. *Id.*

191. *Id.*

192. See *supra* notes 107-08 and accompanying text.

193. See *supra* notes 105-07 and accompanying text.

194. See *supra* notes 134-49 and accompanying text.

195. See *supra* notes 66-71 and accompanying text.

196. Pope, *Labor and the Constitution: From Abolition to Deindustrialization*, 65 TEX. L. REV. 1071, 1076-77 (1987).

197. See *supra* notes 41-48 and accompanying text.

198. Pope, *The Three-Systems Ladder of First Amendment Values: Two Rungs and a Black Hole*, 11 HASTINGS CONST. L.Q. 189, 190 (1984).

199. *International Union*, 108 S. Ct. at 1191.

facts, simply dictates to the Strikers that even if there were an established fundamental right to strike, the government is not required to financially support the Strikers while they strike.²⁰⁰

In *International Union*, the United States Supreme Court upheld the Striker Amendment.²⁰¹ The Court based its decision on two main findings. First, the Court found that the Striker Amendment did not violate the first amendment of the Constitution, finding that neither the Strikers' associational rights nor their expressive rights had been abridged.²⁰² Secondly, the Striker Amendment was found to be consistent with the equal protection clause of the fifth amendment.²⁰³

EQUAL PROTECTION PRINCIPLES

After the analysis of the Striker's first amendment claims, the *International Union* Court moved on to an examination of the alleged equal protection violation. The Court quickly concluded that deferential scrutiny was the only level of judicial review appropriate for the Striker Amendment.²⁰⁴ This conclusion was based on two findings: first, the existence of a fundamental right was not at issue; and second, the Striker Amendment did not involve a suspect class or a quasi-suspect class.²⁰⁵ If the challenged statute does not substantially and directly interfere with a fundamental right or does not involve a suspect or quasi-suspect class, the standard of review is the rationality test.²⁰⁶ To withstand the rationality test, the challenged statutory classification must be "rationally related to a legitimate governmental interest."²⁰⁷ The government submitted three objectives, which involved cutting federal expenditures, channeling government funds to the most needy and enhancing government neutrality in labor disputes.²⁰⁸ The Court stated: "[w]e have little trouble in concluding that [the Striker Amendment] is rationally related to the legitimate governmental objective of avoiding undue favoritism to one side or the other in private labor disputes."²⁰⁹

The Court did, however, recognize that the Striker Amendment does work "at least some discrimination against strikers and their households," but that such a decision involving economic or social

200. See *supra* notes 105-14 and accompanying text.

201. See *supra* notes 32-35 and accompanying text.

202. See *supra* notes 35-36 and accompanying text.

203. See *supra* notes 37-40 and accompanying text.

204. *International Union*, 108 S. Ct. at 1191-92.

205. *Id.*

206. *Id.*

207. *United States Dep't of Agric. v. Moreno*, 413 U.S. 528, 533 (1973).

208. *International Union*, 108 S. Ct. at 1192.

209. *Id.*

policy is a decision for Congress.²¹⁰ Congress has made its decision clear in the enactment of the Striker Amendment.

UNDER EQUAL PROTECTION PRINCIPLES: STRIKERS AS A SUSPECT CLASS

The district court's decision in *International Union* which held that the Striker Amendment burdens a suspect class and discriminates against strikers, "ignores settled equal protection principles." Moreover the district court's "analysis is flawed at every turn."²¹¹

The equal protection clause has historically been employed as a means to put an end to racial discrimination.²¹² The Court has expanded the scope of the equal protection clause to protect other groups that have been the subject of past discrimination.²¹³ With this expanded scope, the Court has offered varying degrees of equal protection safeguards to legislative classifications based on alienage, national origin, gender and illegitimacy.²¹⁴

The Court, however, has also indicated a reluctance to expand this scope of protection to include other groups. In *Massachusetts Board of Retirement v. Murgia*, the Court declined to extend shelter to classification based on age.²¹⁵ In *City of Cleburne v. Cleburne Living Center*, the Court denied heightened protection to retarded persons.²¹⁶ And in *Ohio Bureau of Employment Services v. Hodory*, the Court refused to give special treatment to strikers.²¹⁷

The *International Union* Court merely extends the *Hodory* reasoning, while keeping in line with established principles of equal protection. In *International Union*, as in *Hodory*, the Court recognized that there is no justification for adding strikers or their households to the list of suspect or quasi-suspect classifications.²¹⁸ The *Hodory* Court expressly stated: "The statute does not . . . affect with particularity any protected class."²¹⁹ Strikers have not been historically discriminated against, nor do they exhibit immutable characteristics

210. *Id.* at 1192-93.

211. Opening Brief for Appellant at 13, *International Union*.

212. NOWAK, *supra* note 110, at 603-04.

213. *See supra* notes 118-22 and accompanying text.

214. *Id.*

215. *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 308-13 (1976). *See supra* notes 131-33 and accompanying text.

216. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 435 (1985). *See supra* notes 123-29 and accompanying text.

217. *Ohio Bureau of Employment Servs. v. Hodory*, 431 U.S. 471, 489 (1977). *See supra* notes 168-72 and accompanying text.

218. *Hodory*, 431 U.S. 471, 489 (1977).

219. *Id.*

which affect their ability to contribute to society.²²⁰

Because of the above reasons, the *International Union* Court properly utilized the rationality test in reviewing the Striker Amendment. The Court had its choice of three different governmental objectives.²²¹ However, the Court did not have to engage in an in-depth analysis of the government's three proposed goals; the Court merely had to reach back to its decision in *Hodory* again. The state acts rationally when it seeks neutrality in labor disputes.²²² By refusing to partially fund the strike via payment of the strikers' grocery bills, the state avoids involvement in a dispute concerning only employer and employee.

Granted, some governmental intervention is appropriate in the regulation of employment, but in *International Union*, as the Court has indicated, the proper regulator is the Congress.²²³ For a nation to function effectively, careful decisions need to be made regarding the distribution of limited federal funds. In the United States, those decisions are primarily the duties of Congress.²²⁴ The Court does not disrupt Congress' decision if these decisions are rationally related to a reasonable governmental objective.²²⁵

UNDER EQUAL PROTECTION PRINCIPLES: HOUSEHOLDS AS A SUSPECT CLASS

The Strikers claim that their households were unfairly discriminated against by the operation of the Striker Amendment.²²⁶ The thrust of their equal protection claim is that the Striker Amendment singles out the Strikers and their households "for special punitive treatment without reasonable justification."²²⁷ Again, the *International Union* Court had to look no further than its recent decision in *Lyng v. Castillo* for an analysis of that claim.²²⁸ Both the *International Union* and *Castillo* Courts were confronted with the term "household" as that term appears in the Food Stamp Act.²²⁹ The *In-*

220. Opening Brief for Appellant at 26-27, *International Union*.

221. See *supra* notes 43-48 and accompanying text.

222. *Hodory*, 431 U.S. at 492.

223. *International Union*, 108 S. Ct. at 1192. The rational basis standard utilizes a relatively relaxed standard by which to review the legislative classification. *Hodory*, 431 U.S. at 499. Such a standard reflects the awareness of the Court that the drawing of lines which create classifications is a legislative task. *Id.* The *Murgia* Court commented that "perfection in making the necessary classifications is neither possible nor necessary." *Murgia*, 427 U.S. at 314.

224. *Murgia*, 427 U.S. at 314.

225. *Id.*

226. *International Union*, 108 S. Ct. at 1194 (Marshall, J., dissenting).

227. *Id.*

228. See *supra* notes 136-49 and accompanying text.

229. See *supra* notes 136-49 and accompanying text.

ternational Union Court, as did the *Castillo* Court, declined to extend to "households" a membership into the limited group of suspect classifications.²³⁰ Furthermore, it is rational to assume that close relatives who live together as a family will ordinarily purchase food together as a family.²³¹ The *Castillo* Court found that the definition, which treats parents, children, and siblings who live together, purchase food together and prepare meals together as a single household, was not an unreasonable definition when considered with the purpose of the Food Stamp Act.²³²

The *International Union* Court placed great emphasis on its holding in *Castillo* finding that it is "exceedingly unlikely" that the Striker Amendment would prevent persons from dining together.²³³ The Court, however, recognized that there may indeed be situations where a striker would leave his or her household in order to increase the family's allotment of food stamps, but still held fast to the *Castillo* conclusion that "in the overwhelming majority of cases [the Striker Amendment] probably has no effect at all."²³⁴

The Strikers' plea for the addition of a new suspect class under the equal protection clause can be closely paralleled with the arguments presented in *Cleburne Living Center*. The Strikers claimed discrimination based on their status as strikers.²³⁵ The group home claimed discrimination based on the anticipated housing of mentally retarded persons.²³⁶ Laborers and labor commentators have asserted that laborers and unions have been disadvantaged historically when compared with the management end of labor.²³⁷ The *Cleburne* group home asserted that the general public's misconceptions and overall lack of knowledge regarding mentally retarded persons have historically disadvantaged these persons as well.²³⁸ The United States Supreme Court's response to the group home could well have been its response to the Strikers. Basically the Court said that it is unfor-

230. *International Union*, 108 S. Ct. at 1189.

231. *Lyng v. Castillo*, 477 U.S. 635, 642 (1986).

232. *Id.* at 641-43.

233. *International Union*, 108 S. Ct. at 1189.

234. *Id.*

235. *See supra* notes 11-28 and accompanying text.

236. *Cleburne*, 473 U.S. at 438.

237. Pope, *Labor and the Constitution: From Abolition to Deindustrialization*, 65 TEXAS L. REV. 1071, 1076-77 (1987). Professor Pope discusses the differences in constitutional principles as applied to labor law and those same principals as applied to other areas of the law. *Id.* at 1074-82. Pope notes that courts have declined to protect labor protests and have struck down legislative measures designed to protect the laborer. *Id.* at 1077. He further describes the lack of constitutional protection accorded to laborers as the "labor black hole." *Id.* at 1074. Pope contends that "restrictions on labor protest that would, if applied to other groups, be subject to strict constitutional scrutiny have greased the unions' slide toward impotence." *Id.* at 1078.

238. *Cleburne*, 473 U.S. at 437-38.

tunate that certain groups have more disadvantages than other groups; but the proper way of dealing with this reality is not to declare a new suspect class for each group that claims to have problems which are peculiar to membership in their particular group.²³⁹ The *Cleburne* Court stated that "[p]rivate biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."²⁴⁰ Indeed the *Cleburne* Court refused to give effect to these biases:

[I]f the large and amorphous class of the mentally retarded were deemed quasi-suspect . . . it would be difficult to find a principled way to distinguish a variety of other groups who have perhaps immutable disabilities setting them off from others, who cannot themselves mandate the desired legislative responses, and who can claim some degree of prejudice from at least part of the public at large. One need mention in this respect only the aging, the disabled, the mentally ill, and the infirm. We are reluctant to set out on that course, and we decline to do so.²⁴¹

SCRUTINY OF THE STRIKER AMENDMENT

The Strikers, just as the mentally retarded, are not left completely unprotected from arbitrary discrimination simply because of the United States Supreme Court's reluctance to recognize new suspect classifications.²⁴² To withstand equal protection review, the legislation creating the classification must pass the rationality test.²⁴³ The *Cleburne* statute flunked the rationality test but renewed the strength of that test, thereby proving that the rationality test is not toothless.²⁴⁴ The *International Union* Court, therefore, could have upheld the Striker Amendment even after choosing the rationality test as the proper level of judicial scrutiny. However, the Court found the goal of government neutrality in labor disputes more than satisfied the rationality standard.²⁴⁵ Under previous legislation, strikers often became eligible for the food stamp program, a situation which forced the federal government to be an indirect strike supporter.²⁴⁶ Now, after the Supreme Court's decision in *International Union*, however, the government is required to refrain from such

239. *Id.* at 446.

240. *Id.* at 448 (citing *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984)).

241. *Id.* at 445-46.

242. *Id.* at 446.

243. *Id.* See *supra* notes 115-17 and accompanying text.

244. *Cleburne*, 473 U.S. at 452-53.

245. See *supra* notes 43-48 and accompanying text.

246. AMERICAN HOSP ASSOC., 11 HEALTH LAW VIGIL, NO. 12 (June 3, 1988).

support and remain neutral in labor disputes.²⁴⁷ Furthermore, the tax dollars of an employer may no longer be used to indirectly fund strikes against itself.²⁴⁸

The household of a striker may contain the identical number of hungry mouths as the household of a non-striking unemployed person.²⁴⁹ However, it seems rational to channel the limited number of food stamps towards the non-striking unemployed person and that person's family, a household possibly without other alternatives.²⁵⁰

CONCLUSION

The United States Supreme Court, in the recent case of *Lyng v. International Union*, was faced with important issues related to claims of first amendment violations and equal protection violations. The Court was challenged to examine these claims in relation to persons on strike as well as analyze the effect of the claimed violations on the households of those on strike.

The Court determined that the Striker Amendment did not violate the associational rights or expressive rights of the Strikers. Furthermore, the Court rejected all equal protection arguments set forth by the Strikers and their households by refusing to allow the Strikers or their households any degree of heightened scrutiny under equal protection analysis.

The ruling in *Lyng v. International Union* is consistent with the United States Supreme Court's decisions in previous years. The Court affirmed its unwillingness to expand the list of specially protected classifications under the equal protection clause. Further, the Court declared that a constitutional right does not include a constitutional right to government funds in order to exercise that right. Finally, the Court advanced the goal of government neutrality in labor disputes.

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247. *Id.*

248. *Id.*

249. See *supra* notes 134-66 and accompanying text.

250. See *supra* notes 43-46 and accompanying text.

