

## U.S. Supreme Court Finds Special Dues Assessment Without Opportunity to Opt-Out Abridges Public Employees' First Amendment Rights

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On June 21, 2012, the U.S. Supreme Court issued a decision in *Knox v Service Employees International Union, Local 1000*, holding that a public sector union was required to issue a notice to nonmember employees when assessing special dues, and nonmember employees are in turn required to opt-in to the special assessment (which in this case was used for political purposes) before the assessment can be imposed. The Court found that without providing the notice and receiving the affirmative consent from nonmembers (not merely an opportunity to opt-out of paying the assessment), the assessment unconstitutionally infringed on nonmembers' First Amendment rights to not support a union's political or ideological projects.

The First Amendment rights of public sector employees related to union dues was established by the Court in its 1977 decision in *Abood v Detroit Board of Education* and its 1986 decision in *Teachers v Hudson*. *Abood* held that a public-sector union cannot require nonmembers (employees who choose to not become members of the union) to fund union political and ideological pursuits. However, a public-sector union is allowed to charge nonmembers for costs related to purposes germane to collective bargaining, including contract negotiations and grievance processing, known as "agency fees." In *Hudson*, the Court identified procedural requirements that a union must meet in order to collect the agency fees without violating the First Amendment. The Court held that a union is required to provide an annual notice (*Hudson* notice) informing employees what the agency fee amount will be in the following year, based on the breakdown of chargeable (germane) versus political and ideological expenses the previous year. This is expressed as a percentage of the total union dues for the following year. The nonmember employees then have an opportunity to challenge the agency fee amount.

In *Knox*, SEIU Local 1000 sent its annual *Hudson* notice in June 2005, notifying employees that the agency fees for the July 2005-June 2006 period would be 56.35% of the total dues. On July 30, 2005, after the period to challenge the agency fee amount had passed, the Union implemented a 25% increase in dues, which it billed as an "Emergency Temporary Assessment to Build a Political Fight-Back Fund." The Union claimed the fund would be used "for a broad range of political expenses, including television and radio advertising, direct mail, voter registration, voter education, and get out the vote activities." The Union informed employees that dues would be increased from 1% of their gross monthly salary per month with a cap of \$45.00, to 1.25% with no cap. The Union did not issue a new *Hudson* notice to allow nonmember employees to opt out of the assessment, but charged them based on 56.35% of the new dues amount.

The Court found that the assessment violated *Hudson*, stating "[t]o respect the limits of the First Amendment, the union should have sent out a new notice allowing nonmembers to opt in to the special fee rather than requiring them to opt out." The Court further held that "when a public-sector union imposes a special assessment or dues increase, the union must provide a fresh *Hudson* notice and may not exact any funds from nonmembers without their affirmative consent." In contrast to merely providing the opportunity to opt-out of the assessment, the Court held that the union could not withhold the assessment from the nonmembers without their affirmative consent. While the decision does not require public sector employers to change any practices, the Court clearly signaled its intention to carefully scrutinize public sector union dues assessments in the future.

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