

Supreme Court: Extra Union Dues Must Be Presented On An Opt-In Basis

June 21, 2012 | | [Labor And Employment](#)



The [United States Supreme Court](#) ruled today that it is unlawful for a public employee union to impose a fee hike to cover political expenses without providing its non-members notice and the opportunity to opt-in to paying the fee.

The lawsuit originally was brought by California workers who were not union members, but who still had to pay dues for the union's representational activities pursuant to an agency shop agreement. In this context, unions must provide what is referred to as a Hudson notice, which explains the fees and provides the non-union employees a chance to object. While the union sent out a notice when it sought annual dues, it failed to notify the nonunion members of extra fees imposed for political activities aimed at defeating several ballot measures in California. The nonunion workers argued that the union's activities violated their freedom of speech rights under the First Amendment.

How does the First Amendment come into play? The First Amendment's freedom of speech guarantee necessarily includes the right *not to speak*. Thus, for example, the First Amendment does not permit a public-sector union to adopt procedures that have the effect of requiring objecting

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nonmembers to lend the union money to be used for political, ideological, and other purposes not germane to collective bargaining. By not providing nonmembers the opportunity to object, the union was in effect requiring that they support its political activities.

Siding with the nonunion workers, seven of the nine Justices held that the union should have provided another Hudson notice when it imposed the extra dues. However, the majority opinion took it a step further: Five of the nine justices agreed that the fee should be presented on an *opt-in basis*, as opposed to requiring the nonmembers to unilaterally opt-out.

Barnes & Thornburg's Labor & Employment Department will issue an Alert with a more detailed analysis in the coming days.