

No. 17-7263

**IN THE
SUPREME COURT OF THE UNITED STATES**

MARY H. STEELE-KLEIN,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, Local 117, *et al.*,
Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

**BRIEF FOR THE RESPONDENT KING COUNTY
IN OPPOSITION**

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QUESTION PRESENTED

Petitioner Steele-Klein, an attorney proceeding *pro se* and purporting to represent a putative class, claims that the collection of mandatory pension contributions somehow violates her First and Fourteenth Amendment rights. Derivative of this point, she also raises a number of other federal and state law allegations. The Ninth Circuit affirmed dismissal of her complaint for failure to state a claim because the procedural requirements outlined in *Chicago Teacher's Union, Local No. 1. v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986), do not apply to mandatory pension contributions. Petitioner freely admits the “novelty” of her claims and that there is “no express precedent” for them. Pet. for Cert. at 26.

The primary question presented for review is: Whether petitioner has a First and Fourteenth Amendment right to avoid mandatory pension contributions that are a condition of her temporary employment with King County elections?

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OPINION BELOW

The Ninth Circuit affirmed the order of the United States District Court for the Western District of Washington dismissing Petitioner's complaint for failure to state a claim upon which relief may be granted. *Steele-Klein v. Int'l Bhd. of Teamsters, Local 117*, 696 Fed. Appx. 200, 201 (9th Cir. 2017).

RESTATEMENT OF THE CASE

Petitioner worked as a part-time, temporary, employee of King County in the Department of Elections. SER 179, 199-200. In 2012, when contacted for a temporary assignment, she was notified that 50 cents per hour would be deducted from her paycheck for the Teamster Pension Trust (the Trust). *Id.* Under this condition of her employment, for her work in 2013, a mandatory pension contribution of \$27.25 was deducted from her pay. SER 210. Petitioner objected to the mandatory pension contribution and brought suit. SER 179, 186.

Before the District Court, she claimed that the deduction was unfair because she did not vote on the pension contribution and was not eligible to collect pension benefits if she remained a temporary employee. SER 179, 186, 212. She made no allegation that the Trust engages in any speech that she opposes. Instead, she contended that her employer failed to meet the procedural requirements of *Hudson* with regard to the mandatory contributions made to the Trust.

REASONS TO DENY THE WRIT

Petitioner fails to identify any split in the circuit courts on application of *Hudson* to mandatory pension contributions. To the contrary, she is correct that there is no “express precedent” on this point. Pet. for Cert. at 26. No court of appeals has adopted Petitioner’s novel theories and applied *Hudson* to mandatory pension contributions. To the extent that Petitioner raises even a kernel of a colorable claim, which she fails to do, it should first be addressed, explored and developed by the circuit courts.

Further, this case is a poor vehicle to address the merits of Petitioner’s overarching theory regarding application of *Hudson* to mandatory pension contributions. First, in proceedings before the District Court, her First Amendment claim was raised only as a passing conclusion. She failed to make any factual allegations that the Trust engaged in speech, much less speech that she found objectionable. Second, as a *pro se* litigant, petitioner cannot forward the claims of others. “It is well established that the privilege to represent oneself *pro se* provided by 28 U.S.C. § 1654 is personal to the litigant and does not extend to other parties or entities.” *Simon v. Hartford Life, Inc.*, 546 F.3d 661, 663 (9th Cir. 2008).

The Ninth Circuit correctly held that the *Hudson* procedural requirements have no application to mandatory pension contributions. *Steele-Klein v. Int’l Bhd. of Teamsters, Local 117*, 696 Fed. Appx. at 202. The concern in *Hudson* was agency fees for a mandatory public employee union and the sufficiency of procedures to prevent collection from “dissenting employees any sums for the support of

ideological causes not germane to its duties as collective-bargaining agent.” *Hudson*, 475 U.S. at 294 (quoting *Ellis v. Railway Clerks*, 466 U.S. 435, 447, 104 S. Ct. 1883, 1892, 80 L. Ed. 2d 428 (1984)). Requiring “nonunion employees to support their collective-bargaining representative ‘has an impact upon their First Amendment interests.’” *Hudson*, 475 U.S. at 301 (quoting *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977)). As noted by this Court, the improper use of agency fees may well “interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit.” *Id.* (quoting *Abood*, 431 U.S. at 255 (POWELL, J., concurring in judgment)).

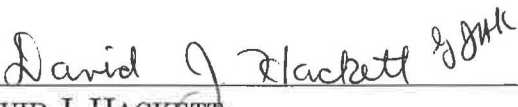
Such concerns are not present with mandatory pension contributions. None of the facts alleged in Petitioner’s complaint support the notion that the Trust is anything other than a bank account for retirement funds. It is an entity created to receive funds, not to engage in political discourse. Petitioner’s challenge, based on *Hudson*, is misguided because her pension contributions are not made to an entity that engages any core speech activities.

Petitioner accepted pension contributions as a condition of employment when she decided to work for King County. Although she would doubtless like to earn a higher hourly wage, the mandatory pension deduction is no more subject to First Amendment challenge, than is a social security deduction or a health plan deduction. The First Amendment does not provide a vehicle for Petitioner to re-negotiate the terms of her voluntary employment with a municipal agency.

CONCLUSION

For the foregoing reasons, Respondent respectfully request that the petition for writ of certiorari be denied. Petitioner has failed to support any grounds that might justify further review of the Ninth Circuit's well supported decision.

Respectfully submitted.



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