



Update on Efforts to De-integrate the Nebraska State Bar

Last spring, State Sen. Scott Lautenbaugh expressed concerns over the Nebraska State Bar Association's (NSBA) use of mandatory bar dues for political and ideological activities in a Platte Chat. Since then, there have been a number of significant developments.

First, the Nebraska Supreme Court was petitioned to de-integrate the NSBA. If the request is granted, Nebraska lawyers will no longer be required to join the NSBA as a condition of practicing law. In response, the Supreme Court requested public comment on the petition and ordered the NSBA to file a report comprised of the following:

- Detailed inventory of all NSBA activities and an accounting of funds, including amounts allocated to administrative and personnel support services, that are used to finance each activity;
- Analysis of each activity's "germaneness" under the U.S. Supreme Court decision in *Keller v. State of California*; and
- Analysis of the constitutional soundness of the NSBA's "opt-out" program for dissenting members in view of last summer's U.S. Supreme Court decision in *Knox v. Service Employees International Union*.

In *Knox*, the U.S. Supreme Court recognized that when a state establishes an agency shop that exacts compulsory union dues as a condition of employment, "[t]he dissenting employee is forced to support financially an organization with whose principles and demands he may disagree" and that this form of compelled speech and association imposes a "significant impingement on First Amendment rights."

The *Knox* court also recognized that the justification for permitting a union to collect fees from nonmembers -- to prevent them from free-riding on the union's efforts -- is an anomaly and that requiring objecting nonmembers to opt out of paying the nonchargeable portion of union dues -- rather than exempting them unless they opt in -- represents a remarkable boon for unions, creating a risk that the fees nonmembers pay will be used to further political and ideological ends with which they do not agree. The court held that a union could not use a member's compulsory dues for political purposes unless the member affirmatively opted-in to such use. The court's opinion technically applies only to special assessments but the reasoning would appear to apply to all

compulsory union dues.

The NSBA filed the required report in December and, in a petition that is still pending, they recently asked the Supreme Court for an opportunity to provide additional information.

Second, Sen. Lautenbaugh sued the NSBA in federal court last October alleging violations of the United States Constitution and federal civil rights laws. The lawsuit seeks to have the NSBA's lobbying and dues procedures declared unconstitutional. The federal court denied "in all respects" the NSBA's motion to dismiss the case, which is still pending.

The state rulemaking petition and federal civil rights lawsuit are related, but have some key differences. The rulemaking petition requests that, going forward, attorneys no longer be required to be members of the NSBA. The federal lawsuit was filed to end ongoing civil rights violations suffered by NSBA members as their mandatory dues are used without their consent for political and ideological purposes.

