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Back to previous page

Class war at the Supreme Court

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On the eve of the Supreme Court's much anticipated ruling on Obamacare, here is a simple test for detecting the politics behind a decision: When reading the rulings, look for the double standards and answers to questions not posed by the cases themselves. By those measures, the Supreme Court's record in the past week fairly reeks of the justices' politics.

Exhibit A is Justice Samuel Alito's majority opinion in *Knox v. Service Employees International Union, Local 1000*, in which nonunion California state employees whose wages and benefits were nonetheless set through the collective bargaining process of SEIU — the state's largest union — sued the local to get back a special dues assessment it levied in 2005 to fight two ballot measures. The union's normal practice was to allow nonmembers to opt out of paying the roughly 44 percent of dues that went to matters not directly related to collective bargaining, such as election campaigns. In this instance, however, no such opt-out was allowed.

The issue before the court was whether mandating the collection of the special assessment from nonmembers violated their constitutional rights to free speech. Alito and the four other conservative justices ruled that it did, and liberal Justices Sonia Sotomayor and Ruth Bader Ginsburg agreed in a concurring opinion. But Alito's opinion didn't stop there. It also changed the long-standing practice of allowing nonmembers to opt out of paying dues toward union functions outside collective bargaining, mandating instead that the unions "may not exact any funds from nonmembers without their affirmative consent." In other words, unions would have to ask for nonmembers' permission to collect political assessments and, possibly, any dues at all. "Individuals should not be compelled to subsidize private groups or private speech," Alito wrote.

Alito's ruling struck at the heart of American unionism. By laying the groundwork for creating a right for nonmembers to avoid dues payments, he came close to nationalizing the right-to-work laws that 23 states have adopted (though 27 have not). As Sotomayor noted in a somewhat astonished dissent (Ginsburg and Justices Stephen Breyer and Elena Kagan dissented on this point as well), this wasn't the question before the court. Neither side had argued that issue in their briefs or oral presentations. "The majority announces its novel rule," Sotomayor wrote, "without any analysis of potential countervailing

arguments." And it did so in defiance of the court's own Rule 14, which states that "only the questions set out in the petition or fairly included therein will be considered by the Court."

Taken in context with the conservative majority's other recent rulings, Alito's opinion also revealed the most class-based double standard the court has exhibited since before the New Deal. In the 2010 case *Citizens United v. Federal Election Commission* — rendered by the same five justices who signed onto Alito's ruling in *Knox* — the court ruled that corporations could directly spend their resources on political campaigns. These two decisions mean that a person who goes to work for the unionized Acme Widget Company can refuse to pay for the union's intervention in political campaigns but has no recourse to reclaim the value of his labor that Acme reaps and opts to spend on political campaigns. *Citizens United* created a legal parity between companies and unions — both are free to dip into their treasuries for political activities — but *Knox* creates a legal disparity between them: a worker's free-speech right entitles him to withhold funds from union campaign and lobbying activities, but not the value of his work from the company's similar endeavors.

If you seek a precedent for this anomaly, might I suggest the following sentiment on unions written (not in a court ruling, mind you) by former president William Howard Taft in 1922, when he was chief justice: "That faction we have to hit every little while." That's the "legal" tradition to which Alito adhered: fear and loathing of workers' organizations.

The club champion for double standards, however, is not Alito but Antonin Scalia. Dissenting from this week's decision striking down major provisions in Arizona's anti-immigrant law, he argued that Arizona has the sovereign rights of a nation in protecting its borders — a right he gleans through such a bizarre reading of the Constitution that not one of his fellow conservatives signed on to his dissent. Yet the same day, Scalia signed on to a Gang of Five decision declining to hear Montana's case that its century-old law banning corporate contributions to political campaigns should take precedence over *Citizens United*. In the world according to Nino, Arizona has the rights of a nation-state, but Montana must submit to the Gang of Five. You're sovereign when Scalia agrees with you; you're nothing when he doesn't.

Politics? Heaven forfend!

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