tionship could meet its requirements under *Abood* [, *i.e.*, collection of fees from all employees in an agency shop to support labor relations-related activity].'"[674] Thus, the Court held in *Davenport* that the State of Washington could prohibit "expenditure of a nonmember's agency fees for [political] election-related purposes unless the nonmember affirmatively consents."[675]

In *Ysursa v. Pocatello Education Ass'n*,[676] the Court upheld an Idaho statute that outright prohibited payroll deductions for union political activities. Because the statute did not restrict the union's political speech, but merely declined to subsidize it by providing for payroll deductions, the state did not abridge the union's First Amendment right and therefore could justify the ban merely by demonstrating a rational basis for it. The Court found that it was "justified by the State's interest in avoiding the reality or appearance of government favoritism or entanglement with partisan politics."[677]

And then, in *Knox v. Service Employees International Union*,[678] the Court suggested a public union may not assess political fees in an agency shop other than through a voluntary opt in system. The union in *Knox* had proposed and implemented a special fee to fund political advocacy before providing formal notice with an opportunity for non-union employees to opt out. Five Justices characterized agency shop arrangements in the public sector as constitutionally problematic in the first place, and, then, charged that requiring non-union members to affirmatively opt out of contributing to political activities was "a remarkable boon for unions." Continuing to call opt-out arrangements impingements on the First Amendment rights of non-union members, the majority more specifically held that the Constitution required that separate notices be sent out for special political assessments that allowed non-union employees to opt in rather than requiring them to opt out.[679] Two concurring Justices, echoed by the dissenters, heavily criticized the majority for reaching "significant constitutional issues not contained in the questions presented, briefed, or argued." Rather, the concurrence more nar-

---

[674] 551 U.S. at 185, quoting Keller v. State Bar of Cal., 496 U.S. 1, 17 (1990), and adding emphasis.

[675] 551 U.S. at 184.

[676] 129 S. Ct. 1093 (2009).

[677] 129 S. Ct. at 1098. The unions had argued that, even if the limitation was valid as applied at the state level, it violated their First Amendment rights when applied to local public employers. The Court held that a political subdivision, "created by the state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." Id. at 1101, quoting Williams v. Mayor of Baltimore, 289 U.S. 36, 40 (1933).

[678] 567 U.S. ___, No. 10–1121, slip op. (2012).

[679] 567 U.S. ___, No. 10–1121, slip op. at 17 (2012) (Alito, J., joined by Roberts, C.J., and by Scalia, Kennedy, and Thomas, JJ.).