

07-610 LOCKE V. KARASS

DECISION BELOW: 498 F 3d 49

LOWER COURT CASE NUMBER: 06-1747

QUESTION PRESENTED:

In *Ellis v. Railway Clerks*, this Court unanimously “determined that the [Railway Labor Act], as informed by the First Amendment, prohibits the use of dissenters’ [union] fees for extraunit litigation.” *Lehnert v. Ferris Faculty Ass’n*, 500 U.S. 507, 528 (1991) (opinion of Blackmun, J., citing *Ellis*, 466 U.S. 435, 453 (1984)). In *Lehnert*, a four-member plurality therefore held “that the Amendment proscribes such assessments in the public sector.” *Id.* Moreover, Justice Scalia’s separate opinion, concurring in part in the judgment announced by Justice Blackmun, reasoned that “there is good reason to treat [*Ellis* and the Court’s other statutory cases] as merely reflecting the constitutional rule.” *Id.* at 555. May a State, nonetheless, consistent with the First and Fourteenth Amendments, condition continued public employment on the payment of agency fees for purposes of financing a monopoly bargaining agent’s affiliates’ litigation outside of a nonunion employee’s bargaining unit?

CERT. GRANTED 2/19/2008