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UNIONS IN THE POLITICAL ARENA: LEGISLATIVE ATTEMPTS TO CONTROL UNION PARTICIPATION IN POLITICS

by Gary R. Rice

Unions have been active in the political sphere to varying degrees since their formation. In one of the earliest instances of such union political activity, the Mechanics Union of Trade Associations in Philadelphia proposed working to elect candidates "to represent the interests of the working class."[1] Although many local labor parties were subsequently formed, by 1832 most were disbanded as a result of factional differences. Due to a general decline in trade unionism, the unions of the pre-Civil War period concerned themselves primarily with immediate economic issues.[2] The National Labor Union which was formed in 1866, nominated a presidential candidate in the election of 1872, but the union was absorbed by the Greenback Labor Party six years later.[3] Meanwhile, the Knights of Labor, which was originally formed as an organization of garment workers, had risen to national prominence. Its membership subsequently declined, however, because of its over-diversity, lack of leadership, and association with the Haymarket Riot of 1886.[4] During this period the American Federation of Labor was formed. The Federation was devoted to seeking its aims outside of the political sphere and resisted pressure to form a labor party. It did, however, enter the political arena by working for particular candidates.[5] A long-standing dispute within the AFL over industrial unions led to the formation of the Congress of Industrial Organizations in 1938. This new union was more politically oriented and formed an organization designed to further the election of favorable candidates.[6] With the merger in 1955 of the two organizations as the AFL-CIO, the Committee for Political Education was organized to collect voluntary contributions from union members for political activities.[7]

To keep unions completely out of politics is probably impossible. Unions have grown largely as a result of protective federal legislation, and because they are, in a sense, quasi-public organizations, it is unreasonable to expect them to risk their very existence by abstaining from political involvement. In addition to furthering protective legislation, it has been suggested[8] that union political activity is motivated by the effect of such activity on the creation of jobs,[9] the regulation of wages and hours,[10] the maintenance

[1] H. FAULKNER & M. STARR, LABOR IN AMERICA 45 (1957).
[2] S. COHEN, LABOR IN THE UNITED STATES 66 (1966).
[3] H. FAULKNER & M. STARR, LABOR IN AMERICA 89 (1957).
[4] *Id.* at 96-99.
[5] *Id.* at 117.
[6] *Id.* at 161.
[7] *Id.* at 322.
[8] Barbash, *Unions, Government and Politics*, 1 IND. & LAB. REL. REV. 66 (1947).
[9] The federal government is a great generator of employment, both through defense spending and public works. Workers in these industries are directly affected by changes in governmental spending policy.
[10] Wage and hour regulation decreases the competition created by unorganized workers with lower wages.

of health and safety standards,[11] and the economic stabilization of various industries.[12]

Due to the Democratic Party's general orientation, outside the South at least, toward "liberalism" and "pro-unionism," most union financial support has been directed to Democratic candidates. During the 1968 election year, labor unions spent an officially reported four million dollars on political campaigns.[13] Of that amount the greatest portion was spent on pro-union candidates for local offices, rather than the presidential candidates. At least one source has suggested that unions spend perhaps as much as sixty-two million dollars a year on political activity.[14] As long as the reporting system remains inadequate, however, the debate over how much money is actually spent will remain unsettled. It is not the purpose of this Comment to discuss the proper role of unions in politics. Rather this Comment will focus on the legislative attitude towards union political activity as expressed in section 304 of the Taft-Hartley Act[15] and the various state acts regulating such activity. It will further analyze the statutes' ability to fulfill their respective objectives, and then offer certain suggestions for legislative regulation of union political activity.

I. Section 304 of the Taft-Hartley Act

The Background of Section 304. Union participation in political elections aroused little interest at the turn of the century. The focus of attention on the political activities of corporations,[16] however, subsequently resulted in the passage of the Federal Corrupt Practices Act.[17] This Act prohibited a corporation from making a money contribution in connection with a federal election. Congressional concern with union activity remained slight until 1936 when a congressional committee reported large union donations in the election campaign of that year.[18] Legislation concerning union political activity was not enacted, however, until section 9 of the War Labor Disputes Act was passed in 1943.[19] In addition, the scope of this legislation was limited since it excluded primary elections and outlawed only direct contributions. Because the War Labor Disputes Act was only temporary, as World War II drew to a close a need for permanent labor reform arose. The activities of the United Mine Workers[20] and the war-

[11] Most prominent in this field is the United Mine Workers which has sought both federal and state inspection laws.

[12] Unions sometimes work for government-regulated prices to keep employment high.

[13] By comparison, unions spent a reported 2.5 million dollars in 1960, 1.8 million dollars in 1956, and 2.0 million dollars in 1952 on political activity. U.S. News, Nov. 11, 1968, at 84.

[14] White, *Why Should Labor's Leaders Play Politics with the Worker's Money*, Reader's Digest, Oct. 1958, at 157, citing a statement by Rep. Ralph Guinn of New York.

[15] 18 U.S.C. § 610 (1964).

[16] *See* J. Shannon, Money and Politics 31-33 (1959).

[17] Act of Jan. 26, 1907, Pub. L. No. 59-36, 34 Stat. 864.

[18] Kovarsky, *Unions and Federal Elections—A Social and Legal Analysis*, 12 St. Louis U.L.J. 358, 371 (1968).

[19] Act of June 25, 1943, Pub. L. No. 78-89, 57 Stat. 163.

[20] John L. Lewis led his mine workers on a walkout over the union security issue. Although the National Defense Mediation Board, established by presidential order in March of 1941, voted against allowing the strike, it was unable to stop the walkout. Shortly thereafter the Board was abolished. S. Cohen, Labor in the United States 125 (1966).

time strikes[21] had created an atmosphere conducive to labor legislation.[22] These factors, combined with a general conservative swing throughout the country, resulted in public demand for governmental regulation of labor.[23] The election of 1946 gave the Republicans control of Congress and set the stage for the enactment of the Taft-Hartley Act.

Representative Hartley introduced H.R. 3020, which contained a provision that was to become the basis of the enacted section 304, on April 10, 1947.[24] Despite the prevalent threat of legislation restricting union activity, there was no united labor position concerning what should or should not be included in the legislation.[25] After the Senate and House passed bills with differing provisions,[26] a conference committee was created to resolve the differences.[27] The resulting conference report, which contained section 304, was passed by the House with only one hour's debate, and the Senate passed the Taft-Hartley Act after only two days of debate.[28] The enacted section 304 reads in part as follows:

> It is unlawful for . . . any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.[29]

The final part of the section provides fines for unions, for their officers and directors, and for any person who receives the money.[30] Additional fines are imposed for willful violations.[31]

The legislative history of section 304 is not extensive. The Taft-Hartley Act was a complex piece of legislation and other sections merited more attention. The House Education and Labor Committee report carried only a one paragraph summary of section 304 indicating that (1) unions were subject to the provisions, and (2) expenditures as well as contributions were prohibited.[32] The primary legislative history of the Act is found in a

[21] There were some 4,557 work stoppages with a resulting loss of 23.5 million man hours during the war period. *Id.* at 126.

[23] A. McADAMS, POWER AND POLITICS IN LABOR LEGISLATION 27-28 (1964). Although strikes cause great inconvenience to the public during peacetime, during wartime they have the added disadvantage of appearing unpatriotic.

[23] Most states had already amended their own "Baby Wagoner Acts" to regulate unions as well as employers. S. COHEN, LABOR IN THE UNITED STATES 484 (1966).

[24] 93 CONG. REC. 3400 (1947).

[25] A. McADAMS, POWER AND POLITICS IN LABOR LEGISLATION 27-28 (1964).

[26] 93 CONG. REC. 3747-48, 5298 (1947). The Senate bill had no section concerning political contributions.

[27] 93 CONG. REC. 5413, 5298 (1947).

[28] 93 CONG. REC. 6537-49, 6593-615, 6654-93 (1947).

[29] 18 U.S.C. § 610 (1964). Section 304 also subjects corporations to the same regulations as are applied to unions.

[30] *See* 1951 U.S. CODE CONG. & AD. NEWS 723.

[31] The term "willful" is not defined in the statute, but has been defined by a federal court to mean "that the person charged with the duty knows what he is doing." Dennis v. United States, 171 F.2d 986, 990 (D.C. Cir. 1948).

[32] CONFERENCE REPORT LABOR-MANAGEMENT RELATIONS ACT OF 1947, H.R. REP. No. 510, 80th Cong., 1st Sess. 67 (1947).

series of exchanges between Senator Taft and his colleagues.[33] The thrust of Senator Taft's remarks was that a labor union should not be allowed to use members' dues for political causes in which they may not believe. Little mention was made of any corrupting effect of union money, which was the reason most prominent in the public's mind for the existence of section 304. Clearly, both arguments can be recognized as legislative purposes inherent in the section.[34]

The Early Years Under Section 304. Labor immediately set out to test the constitutionality of section 304.[35] The first case to deal with the newly-enacted section was *United States v. CIO.*[36] *The CIO News*, a periodical published by the union and distributed to its members, was financed by CIO funds. The source of the funds, however, was unclear. The front page of the *News* had carried an editorial by CIO president Philip Murray urging a vote for a certain candidate for Congress. In addition to normal distribution, a thousand extra copies were sent to the regional CIO director, apparently to be used in the election campaign. An indictment was returned charging the CIO and its president with a violation of section 304. The United States District Court sustained a motion to dismiss, remarking "that no clear and present danger to the public interest can be found in the circumstances surrounding the enactment of this legislation."[37] An appeal was made directly to the United States Supreme Court.[38]

Rather than passing on the constitutionality of the section, the court chose to rely upon statutory construction. It held that the key word "expenditure" did not apply to house organs published for union members only. The Court first noted that "expenditure" was not a word of art and that its meaning, therefore, must be ascertained from the congressional intent in passing the statute. The Court quoted extensively from the Senate debates, even citing an exchange between Senators Pepper and Taft which clearly indicated that, in fact, the section was intended to prohibit the publication of union newspapers containing an editorial position concerning candidates for public office if the distribution and publication expenses were paid from union dues.[39] Despite this evidence of con-

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[33] 93 CONG. REC. 6593-98, 6603-07 (1947).

[34] A federal court has subsequently held that both were purposes of § 304. United States v. Lewis Food Co., 236 F. Supp. 849 (S.D. Cal. 1964).

[35] H. MILLIS & E. BROWN, FROM THE WAGONER ACT TO THE TAFT-HARTLEY ACT 596 (1950).

[36] 335 U.S. 106 (1948).

[37] United States v. CIO, 77 F. Supp. 355 (D.D.C. 1948). The clear and present danger test originated in Schenck v. United States, 249 U.S. 47 (1919). It is not clear whether this test continues to be applied in its pure form. *See* Dennis v. United States, 341 U.S. 494 (1951); American Communications Ass'n v. Douds, 339 U.S. 382 (1950).

[38] The appeal was made under a federal statute, 18 U.S.C. § 682 (1947), now 18 U.S.C. § 3731 (1964), allowing direct appeals from dismissals of indictments based on the invalidity of a federal statute.

[39] Mr. Barkley. Let us suppose a labor organization publishes a newspaper for the information and benefit of its members, and let us suppose that it is published regularly . . . and is paid for from a fund created by the payment of dues into the organization it represents . . . . Does the Senator from Ohio advise us that under this measure such a newspaper could not take an editorial position with respect to any candidate for public office, without violating this measure?
Mr. Taft. If it is supported by union funds, I do not think it could.

gressional intent, the Court held that a periodical distributed solely to union members[40] could be published even though it contained an article advocating the election of a particular candidate for office. The Court also advanced the argument that since members knew that it was the practice of unions to publish house organs and with this knowledge they nevertheless became associated with these organizations, they were in no position to complain.

Justice Rutledge, in a concurring opinion, attacked the leading opinion for ignoring the legislative history of the Act. He stated that the majority's interpretation "is not construction under the doctrine of strict necessity. It is invasion of the legislative process by emasculation of the statute."[41] The Justice noted that statutes restricting constitutional freedoms must be narrowly drawn to meet the precise evils found by Congress.[42] In pointing out that majority rule is a firmly established principle in unions, Justice Rutledge reasoned that if minority rights are the primary concern, it would be better to simply allow the minority to refrain from paying that portion of its dues allocated to activities which the minority opposed.[43] Furthermore, while Congress could find that unrestricted expenditures by unions for political activities might be undesirable, this did not mean it had the power to outlaw *all* expenditures, since to do so would deprive "the electorate of information, knowledge, and opinion vital to its function."[44]

The next challenge to section 304 came the following year in *United States v. Painters Local 481*.[45] In that case a small union in Connecticut purchased radio time for $32.50 and newspaper ads for $111.14 to discour-

93 CONG. REC. 6595 (1947). A second passage was cited in the appendix to the concurring opinion of Justice Rutledge, 335 U.S. at 157-58.

> Mr. Barkley. So if there is a labor organization which is publishing a newspaper . . . and if the expenses of that publication and distribution are paid from the funds raised by means of payment of dues . . . then in order for that newspaper to take any position with respect to any candidate, it would have to charge a subscription . . . .
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> Mr. Taft. I am inclined to think so.

Another indication of the general understanding of the meaning of § 304 was found in the comment of President Truman in his veto message: "This provision would prevent the ordinary union newspaper from commenting favorably or unfavorably upon candidates or issues in national elections." 93 CONG. REC. 7503 (1947).

[40] The Court misstated the fact situation since the indictment concerned itself with the extra copies of the magazine which were intended for distribution in the election campaign, as well as those intended for the regular distribution to CIO members.

[41] 335 U.S. at 139.

[42] *Id.* at 141.

[43] *Id.* at 149. *See* Machinists Union v. Street, 367 U.S. 740 (1961); text accompanying notes 120-23 *infra*.

[44] 335 U.S. at 144. The *CIO* case could have been decided on the basis that only a small sum of money was involved in the extra copies, and that there is no public concern with a few dollars. *See* Kovarsky, *Unions and Federal Elections—A Social and Legal Analysis*, 12 ST. LOUIS U.L.J. 358, 378 (1968). Such reasoning ignores, however, the fact that the indictment was based not only upon the extra copies published, but also the normal distribution of the magazine.

[45] 79 F. Supp. 516 (D. Conn. 1948), *rev'd*, 172 F.2d 854 (2d Cir. 1949). Before the *Painters* case arose Walter Reuther filed an action before the District Court of the District of Columbia to obtain a declaratory judgment that § 304 was unconstitutional. Reuther v. Clark, 14 CCH Lab. Cas. ¶ 64,503 (D.D.C. 1948). The request was denied by a three-judge panel despite the fact that a classic case for declaratory judgment was presented. The complaint alleged that the union had conducted activities which were apparently within the terms of the statute, that further activities of this type were planned, and that the Attorney General had threatened the union with prosecution.

age support for Senator Robert Taft's presidential candidacy. The district court wrote an extensive opinion upholding the indictment as charging an offense under section 304 and upholding the section as constitutional. *Painters* was distinguished from *CIO* on the basis that the latter was concerned only with the limited fact situation of that case.[46] It was clear to the court that this was the type of expenditure sought to be prohibited by the Act.[47] Finding this, the court further held that "the right of the people by free elections to keep the control of their own government is truly fundamental and preponderant over even the freedoms of the First Amendment."[48] The court reasoned that groups with great economic power have the potential to control the nation if allowed to proceed unchecked. Therefore, when balanced against even first amendment freedoms, it was apparent that the regulation should be allowed.[49]

The United States Court of Appeals, however, viewed the indictment quite differently and dismissed it as not stating an offense under the statute.[50] The court viewed the number of people affected as the critical factor. It stated: "It is hard to imagine that a greater number of people would be affected [by the publicity here] than by publication in the union periodical dealt with in the *CIO* litigation."[51] Further, since the union had no newspaper, "the daily press [and] radio was as natural a way of communicating its views to its members as by a newspaper of its own."[52] The court apparently misinterpreted the *CIO* case, however, since Justice Reed had clearly attempted to differentiate between house organs and general circulation newspapers.[53]

The final case in this early period was *United States v. Laborers Local 264*.[54] In that case the union supplied men and automobiles to help in the campaign of the union business agent for a political office. Some of the expenditures had been used for registering voters and transporting them to the polls. The government was unable to present evidence separating these expenditures from the ones directly benefiting the candidate. The district court noted the importance of having as many people as possible registered to vote[55] and concluded that Congress had not intended to curtail activities which further this goal. The court concluded that the other expenditures in behalf of the candidate constituted "an uncertain, insig-

[46] The court merely repeated the factual differences between the two cases.

[47] 79 F. Supp. at 521. The court did not cite any congressional debates, but an exchange between Senators Pepper and Taft makes it clear that this situation was intended to be covered. "Mr. Pepper: [W]ould it be forbidden by this proposed act to pay for any radio time, for anybody to make a speech that would express to the people the point of view of that organization? Mr. Taft: If it contributed its own funds to get somebody to make the speech, I would say they would violate the law." 93 CONG. REC. 6596 (1947).

[48] 79 F. Supp. at 522.

[49] *Id.*

[50] 172 F.2d 854 (2d Cir. 1949).

[51] *Id.* at 856.

[52] *Id.*

[53] "Of course, a periodical financed by a corporation or labor union for the purpose of advocating legislation advantageous to the sponsor or supporting candidates whose views are believed to coincide generally with those deemed advantageous to such organization is on a different level from newspapers devoted solely to the dissemination of news, but the line separating the two classes is not clear." 335 U.S. at 122.

[54] 101 F. Supp. 869 (W.D. Mo. 1951).

[55] *Id.* at 875.

nificant amount" which Congress had not intended to be the basis of criminal prosecution.[56] Thus, while the court admitted that the rule of *de minimis non curat* did not apply to criminal cases, this result was in fact achieved by ruling that Congress had not intended to cover these small sums.[57] The court noted that under the government's interpretation, any union employee "from its president to its janitor" could expose the union to the risk of prosecution.[58] If any person on the payroll of a union spent a few hours taking people to the polls, voting, or participating in any other type of political activity, the possibility of prosecution would exist. The court concluded that Congress could not have intended such a result.

In these early cases, every appellate court which reached the merits of the case commented that if the statute were interpreted literally, there would be no doubt as to its unconstitutionality. Thus, by judicial interpretation, the principle organs of union communication, union newspapers for the larger nationals and radio and television for the smaller locals, were exempted from the broad sweep of the statute. Furthermore, expenditures were exempted from coverage if they were small or directly related to such "nonpartisan" activities as voter registration. The statute was barely alive at this point and it was to be some six years before the statute received any support.

Later Development of Section 304. The first case to sustain an indictment under section 304 was *United States v. Auto Workers Union.*[59] The union had been charged in district court with paying for a television broadcast in which certain candidates for federal office were endorsed.[60] The money for the broadcast had come solely from union dues. The union moved to dismiss the indictment on the grounds that the statute was unconstitutional and, in the alternative, that the expenditures were outside the terms of the statute. The district court, in sustaining the motion, addressed itself solely to the latter grounds, holding the alleged actions and the facts of the *Painters* case "as alike as two peas in a pod."[61] The court adopted the reasoning of the earlier cases in expressing doubt over the constitutionality of the section if it were broadly interpreted. By a somewhat strained logic the court concluded, therefore, that the statute should be narrowly interpreted since "Congress did not intend to write an unconstitutional law."[62]

On direct appeal to the United States Supreme Court, the dismissal was reversed. Speaking for the majority, Justice Frankfurter traced the statute to the early anti-corporate legislation and indicated that the purpose of such statutes was to curb the serious effects on elections of money from

[56] *Id.* at 873.

[57] The court appears to have misinterpreted § 304. Although the purpose of curbing the economic power of unions would not be substantially affected by the application of the section to small expenditures, the section itself denotes no minimum amount to be covered and seemingly even the smallest expenditure would constitute a violation.

[58] 101 F. Supp. at 876.

[59] 352 U.S. 567 (1957).

[60] United States v. Auto Workers Union, 138 F. Supp. 53 (E.D. Mich. 1956).

[61] *Id.* at 57.

[62] *Id.* at 59.

"those who exercise control over large aggregations of capital."[63] *CIO* was distinguished on the basis that the magazine was distributed only to union members or purchasers of the magazine, and not, as here, to the public at large. Justice Frankfurter noted: "The evil at which Congress has struck in [section 304] is the use of corporate or union funds to influence the public at large to vote for a particular candidate or a particular party."[64]

Justice Douglas dissented on the basis that union expression of views are fully protected by the first amendment. He noted: "Until today political expression has never been considered a crime."[65] He felt that no remand was necessary since the facts which the majority thought the lower court should determine[66] were irrelevant to the constitutional issues. The Justice disposed of the question of minority rights by characterizing it as involving only the "internal management of union affairs."[67] He further indicated that any problem of minority rights would best be solved by some other type of statute, although he made no suggestion as to what type he considered most suitable.[68]

In *United States v. Teamsters Local 688*[69] the union was indicted for using a system whereby union members could allocate a certain portion of their dues to political activities. It appeared that each member's dues were the same and that these allotments did not represent extra assessments. The federal district court held that such funds were voluntary donations and thus not covered by section 304. The court did not discuss the fact that when money is used for political purposes, the nonpolitical activities have to be supported in greater measure by the nonparticipants. The result is a shifting process whereby the nonparticipants have to pay more than their share for the union's nonpolitical activities.

The most recent case to deal with union violations of section 304 was *United States v. Anchorage Central Labor Council.*[70] In that case a union association received contributions to a "television fund" from member unions. These funds were used to purchase television time for a series of programs, some of which attacked various candidates for office. The court held that the expenditures were not covered by section 304 because (1) they were voluntary and did not violate minority rights, and (2) television time was the member union's only source of communication with its members. The court ruled that because the locals voted to pay the money into a common fund, the expenditures were voluntary. However, the court failed to distinguish between voluntariness on the individual level and on the individual union level. Although the locals voted to put money into

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[63] 352 U.S. 585 (1957).

[64] *Id.* at 589. The Court avoided the constitutional issues, noting that an appeal of the sustaining of a motion to dismiss is not the setting within which to decide constitutional questions. Only after a trial has provided a concrete factual situation can such a decision be reached.

[65] *Id.* at 594.

[66] (1) How large an audience did the broadcast reach? (2) Was the conduct active electioneering or simply a statement of the record? (3) Did the union intend to affect the outcome of the election? *Id.* at 595-96.

[67] *Id.* at 596.

[68] *Id.*

[69] 41 CCH Lab. Cas. ¶ 16,601 (E.D. Mo. 1960).

[70] 193 F. Supp. 504 (D. Alas. 1961).

the "television fund," the fund was a mere conduit for money derived from the local union. Thus, on the individual level the money was taken from the same dissenting minority as in the previous cases of direct expenditures by the union. The court further remarked that it was reasonable for the labor council to use television to reach its members because of the great cost of printing a newspaper.[71]

While the statute seemed moribund at this point, some new life may have been breathed into it by *United States v. Lewis Food Co.*,[72] which although it concerned a corporation,[73] is directly analogous to the union situation.[74] Lewis Food published a list of all California legislators, state and federal, with percentage listings of their voting in favor of "constitutional principles."[75] The district court dismissed the indictment, holding that the advertisement represented only a publication of the voting record of the legislators.[76] The court of appeals reversed, holding that "a jury question was presented as to whether the advertisement . . . was designed to influence the public at large to vote for or against the particular candidates."[77] A mere percentage figure based on undisclosed criteria was not "an objective report on the voting record of public officeholders."[78] Of even greater potential significance is the statement by the court that "[t]he statute itself, however, does not provide an exception when stockholders consent."[79] This statement is an indication that even if union members voted unanimously in favor of an expenditure, a violation has nevertheless been committed.[80] It is also an indication that the statute was not intended solely as a solution to the problem of minority rights.

II. State Legislation

At present four states have provisions banning political contributions by labor unions. A New Hampshire statute[81] provides that no gift of any type shall be made to any organization if it is to be used in any way to promote a candidate for political office. The Pennsylvania statute[82] is broader, prohibiting any valuable thing being given or lent for "any political purpose whatsoever." The Indiana statute[83] is also comprehensive, outlawing direct and indirect contributions that have the objective of in-

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[71] *Id.* at 507.

[72] 366 F.2d 710 (9th Cir. 1966).

[73] This is the only recent case the author has been able to locate dealing with corporate violations of § 304.

[74] One of the purposes of § 304 was to put unions and corporations on a par in this regard. 93 CONG. REC. 7508 (1947) (remarks of Rep. Robison). For an interesting discussion relating unions to corporations, see G. TAYLOR, THE POLITICAL IMPERATIVE: THE CORPORATE CHARACTER OF UNIONS (1968).

[75] The opinion of the district court contains a reprint of the advertisement published in some thirty-five newspapers. United States v. Lewis Food Co., 236 F. Supp. 849, 851-52 (S.D. Cal. 1964).

[76] *Id.* at 853.

[77] 366 F.2d at 712.

[78] *Id.*

[79] *Id.* at 713.

[80] Compare the court's statement with the role of unanimous stockholder approval in *ultra vires* actions. *See* McQueen v. Dollar Sav. Bank, 133 Ohio St. 579, 15 N.E.2d 529 (1938).

[81] N.H. REV. STAT. ANN. ch. 70, § 2 (Supp. 1967).

[82] PA. STAT. ANN. tit. 25, § 3225 (1963).

[83] IND. ANN. STAT. § 29-5712 (1969).

fluencing a political campaign. The New Hampshire statute has never been interpreted by the courts of that state. Moreover, in Pennsylvania and Indiana, the cases upholding their respective statutes have been concerned only with the prohibitions against corporate expenditures.[84]

The Texas statute is simple. It provides: "It shall be unlawful for any labor union to make any financial contribution to any political party or to any persons running for political offices as a part of the campaign expenses of such individual."[85] This provision was part of a comprehensive statute[86] passed in 1943 regulating the activities of labor unions. Immediately after the passage of this legislation the AFL sought a declaratory judgment[87] that the entire statute was unconstitutional. One of the provisions attacked was that relating to political contributions. In *AFL v. Mann*[88] the court of civil appeals held that political contributions could be outlawed since the free selection of governmental officials is essential to the operation of a democratic government and such officials must represent all the people, not just certain groups or classes. The court noted that a provision similar to the one being challenged had long been applied to corporations.[89] It further held that the rights of the individual were not affected since the prohibition applied only to a labor union as a "separate functioning institution."[90] In addition, the court noted that the statute did not affect the union's right to inform its members of the merits or demerits of any candidate.

A later Texas case provides an indication of an individual member's remedy against union violations of the Texas provision. In *Taylor v. Plumbers Union*[91] plaintiff had been expelled from the union for failure to pay dues. Although Taylor tendered the back dues the union would not accept the payment unless an additional two dollar "assessment" was paid. Taylor sought reinstatement and damages for the exclusion contending that the union demand constituted a "void and illegal political assessment."[92] No mention was made in the plaintiff's petition as to why the assessment was illegal, but the court of civil appeals assumed it was because it violated the Texas political contribution provision. Although the court held that the claim for damages was proper, the claim for reinstatement was abated because the plaintiff had failed to seek the remedies provided by the union constitution. *Taylor* thus makes it clear that a union member who refuses to pay that portion of dues spent for political purposes must exhaust his intra-union remedies before turning to the courts.[93]

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[84] State v. Fairbanks, 187 Ind. 648, 115 N.E. 769 (1917); *In re* Bechtel's Election Expenses, 39 Pa. Super. 292 (1909).

[85] TEX. REV. CIV. STAT. ANN. art. 5154a, § 4b (1962).

[86] *Id.* art. 5154a.

[87] Under the Texas Uniform Declaratory Judgment Act, TEX. REV. CIV. STAT. ANN. art. 2524-1 (1962).

[88] AFL v. Mann, 188 S.W.2d 276 (Tex. Civ. App. 1945).

[89] TEX. REV. CIV. STAT. ANN. art. 1349-52 (1962); TEX. PEN. CODE ANN. arts. 213, 214, 265 (1961).

[90] 188 S.W.2d at 283.

[91] 337 S.W.2d 421 (Tex. 1960).

[92] *Id.* at 422.

[93] *See* DeMille v. Radio Artists, 31 Cal. 2d 139, 187 P.2d 769, *cert. denied*, 333 U.S. 876 (1948).

A few states have political contribution statutes which are no longer operative. One state repealed its provision[94] and two such statutes have been invalidated on technicalities.[95] Only in Massachusetts has the issue of the constitutionality of such statutes been squarely faced. In *Bowe v. Secretary*[96] a group of voters had proposed[97] the adoption of several provisions regulating unions, one of which outlawed union contributions to election campaigns. The opponents of the proposed law challenged the constitutionality of the change, contending that it violated freedom of the press as guaranteed by the Massachusetts constitution.[98] The Massachusetts supreme judicial court held the proposal unconstitutional and noted that "the liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets."[99] In relating freedom of the press to labor unions, the court concluded that this freedom is enjoyed by associations as well as by individuals. Moreover, the prohibition against the use of union financial resources for the expenses of printing and circulating political opinions amounted to a restriction on freedom of the press.[100] The court went on to note, however, that the statute could prohibit labor unions from "dumping immense sums of money into political campaigns,"[101] but that such regulation was far different from an absolute prohibition against union political contributions.

With so few reported cases, it is hard to draw any general conclusion concerning state attempts to regulate labor union political contributions. The paucity of cases could mean that the statutes have been effective, although it probably indicates that the prohibitions are generally ignored. Certainly there is a need for some type of state regulation, since the coverage of section 304 is limited to federal elections.

III. Facing the Current Problem

An examination of the cases involving section 304 reveals that the provision has been ineffective in regulating union political contributions.[102] It is apparent that the few state regulations have also been inadequate. Congress and the state legislatures need to consider new legislation, keeping in mind the twofold purpose of this type of regulation: (1) to prevent union con-

[94] The 1955 Wisconsin statute prohibiting campaign contributions by labor unions was repealed in 1959. *See* WIS. STAT. ANN. § 12.56 (repealed 1959). On the other hand, a similar provision relating to corporations is still in existence and was upheld in State v. Joe Must Go Club, 270 Wis. 108, 70 N.W. 681 (1955).

[95] *See* Alabama Fed'n of Labor v. McAdory, 246 Ala. 1, 18 So. 2d 810, *cert. denied*, 325 U.S. 450 (1945); AFL v. Reilly, 113 Colo. 90, 155 P.2d 145 (1944).

[96] 320 Mass. 230, 69 N.E.2d 115 (1946).

[97] The forty-eighth amendment to the Massachusetts Constitution allows ten qualified voters to initiate an election of a proposed law. MASS. CONST. ANN. amend. 48.

[98] MASS. CONST. ANN. Declaration of Rights art. 16.

[99] 69 N.E.2d at 129.

[100] The court's logic can be criticized on the ground that many political actions of labor unions (voter registration, speeches, etc.) have nothing to do with the printed word. The court seemed to be attempting to enlarge freedom of the press to include freedom of speech.

[101] 69 N.E.2d at 130.

[102] Between 1950 and 1956, the government received fifty-four complaints involving § 304, forty-nine were investigated, fourteen were brought before grand juries, two indictments were returned but no convictions resulted. Comment, *Political Contributions by Labor Unions*, 40 TEXAS L. REV. 665, 670 (1962).

trol of elections; and (2) to protect minority union members from having funds used for political purposes contrary to their wishes.

Control of Elections. Legislation designed to prevent union control of elections could take any of three forms: government subsidy, direct or indirect, of candidate's expenses; publication of political donations; or direct limitations on the size of political contributions. The first proposal would provide a broad basis of support to a candidate in order to prevent undue influence by any one group or person. There are two basic means to accomplish this objective—a tax incentive and a direct subsidy. Tax incentive proposals would allow a person to deduct a political contribution as an expense on his income tax return or deduct the contribution as a direct credit to his income tax bill.[103] The size of the deduction should be limited, however, to a figure small enough to avoid providing an advantage to higher-income taxpayers.[104] A direct subsidy is not a new idea,[105] and such a subsidy at one time received congressional endorsement in a modified form.[106] Under both forms of subsidization, sufficient funds would have to be received by the candidate to make it unnecessary for him to rely heavily on large contributors. However, the result of the subsidy might be to simply move expenditures to a higher level. It is rare for a politician not to spend everything he can get.[107] There is also the problem of what to do about primaries, which in many states are the crucial elections. An additional problem of direct subsidies is deciding to whom to give the money if it is not given directly to the candidates. State political organizations are not going to be willing to have a large amount of money placed in the hands of national officials. On the other hand, once the money is in the hands of the local organizations it would be difficult to force funds upward.[108]

The publication of campaign expenditures and gifts has been proposed as a means of limiting the influence of large contributors. Present federal law concerning campaign contributions consists of provisions requiring political committees[109] and individuals contributing more than $50[110] to report expenditures to the Clerk of the House of Representatives. In addition, every candidate is required to account for expenditures made by himself or by others "with his knowledge or consent,"[111] and the total

[103] This is an increasingly popular approach, being endorsed by former President Johnson. *See* Lobel, *Federal Control of Campaign Contributions*, 51 MINN. L. REV. 1, 53 (1966). *See also* H. ALEXANDER, TAX INCENTIVES FOR POLITICAL CONTRIBUTIONS? (1961) for a discussion of the techniques of various plans.

[104] The proposal of the Committee for Economic Development limits the credit to $25. CED, FINANCING A BETTER ELECTION SYSTEM 21 (1968).

[105] President Theodore Roosevelt proposed such a plan. 42 CONG. REC. 78 (1907).

[106] The Election Campaign Fund Act allows a citizen to, by checking a square on his income tax return, contribute a dollar to a fund evenly divided between the two major political parties. 26 U.S.C. § 6096, 31 U.S.C. § 971-73 (1967). The Act is inoperative until Congress passes a bill putting the scheme into action. Act of June 13, 1967, Pub. L. No. 90-26, 81 Stat. 58.

[107] Sen. Barry Goldwater was an exception. He had approximately one million dollars remaining after his presidential campaign. *See* Pincus, *The Fight over Money*, 217 ATLANTIC 71, 73 (1966).

[108] H. ALEXANDER, RESPONSIBILITY IN PARTY FINANCE 31 (1963).

[109] 2 U.S.C. § 244 (1964).

[110] 2 U.S.C. § 245 (1964).

[111] 2 U.S.C. § 246 (1964).

amount of such expenditures is limited.[112] However, the law is full of loopholes: intrastate committees are excluded,[113] any money spent for a candidate without his knowledge goes unreported,[114] and no expenditures in primaries need be reported.[115] Although the present law has been held to be constitutional by the Supreme Court,[116] a broader publicity statute might be exposed to attack on the basis that the publication of an individual's campaign contributions could be as effective in restricting freedom of association as the publication of a person's membership in an organization.[117] However, a Florida statute[118] providing broad expenditure regulations has been upheld by the highest court of that state.[119] Expenditure regulations must be effective in forcing candidates to reveal their political expenses. As a result of such publication, the elected official must govern his conduct carefully in order to avoid a charge of favoring the contributing group or person.

Finally, a limitation could also be placed upon the amount of money that unions or corporations could contribute. This is the approach suggested by Mr. Justice Rutledge in *CIO* and by the Massachusetts court in *Bowe*. A formula would have to be derived that would be fair when applied to both unions and corporations.

Protection of Minority Rights. Support for the enactment of legislation designed to protect minority rights can be found in *Machinists Union v. Street*,[120] a case arising under the National Railway Labor Act. *Street* concerned union shop agreements under section 2, Eleventh[121] of the NRLA. A group of employees brought an action to void the agreement, based on a contention that dues were being used for political causes which the plaintiffs did not support. The trial court enjoined the enforcement of the union shop provision.[122] The Supreme Court on certiorari noted that the union shop provisions had been enacted to spread the costs of collective bargaining fairly. The Court found that the statute was not intended to "provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose."[123] However, the Court did not void the union shop, but suggested two remedies: an injunction to prohibit the union from spending the amount of money extracted from

[112] 2 U.S.C. § 248 (1964) ($10,000 for a senatorial candidate, $2,500 for a candidate for the House).

[113] Such committees are not included in the definition of "political committee." 2 U.S.C. § 241(c) (1964).

[114] Unless the contributor comes under one of the other sections.

[115] 2 U.S.C. § 241(a) (1964).

[116] Burroughs v. Cannon, 290 U.S. 534 (1934).

[117] *See* Shelton v. Tucker, 364 U.S. 479 (1960); NAACP v. Alabama, 357 U.S. 449 (1958), relating to freedom of association and publication of membership in an organization. These cases indicate that a balancing test is used, that is the greater the interest of the state in the revelation of the membership, the more that must be revealed.

[118] FLA. STAT. ANN. §§ 99, 161(4), (5), (8), (9) (Supp. 1969).

[119] Smith v. Ervin, 64 So. 2d 166 (Fla. 1953).

[120] 367 U.S. 740 (1961).

[121] 45 U.S.C. § 152, Eleventh (1965). The validity of the section was upheld in Railway Employee's Dept. v. Hanson, 351 U.S. 225 (1956).

[122] Machinists Union v. Street, 215 Ga. 27, 108 S.E.2d 796 (1959).

[123] 367 U.S. at 764.

the employee to support political activity; or a restitution suit by the employee to recover that proportion of his dues spent for political purposes. In either case a dissenting employee must notify the union of his dissent.[124] The remedy was further defined in *Railway Clerks Union v. Allen*[125] where a situation similar to *Street* existed. The Court held (1) a dissenting employee must actively make known his opposition to the expenditures, although he need not object to each and every specific disbursement individually, (2) an order allowing the dissenting employee to pay no dues to the union was not a proper remedy, (3) since a union has financial records, the burden is on it to prove what proportion of expenditures are nonpolitical, and (4) unions will be allowed to establish internal plans for granting reduced dues to dissenters.

Street and *Allen* were based on the statutory language and legislative history of the NRLA and as yet no court has held that similar reasoning applies to the NLRA union shop provisions.[126] Justices Black and Douglas made it clear in their separate opinions in *Street*[127] that a union operating under a union shop agreement may not *constitutionally* spend money for political purposes over the objection of the paying member. Presumably, if a case arose under the NLRA provisions, these two justices would hold in favor of the dissenting member. With the recent changes in the composition of the Court, however, it may be ready for new directions. But rather than relying on the United States Supreme Court to solve the problem, Congress should provide a statute allowing an individual to bring an action to recover dues spent for political purposes. As an alternative, the union shop agreement could be voided entirely when money is spent for political purposes. When the cost of litigation is considered in relation to the amounts recoverable it is clear that intra-union plans for reducing dues along the lines suggested in *Allen* should be encouraged. Whatever the scheme, it is doubtful whether it could constitutionally apply to states with "right-to-work" laws, since membership in the union is purely voluntary. States with these laws should thus be exempted from the operation of any statute.

IV. Conclusion

Present attempts to control union participation in politics have largely failed. On the federal level, section 304 of the Taft-Hartley Act has been interpreted so that the main organs of union communication have been exempted and the courts have repeatedly held that if the statute were interpreted literally, it would be unconstitutional. Furthermore, the state statutes, most of which are modeled after federal law, have apparently been largely ignored. The need is apparent for statutes more closely related

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[124] *Id.* at 744-75.

[125] 373 U.S. 113 (1963).

[126] 29 U.S.C. § 158(a)(3) (1965). *See* DeMille v. Radio Artists, 31 Cal. 2d 139, 187 P.2d 769, *cert. denied*, 333 U.S. 876 (1948), where a union member refused to pay a special assessment that was being used to fight a proposal for a right-to-work law. It was held members were bound by the will of the majority and that they could work for the defeat of the proposal if they wished.

[127] 367 U.S. at 775 (Douglas, J.); 367 U.S. at 779 (Black, J.).

to the desired objectives. Clearly, some of the legislation discussed above is more suited to a federal law than state legislation, particularly the tax incentive programs. But since Congress has shown a reluctance to regulate state elections, state laws are necessary to fill the resulting gap.

The best proposal for limiting labor's political influence would appear to be the direct limitation on labor contributions for political purposes. A federal law could limit contributions by a labor organization for all political purposes to a specified figure per member. This could include spending for *any* political purposes, including contributions to state elections. Such a proposal could be combined with more rigid reporting requirements for individuals or organizations receiving support. But more important is the protection of minority rights. Labor unions should be required to establish a system, within broad legislative guidelines, for reimbursing dissenting employees. The system should be designed so that reimbursement would be a simple, expedient procedure. The National Labor Relations Board and state labor boards would have to police the system to insure its proper functioning. A two-pronged effort to limit labor's political influence and protect minority rights should come much closer to meeting the objectives of section 304 and the various state laws than the present legislation.