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## Federal Regulation of Union Political Expenditures: New Wine in Old Bottles

Stanley N. Hatch

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## COMMENTS

### Federal Regulation of Union Political Expenditures: New Wine in Old Bottles

Neither do men put new wine into old bottles: else the bottles break and the wine runneth out, and the bottles perish: but they put new wine into new bottles, and both are preserved.

Matthew 9:17

#### I. INTRODUCTION

Speaking for the American Federation of Labor in 1952, William Green fervently articulated the attitude that has inspired unionists to intense political involvement in the twentieth century:

Elect our friends! Defeat our enemies! That slogan contains no element of hesitation—no hint of neutrality. It sounds a call to action. Vigorous and aggressive political action is the only way to carry out its dictates.<sup>1</sup>

Encouraged by this enthusiastic political philosophy, American labor unions have amassed a political potential that incumbents and challengers nervously but eagerly court.<sup>2</sup> Unions have developed in a relatively short period of time a well-oiled and computerized machine that has accurately been termed “one of the most powerful political forces in the country,”<sup>3</sup> and which has consistently been able to apply millions of dollars and hundreds of thousands of man-hours to the task of defeating enemies and electing friends.<sup>4</sup> Due in large measure to the momentum and

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1. Green, *We Are Not Neutral*, AM. FEDERATIONIST, July 1952, at 3. In May of 1962, George Meany reemphasized the importance of labor's role in politics as he remarked to a conference of the Committee on Political Education (COPE) that “labor's most important activity” at that time was political involvement. AFL-CIO News, May 5, 1962, at 1, col. 2.

2. It has been estimated that as of 1954, American labor boasted a political potential consisting of 16 million workers plus their spouses and families. Hudson & Rosen, *Union Political Action: The Member Speaks*, 7 INDUS. & LAB. REL. REV. 404 (1954). More recently, the *New Republic Magazine* has suggested that “[e]ach campaign is eager to demonstrate its labor support, and most need the assistance that union backing normally brings . . . .” Bode, *Six Million Workers Minus George Meany*, NEW REPUBLIC, Jan. 31, 1976, at 7.

3. *Labor's Best-Heeled Powerhouse*, TIME, Mar. 1, 1976, at 10.

4. The success of labor's political involvement is generally credited to the efforts of

speed that have accompanied organized labor's dizzy rise to political power, a heated and longstanding debate between those who feel that "labor has no proper concern with a political question not directly and immediately related to wages, hours, and working conditions" and those who hold that "there is no political question which will not, in the end, have such an effect" has pervaded the political arena.<sup>5</sup>

Motivated partly by the scope of labor's political influence and partly by the intensity of the arguments regarding the propriety of that influence, Congress initiated legislation early in the 1940's to limit the use of labor money for political purposes.<sup>6</sup> Section 441b of the United States Code, Title 2, enacted in 1976, represents the most recent expression of that legislative effort.<sup>7</sup> From its beginning, the federal response to union political involvement engendered almost as much controversy as the problem it was intended to alleviate. Through judicial interpretation, union loophole exploitation, and legislative repair, the law governing labor political spending evolved into a regulatory scheme of questionable validity and uncertain scope.

A detailed examination of the development of restrictions upon union political involvement provides a clearer understanding of the conflicts and tensions which pervade that realm of political activity as well as the available alternatives for solving the problems associated with labor campaign spending.

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the AFL-CIO's Committee on Political Education (COPE). The effectiveness of political involvement committees was initially demonstrated in 1936 by Labor's Nonpartisan League, which coordinated union campaigning and contributions to elect Franklin Roosevelt. The increased political needs of the 1940's inspired the CIO's Political Action Committee (PAC) and the AFL's Labor League for Political Education (LLPE). With the merger of the AFL and the CIO in 1955, the political machinery of PAC and LLPE was consolidated in the form of COPE. (For a detailed description of COPE's organization and function, see C. REHMUS & D. McLAUGHLIN, *LABOR AND AMERICAN POLITICS* 207 (1967)). Since 1955, COPE has flourished into labor's powerful and persuasive political and public relations tool. One writer predicted that COPE, under the leadership of Alexander Barkan, would "wield a tremendous influence in [the 1976] election," by "pour[ing] not only money but armies of workers into the campaign, mount[ing] mass mailing, and mobiliz[ing] one of the most powerful political forces in the country." *Labor's Best-Heeled Powerhouse*, *TIME*, Mar. 1, 1976, at 10.

5. See Zon, *Labor in Politics*, 27 *LAW & CONTEMP. PROB.* 234, 234-35 (1962).

6. See Chang, *Labor Political Action and the Taft-Hartley Act*, 33 *NEB. L. REV.* 554, 560-61 & n.35 (1954).

7. 2 U.S.C.A. § 441b (1976).

## II. REGULATION OF UNION POLITICAL ACTIVITY: AN HISTORICAL OVERVIEW

### A. Legislative Evolution

Section 441b exhibits a long and active history. Its first legislative progenitor appeared on January 26, 1907, as a curb upon corporate political influence. Congress had become keenly aware of both the unusually powerful financial influence that corporations exercised upon national and state elections and the apparently unlimited discretion with which they dispensed shareholders' money for political purposes.<sup>8</sup>

In an attempt to more completely purify the electoral process and defend "the public interest in free elections,"<sup>9</sup> federal lawmakers enacted a strict prohibition forbidding corporations from making money contributions in connection with federal elections.<sup>10</sup> The judiciary apparently took no notice of the statute for almost a decade. In 1916, however, a federal district court in Pennsylvania explicitly recognized the enactment as being constitutional.<sup>11</sup> A short time later, the United States Supreme Court, although not directly concerned with the 1907 Act, inadvertently infused a serious element of doubt into parts of the existing law. In *Newberry v. United States*,<sup>12</sup> the Court, among other things, clearly invalidated federal regulation of Senate primary elections. As a consequence, Congress was forced to consider a comprehensive revision of its earlier limitation on corporate political spending. The result, the Federal Corrupt Practices Act of 1925,<sup>13</sup> not only eliminated the *Newberry* problem by defining primary elections as outside the scope of the Act, but also strengthened the prohibitions in the 1907 statute.<sup>14</sup>

While corporate political fervor was being dampened by Congress, American labor was just beginning to flex its political muscles. By the late 1930's, unions began to blossom into major power

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8. *United States v. CIO*, 335 U.S. 106, 113 (1948).

9. *United States v. Pipefitters Local 562*, 434 F.2d 1116, 1119 (8th Cir. 1970).

10. Act of Jan. 26, 1907, 34 Stat. 864-65 (1907).

11. *United States v. United States Brewers' Ass'n*, 239 F. 163 (W.D. Pa. 1916).

12. 256 U.S. 232 (1921).

13. Federal Corrupt Practices Act of 1925, ch. 368, tit. III, 43 Stat. 1070 (1925).

14. The Supreme Court explained the effect of the statute in the following words: "[The Act of 1925] strengthened the 1907 statute (1) by changing the phrase "money contribution" to "contribution" . . . ; (2) by extending the prohibition on corporate contributions . . . ; and (3) by penalizing the recipient of any forbidden contribution as well as the contributor." *United States v. UAW-CIO*, 352 U.S. 567, 577 (1957).

blocs.<sup>15</sup> During the 1936 election, labor political influence was felt in favor of Democratic candidates to the tune of \$770,000.<sup>16</sup> This development quickly aroused the attention of Congress, which sought to extend the limitations imposed by the Act of 1925 to labor unions by restraining "all organizations . . . whose aims or purposes are the furtherance of group, class, or special interests."<sup>17</sup> In 1940, the Hatch Act accomplished this result in part by explicitly restricting political contributions by organizations, including labor unions, to a maximum of \$5,000.<sup>18</sup> It was soon obvious, however, that this limitation provided no serious obstacle to labor's support of chosen candidates. In the 1940 election, instead of making large national contributions, union leadership sidestepped the legislation by making extensive smaller donations, each within the \$5,000 limit, through its numerous local organizations.<sup>19</sup>

With the advent of World War II, the power of organized labor became apparent to a degree unprecedented in American history. As the nation mobilized its industrial energy to the full extent of its resources, the threat of paralyzing strikes emphasized the position of leverage that labor had gained to those both within and without its ranks. When the United Mine Workers closed down the coal industry in the early part of 1943, the danger to the nation's war effort motivated Congress to enact the War Labor Disputes Act (WLDA).<sup>20</sup> This legislation not only answered the immediate emergency by preventing crippling wartime strikes, but it went one step further and applied the broad prohibitions outlined in the Act of 1925 against corporate political spending to labor organizations for the duration of the war.<sup>21</sup> Jus-

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15. Comment, *Political Contributions by Labor Unions*, 40 TEX. L. REV. 665, 666 (1962) [hereinafter cited as *Political Contributions by Labor Unions*].

16. Kallenbach, *The Taft-Hartley Act and Union Political Contributions and Expenditures*, 33 MINN. L. REV. 1, 2 & n.3 (1948).

17. S. REP. NO. 151, 75th Cong., 1st Sess. 127, 135 (1937).

18. Act of July 19, 1940, ch. 640, § 13, 54 Stat. 767, 770 (1940).

19. Kallenbach, *supra* note 16, at 4.

20. War Labor Disputes Act of 1943, 57 Stat. 163 (1943).

21. The Supreme Court noted the following reasons for extending the provisions of the Federal Corrupt Practices Act of 1925 to labor organizations:

[The] legislative history [of the WLDA] indicates congressional belief that labor unions should then be put under the same restraints as had been imposed upon corporations. It was felt that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose.

United States v. CIO, 335 U.S. 106, 115 (1948)(footnotes omitted). See also note 81 *infra*.

tice Rutledge, later reviewing the extension of these restrictions to union political spending, outlined the three objectives that Congress sought to further by its action:

[T]he sponsors and proponents had in mind three principal objectives.

These were: (1) To reduce what had come to be regarded in the light of recent experience as the undue and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections and of official conduct ensuing from the choices made in them against the use of aggregated wealth by union . . . entities; and (3) to protect union members holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance of those opposing views. Shortly, these objects may be designated as the "undue influence," "purity of elections," and "minority protection" objectives.<sup>22</sup>

American labor was not alone in its disapproval of this new restriction. President Roosevelt immediately vetoed the legislation, citing as among its most objectionable features the provision that barred labor political contributions.<sup>23</sup> Congress would not be denied, however, and the veto was overridden. As long as the war continued, union political activity appeared significantly inhibited.

Soon after the war, Congress discovered that appearances had been drastically misleading. In spite of the confines imposed on labor by the WLDA, rumors circulated concerning enormous union political spending during the 1944 campaigns. Apprehension and suspicion became so intense that Congress organized a special committee to investigate the allegations. The search concentrated on special political organizations such as the CIO's Political Action Committee (PAC). The investigation quickly discovered that unions had, in fact, spent more money in 1944 than in any previous election,<sup>24</sup> but it reluctantly concluded that inasmuch as unions had limited their campaign support to "expenditures" of money for political advertising as opposed to "contributions," there was no clear-cut violation of the 1943 pro-

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22. *United States v. CIO*, 335 U.S. 106, 134-35 (1948)(Rutledge, J., concurring) (footnote omitted).

23. Kallenbach, *supra* note 16, at 5.

24. Comment, *Regulation of Labor's Political Contributions and Expenditures: The British and American Experience*, 19 U. CHI. L. REV. 371, 374 (1952) [hereinafter cited as *British and American Experience*].

hibitions.<sup>25</sup> Many lawmakers who had assisted in passing the WLDA understandably expressed grave concern over the amount of money that labor had expended in the previous election and the ease with which it had bypassed the statutory limitations. The House Special Committee to Investigate Campaign Expenditures, in its 1945 Report, soberly observed:

The scale of operation of some of these organizations is impressive. Without exception, they operate on a Nation-wide basis; and many of them have affiliated local organizations. One was found to have an annual budget for "educational" work approximating \$1,500,000, and among other things regularly supplies over 500 radio stations with "briefs for broadcasters." Another, with an annual budget of over \$300,000 for political "education," has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another, representing an organized labor membership of 5,000,000, has raised \$700,000 for its national organizations in union contributions for political "education" in a few months, and a great deal more has been raised for the same purpose and expended by its local organizations.<sup>26</sup>

With the discovery of the extent of labor's financial investment in the political arena, a serious sentiment began to develop in various quarters encouraging stricter regulation of labor campaign expenditures.

Labor involvement in the 1944 presidential election and the 1946 senatorial campaigns was fresh in everyone's memory as Congress began to consider a comprehensive package of labor legislation in 1947. The Taft-Hartley Act<sup>27</sup> emerged from the debates of that year with a clear indication that Congress was determined to plug the loopholes in the previous law curtailing union political spending. Section 304 of that Act<sup>28</sup> effectuated this congressional disapproval of the extravagant use of union money

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25. S. REP. No. 101, 79th Cong., 1st Sess. 23 (1945).

26. H.R. REP. No. 2093, 78th Cong., 2d Sess. 1, 3 (1945).

27. 61 Stat. 136 (1947).

28. The section was codified in 18 U.S.C. § 610, where it remained until 1976, when it was repealed and replaced by 2 U.S.C.A. § 441b. As originally enacted in section 304 of the Taft-Hartley Act, the statute stated:

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 . . . 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 . . . .

61 Stat. 136, 159 (1947).

during political campaigns by (1) forbidding "expenditures" in addition to "contributions;" (2) making permanent the application to labor organizations of the 1925 restrictions upon political activity; and (3) extending its coverage to federal primaries and nominating conventions.<sup>29</sup> As President Roosevelt had previously done with the WLDA, President Truman quickly vetoed the Taft-Hartley Act, noting as particularly offensive the ban against union political expenditures. Again, however, the legislation became law without the President's approval as Congress committed itself to control labor money in politics on a more rigorous and comprehensive scale.<sup>30</sup>

### B. Judicial Whittling

American labor unions quickly demonstrated their dissatisfaction with section 304. After carefully considering the most effective way to voice their displeasure, and upon the advice of counsel, labor decided to initiate calculated violations of the statute, thereby inviting the courts to scrutinize its prohibitions.<sup>31</sup> The first meaningful opportunity to challenge the statute arose in *United States v. CIO*<sup>32</sup> as a result of union activities during a special Maryland election for a representative to Congress. With the express purpose of violating the law,<sup>33</sup> Phillip Murray, President of the CIO published an editorial in the CIO news (a union periodical) supporting one of the candidates. The project was financed out of general union funds, and the periodical was distributed not only to union members but also to the general public to the extent of about 1,000 copies. The trial court squarely con-

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29. *United States v. UAW-CIO*, 352 U.S. 567, 582-83 (1957).

30. Kallenbach, *supra* note 16, at 9 & n.31.

31. Comment, *Union Political Expenditures Under Taft-Hartley Section 304*, 48 Nw. U.L. REV. 64, 68 (1953). The article makes mention of a New York Times' report which indicated that approximately 75 lawyers from around the country gathered under the direction of the AFL to decide how to respond to the new restrictions. It was there decided that all unions should affirmatively violate the statute. *Id.* at 68 n.22.

32. 77 F. Supp. 355 (D.D.C.), *aff'd on other grounds*, 335 U.S. 106 (1948).

33. See Rauh, *Legality of Union Political Expenditures*, 34 S. CALIF. L. REV. 152, 156-57 (1961); Comment, *An Attempt to Restrict Union and Corporate Political Activity*, 46 MARQ. L. REV. 364, 367 (1962-3) [hereinafter cited as *An Attempt to Restrict*].

Counsel for CIO not only failed to argue, both at trial and upon appeal, that the actions of the union were not a violation of the Act but actually admitted that the statute covered the circumstances and that the only question for adjudication was the constitutionality of the law. *United States v. CIO*, 335 U.S. 106, 128-29 (1948) (Frankfurter, J., concurring); Rauh, *supra* at 156. The facts surrounding publication of the editorial seem to indicate that efforts were made to insure that the action would be viewed as an expenditure.

fronted the issue presented by the case and declared the restrictions on union spending unconstitutional as an abridgement of first amendment freedoms.<sup>34</sup> On appeal, even though no argument had been made as to the applicability of the statute and in spite of the fact that the constitutional question had been clearly accentuated for consideration,<sup>35</sup> the Supreme Court purposely skirted the issues as framed and held that section 304 did not apply to the facts of the case. The Court defended its holding by reasoning that a union periodical, published with union funds, that advocated the election of a candidate for federal office could not be considered an unlawful "expenditure" if it was distributed "in regular course to those accustomed to receive copies."<sup>36</sup> To hold otherwise, the Court added, would raise serious doubts as to the statute's constitutionality. This decision was surprising not only because the constitutional question had been so carefully prepared for review, but, more importantly, because it flew in the face of congressional intent and the plain meaning of the statute.<sup>37</sup> By judicial definition, a union periodical, published in "regular course," could now be distributed, to some extent at least, to the general public in addition to the union membership and still fall outside the scope of the prohibition. The decision not only narrowed the statute's practical applicability but also revealed that certain Justices entertained "gravest doubts" as to its constitutionality.<sup>38</sup>

A year after the *CIO* decision, the courts were afforded a second opportunity to consider the propriety of union political spending. In *United States v. Painters Local 481*,<sup>39</sup> a Connecticut

34. 77 F. Supp. 355, 359 (D.D.C.), *aff'd on other grounds*, 335 U.S. 106 (1948).

35. So anxious were the parties for a constitutional adjudication that Justice Frankfurter suggested that the manner in which the question was presented appeared almost collusive: "[T]he manner by which the constitutional issue had been brought to the Supreme Court for decision bordered on collusion. Government counsel, he maintained, had failed in the lower court proceedings to advance 'the most effective and the least misapprehending grounds for supporting what Congress had enacted . . .'" Kallenbach, *supra* note 16, at 15. See 335 U.S. at 126-27 (Frankfurter, J., concurring).

36. 335 U.S. at 123.

37. *Id.* at 138-40 (Rutledge, J., concurring); Kallenbach, *supra* note 16, at 17-18; Comment, *Unions in the Political Arena: Legislative Attempts to Control Union Participation in Politics*, 23 Sw. L.J. 713, 716-17 (1969); *British and American Experience*, *supra* note 24, at 376-77 & n.44; Note, *Interpretation of Statutes to Avoid Constitutional Questions Re Labor Union Political Contributions*, 22 MD. L. REV. 348, 354 (1962); see Note, *Section 304 of the Labor-Management Relations Act of 1947 After the Decision In The United States vs. Congress of Industrial Organizations*, 1949 Wis. L. REV. 184, 191 (1949).

38. 335 U.S. at 121. See also Note, *Statutory Interpretation Under Labor-Management Relations Act—Prohibition of Union Political Expenditures*, 47 MICH. L. REV. 408, 410 (1949).

39. 172 F.2d 854 (2d Cir. 1949).

union authorized the purchase of advertising space in a newspaper of general circulation and radio broadcast time in order to advocate the defeat of Senator Taft, a cosponsor of the legislation under which the union was prosecuted. The expenditures for both items totaled just under \$145. As in *CIO*, there was no argument at trial that the statute was inapplicable,<sup>40</sup> only that it was unconstitutional. The United States Court of Appeals for the Second Circuit, however, following the Supreme Court's cue, avoided the constitutional question altogether and held that the present case was beyond the reach of the statute. The court noted:

In the decision in [*CIO*] . . . a majority of the Supreme Court held that a publication in a union newspaper which was distributed to members and a few other persons, did not fall within the prohibition of the statute. While . . . the publication was by the union itself and reached a somewhat limited class of readers, [the Court] nowhere said that a publication in an ordinary newspaper paid for out of the funds of a union would not also be outside of the coverage of the Act. . . . It seems impossible, on principle, to differentiate the scope of that decision from the case we have before us. It is hard to imagine that a greater number of people would be affected by the advertisement and broadcasting in the present case than by publication in the union periodical . . . . In a practical sense the situations are very similar, for in the case at bar this small union owned no newspaper and a publication in the daily press or by radio was as natural a way of communicating its views to its members as by a newspaper of its own.<sup>41</sup>

In an effort to further justify its decision, the court pointed to the "trifling 'expenditures'" that inspired the prosecution and implied that their de minimis nature might also prevent application of the statute.<sup>42</sup> If the Supreme Court in *CIO* could be said to have ignored the legislative history in construing the prohibition, the Second Circuit affirmatively offended it.<sup>43</sup>

*Painters Local 481* carved out a substantial exception to the limitations upon union political expenditures by exempting from the operation of the statute not only union-owned periodicals, but, at least in the case of small local unions, general newspaper

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40. *An Attempt to Restrict*, *supra* note 33, at 367.

41. 172 F.2d at 856.

42. See Ruark, *Labor's Political Spending and Free Speech*, 53 Nw. U.L. REV. 61, 75-76 (1958).

43. As one writer pointed out, "Senator Pepper stated on the floor that the act applied to expenditures of 'a dollar, or 50 cents, or \$500, or \$1000.'" *Id.* at 75.

advertisements and radio broadcasts as well. In addition, it cast further doubt upon the constitutionality of the statute which could only be resolved if, and when, section 304 was held applicable in a particular case.

The next opportunity for the courts to examine union political spending followed closely behind *Painters Local 481*. In *United States v. Construction & General Laborers Local 264*,<sup>44</sup> a Mississippi federal district court was confronted with a fact situation that appeared to be significantly different from the earlier cases. The alleged expenditures in *Laborers Local 264* had been authorized by the president of a local union to further his personal campaign for Congress. The facts indicated that the money had been spent in the form of salaries for a union business agent and three other union employees. While the business agent devoted most of his time to conducting the campaign, the three employees worked part time electioneering for the defendant and part time in so-called "nonpartisan" activities such as get-out-the-vote drives and voter registration programs.<sup>45</sup> Ignoring the substantial factual variations, the court faithfully mimicked the earlier cases and avoided the constitutional question. The author of the majority opinion, relying first upon *CIO* and then upon *Painters Local 481*, expressed disbelief that Congress could have intended such a restriction upon labor spending and, while admitting that *de minimus non curat lex* did not apply in the criminal context, concluded that the money involved was such an "uncertain, insignificant amount" that it could not be governed by the statute.

The decision was clearly erroneous from two standpoints. First, it violated legislative history in an offhanded fashion not

44. 101 F. Supp. 869 (W.D. Mo. 1951).

45. The court accorded an unusual degree of significance to the "nonpartisan" activities of the three employees at the expense of other activities that were undeniably "partisan" in their effect and intent. One writer noted this fact with the following observation:

Ignoring the extreme distrust of labor unions that motivated the strongest supporters of the restrictive legislation, the court reasoned that Congress could not have intended to deprive labor organizations of their constitutionally protected right to engage in political activities. The partisan nature of the activity in question was camouflaged with glowing language about the altruism of voter registration. [In fact, voter registration was the most neutral of a variety of activities, including distribution of campaign literature and operation of a campaign trailer.]

Comment, *Of Politics, Pipefitters, and Section 610: Union Political Contributions in Modern Context*, 51 TEX. L. REV. 936, 947 & n.52 (1973) (footnotes omitted) [hereinafter cited as *Of Politics*].



of union dues to pay for commercial broadcasts that are designed to urge the public to elect a certain candidate."<sup>50</sup> Thus, by focusing its attention on the source of the funds as well as the fact that the communication was intended for the public at large,<sup>51</sup> the Court gave the statute its first application, but still avoided constitutional issues.

Although the Court in *UAW* left in doubt the effect of its decision upon *Painters Local 481* and *Laborers Local 264*, it was assumed that at least the former had been overruled sub silentio.<sup>52</sup> Most of what the decision in *UAW* gained for the statute was challenged, however, in *United States v. Anchorage Central Labor Council*.<sup>53</sup> There, in a fact situation almost identical to the earlier case, an association of labor unions had sponsored political television announcements intended to reach not only union members, but also the general public. Tightroping its way through the *UAW* rationale, the federal district court distinguished the case at bar by concluding that the expenditures in question were derived from "voluntary" contributions. In support of this argument, the court noted that the individual local unions had decided by majority vote to contribute funds to the Council for political purposes. What it failed to recognize was the fact that the funds came exclusively from general union treasuries. As scholars quickly perceived, the court's distinction and reasoning were precarious at best.<sup>54</sup> The court openly admitted that such a result could "render virtually impossible the enforcement of the statute."<sup>55</sup>

After *UAW* and *Anchorage*, the question of union political expenditures did not arise in the courts for almost twelve years. In 1972, however, the controversy came before the Supreme Court for the third time since the Taft-Hartley Act was passed. In *Pipefitters Local 562 v. United States*,<sup>56</sup> the Court examined a

50. 352 U.S. at 586-87.

51. In outlining those inquiries that it felt would be productive in the determination of what union political expenditures were proscribed by the statute, the Court noted the following:

[W]as the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis? Did the broadcast reach the public at large or only those affiliated with appellee?

*Id.* at 592.

52. *Of Politics*, *supra* note 45, at 948.

53. 193 F. Supp. 504 (D. Alas. 1961).

54. *An Attempt to Restrict*, *supra* note 33, at 369.

55. 193 F. Supp. at 508.

56. 407 U.S. 385 (1972).

“Voluntary, Political, Educational, Legislative, Charity and Defense Fund” which had contributed over \$150,000 to candidates for federal office between 1964 and 1966. Both the government and the union agreed substantially as to the facts. The fund was controlled and administered by the principal union officer. Although formally separate, the fund and the union were closely related at all levels. As a consequence, “voluntary” contributions were employed for political and nonpolitical purposes alike. As to collection of funds, the union itself conceded that

contributions to the Fund were routinely made at regular intervals at job sites; that they were routinely collected by union stewards, area foremen, general foremen, or other agents of the union; that they were determined by a formula based upon the amount of hours or overtime hours worked upon a job under the jurisdiction of the union . . . .<sup>57</sup>

The Court went even further by noting that the members who made contributions to the fund did so “voluntarily” only “in the same sense tht they paid their dues or other financial obligations.”<sup>58</sup>

Like his predecessors, Justice Brennan, writing for the majority, carefully sidestepped the constitutional questions presented<sup>59</sup> and concentrated on defining the scope of section 304. Shifting emphasis significantly from the two former Supreme Court decisions, Justice Brennan focused almost exclusively on two points of interpretation: the separateness of the fund and the voluntary nature of the contributions.<sup>60</sup> As to the first point, the Court held that a fund from which political contributions were drawn must be “separate from the sponsoring union *only* in the sense that there must be a strict segregation of its monies from union dues and assessments.”<sup>61</sup> In addition, administration and organization of the fund could be financed from the general union treasury if it was segregated as defined.<sup>62</sup> With respect to the second point, the Court stated that although all money donations had to be “voluntary,” and any solicitation had to be performed in such a manner as to clearly indicate “that donations are for a

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57. *Id.* at 392-93 n.3.

58. *Id.* at 393.

59. Holding that the lower court’s judgment required reversal because of erroneous jury instructions, Justice Brennan pointed out that such a “disposition makes decision of the constitutional issues premature, and we therefore do not decide them.” *Id.* at 400.

60. *See Of Politics, supra* note 45, at 961-62, 970.

61. 407 U.S. at 414 (emphasis added).

62. *Id.* at 429-30.

political purpose and that those solicited may decline to contribute without loss of job . . . or any other reprisal within the union's institutional power," solicitation of funds by union officials was permissible.<sup>63</sup> As Justice Powell quickly pointed out, the decision not only made possible the collection of contributions that exhibited the "trappings of voluntariness" while retaining the "substance of coercion,"<sup>64</sup> but it also enabled unions to establish and maintain substantial treasure chests for political activity with no more concern for distinctness than a "separate ledger and bank account."<sup>65</sup> The Court's holding neither resolved the confusion as to just where the permissible bounds of union political expenditures lay, nor did it accomplish even partial resolution of the constitutional doubts that had grown up around the prohibitions.

### C. Legislative Response

The *Pipefitters* decision undoubtedly resulted in large measure from a 1972 amendment to section 304 of the Taft-Hartley Act that was passed as part of the Federal Election Campaign Act (FECA)<sup>66</sup> while the case was pending before the United States Supreme Court. As the Court pointed out after reviewing supplemental briefs filed by both parties outlining the effect of the amendment upon existing law, section 205 of the FECA was little more than an attempt by Congress to codify prior legislative and judicial modifications of section 304.<sup>67</sup> It appears, however, that the Court carried the new amendment further than its initial

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63. *Id.* at 414.

64. *Id.* at 449 (Powell, J., dissenting).

65. *Id.* at 450 (Powell, J., dissenting).

66. Federal Election Campaign Act of 1972, 86 Stat. 10 (amending 18 U.S.C. § 610 (1970)). The amendment added to the section the following pertinent language:

As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment . . . or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any election [governed by this section]; but shall not include communications . . . by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns . . . by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by . . . a labor organization: *Provided*, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals; or by dues, fees, or other monies required as a . . . condition of employment, or by monies obtained in any commercial transaction.

67. 407 U.S. at 399.

characterization would indicate. Not only did it read the phrase "separate segregated fund" more narrowly than prior decisions demanded,<sup>68</sup> but it held that general union treasuries, theoretically sacred against use for political contributions, were fully available for the establishment, administration, and solicitation of contributions to a political fund—a use arguably prohibited by prior law.<sup>69</sup> Some writers viewed the amendment as having transformed section 304 to such an extent that protection against the corrupting influence of aggregations of wealth, one of the primary purposes behind the original legislation, was no longer of even secondary importance, "since the amendment permitted both unlimited political campaigning directed at members . . . when funded out of the organizations' general treasuries and unlimited political campaigning directed at the public if the source of the funds was voluntary."<sup>70</sup>

As a consequence of this interplay between judicial and legislative interpretation, labor unions appeared to gain an unusual confidence in their ability to solicit and spend money for political purposes. In 1973, however, this confidence was answered with a flurry of federal cases that served as a general reminder that boundary lines existed even though they were difficult to predict.<sup>71</sup>

While 1976 produced major amendments to the FECA,<sup>72</sup> these changes have had little more effect upon existing regulation

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68. *Id.* at 421-22.

69. *Id.* at 429-30; *Of Politics, supra* note 45, at 967.

70. Comment, *The Constitutionality of the Federal Ban on Corporate and Union Campaign Contributions and Expenditures*, 42 U. CHI. L. REV. 148, 152 (1974).

In 1974, amendments to the Federal Election Campaign Act substantially limited the amount of expenditures that persons, including labor organizations, could contribute in federal elections. 18 U.S.C. § 608(b)(1) (Supp. V 1975) (contributions limited to \$1000 per candidate per election). The law carefully exempted from its restrictions, however, any expenditures that were allowed under the 1972 amendment. 18 U.S.C. § 608(e)(2)(B) (Supp. V 1975). 18 U.S.C. § 608 was repealed by the Act of May 11, 1976, Pub. L. No. 94-283, 90 Stat. 496 (1976).

71. *United States v. Boyle*, 482 F.2d 755 (D.C. Cir.), *cert. denied*, 414 U.S. 1076 (1973) (\$5,000 of general union funds were loaned to Labor Nonpartisan League to facilitate the funding of a testimonial dinner); *Barber v. Gibbons*, 367 F. Supp. 1102 (E.D. Mo. 1973) (a deduction from dues of union members who signed authorization cards was placed in a special political fund). *Cf. Reid v. UAW-AFL-CIO*, 479 F.2d 517 (10th Cir. 1973) (nonunion workers required to exhaust internal union grievance machinery before judicially contesting the use of agency assessments).

72. The Supreme Court held in *Buckley v. Valeo*, 424 U.S. 1 (1976), that while the contributions provisions of the FECA as amended in 1974 were constitutional, certain expenditure limitations imposed an unconstitutional burden upon free speech. As a result, Congress extensively reevaluated its campaign legislation during 1976, proposing substantial changes beyond the scope of this comment.

of union political spending than to relocate them in a different title in the Code.<sup>73</sup> At present, the law regarding the status of labor's financial involvement in the political arena is neither more predictable nor more easily applied than it was in the beginning. For thirty-three years since the restrictions were originally enacted in the WLDA, Congress and the courts have done little more than repeatedly pour new wine into old bottles in competing attempts to define the parameters of acceptable union political expenditures.

### III. FIDELITY TO LEGISLATIVE OBJECTIVES BEHIND REGULATION OF UNION POLITICAL EXPENDITURES

In *CIO*, Justice Rutledge outlined the three principal objectives underlying Congress' regulation of union political spending in terms of "undue influence," "purity of elections," and "minority protection."<sup>74</sup> It has been argued that of these objectives both the "undue influence" and "purity of elections" purposes have been forgotten in recent formulations of the law.<sup>75</sup> While it may be true that the legislation has never effectively accomplished its congressionally defined goals, the wisdom of such a limited approach to labor political involvement is highly suspect. The problems are no less compelling now, with or without an intent on the part of Congress to deal with them, than they were in 1943 when prohibition of labor political spending was initially codified.

#### A. *Undue Influence and Purity of Elections*

Although official reports are often misleading, and accurate and exhaustive figures are difficult to come by, it is obvious that millions of union dollars are spent on campaigns yearly.<sup>76</sup> One source has estimated approximately \$62,000,000 per year as a likely figure.<sup>77</sup> By any calculation, however, it is generally con-

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73. Although section 304 of the Taft-Hartley Act, as codified in 18 U.S.C. § 610 and amended by section 205 of the FECA (1972), was repealed by the Act of May 11, 1976, 90 Stat. 496, it reappeared substantially unchanged as part of the Federal Election Campaign Act, 2 U.S.C.A. § 441b (1976).

74. 335 U.S. at 134-35 (Rutledge, J., concurring). See note 22 and accompanying text *supra*.

75. Comment, *The Constitutionality of the Federal Ban on Corporate and Union Campaign Contributions and Expenditures*, 42 U. CHI. L. REV. 148, 151-52 (1974).

76. See, e.g., Comment, *Unions in the Political Arena: Legislative Attempts to Control Union Participation in Politics*, 23 Sw. L.J. 713, 714 & n.13 (1969).

77. White, *Why Should Labor Leaders Play Politics with the Workers' Money?*, READER'S DIG., Oct. 1958, at 158.

ceded that more union money is spent on federal elections than is officially acknowledged.<sup>78</sup> Although writers have suggested that "no real danger to our democratic form of government has been demonstrated" in this kind of political involvement,<sup>79</sup> such a claim is neither supported by an examination of the history of union spending nor consistent with recent federal efforts to police political campaign financing. It appears, in fact, that unchecked union financial involvement exhibits an undesirable influence upon both the politician and the public in general.

In 1940, as Congress was reviewing the problem of corporate contributions, the issue was clearly framed in the following words:

We all know that money is the chief source of corruption. We all know that large contributions to political campaigns . . . put the political party under obligation to the large contributors, who demand pay in the way of legislation . . . .<sup>80</sup>

It appears that the primary reason that Congress extended the 1925 prohibitions against corporate expenditures to include labor organizations was labor's indiscreet use of money as a club to insure that Congress voted in a manner consistent with union objectives, often at the expense of the public interest.<sup>81</sup> In the

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78. Kovarsky, *Unions and Federal Elections—A Social and Legal Analysis*, 12 *ST. LOUIS U.L.J.* 358, 369 (1968).

79. Comment, *Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity*, 57 *YALE L.J.* 806, 821 (1948).

80. 86 *CONG. REC.* 2720 (1940).

81. The prohibition against political expenditures which found its way into the WLDA was neither directly responsive to the emergency that inspired the statute nor closely related to the other provisions of the bill. In fact, as it originally passed the Senate, the WLDA contained no prohibition against political expenditures. See S. 796, 78th Cong., 1st Sess., 89 *CONG. REC.* 3993-95 (1943). Both of these facts strongly suggest that a more immediate concern inspired inclusion of the provision. An explanation of Congress' sudden awareness of political spending is probably best understood by reference to a radio address made by William Green, President of the A.F. of L. In his somewhat tactless enthusiasm to guarantee that the bill would be defeated, Green issued the following warning:

The American Federation of Labor calls upon Congress to defeat the [War Labor Disputes Act].

We will demand a record vote on this measure. Regardless of whether it is killed or adopted, we shall endeavor to vote out of office any Member of Congress who supports it. Into this effort the American Federation of Labor will pour every resource at its command. It may be recalled that some years ago the American Federation of Labor undertook a similar campaign against the Members of the United States Senate who voted for confirmation to the Supreme Court of a Federal judge who had upheld "yellow dog" contracts. This appointee was not confirmed but the American Federation of Labor did not forget those Senators who voted for him. Within 10 years not a single one of them remained

words of Congressman Landis, one of the authors of the measure,

[o]ne of the matters upon which I sensed that the public was taking a stand opposite to that of labor leaders was the question of handling of funds of labor organizations. The public was aroused by many rumors of huge war chests being maintained by labor unions, of enormous fees and dues being extorted from war workers, of political contributions to parties and candidates which later were held as clubs over the head of high Federal officials.

. . . The source of much of the national trouble today in the coal strike situation is that ill-advised political contribution of another day [referring, apparently, to the reported contribution of over \$400,000 by the United Mine Workers in the 1936 campaign].<sup>82</sup>

Similar public displeasure was expressed in 1946, when A. F. Whitney, President of the Brotherhood of Railroad Trainmen, threatened that he would spend \$47 million to defeat President Truman in his bid for reelection and \$2 1/2 million to defeat any congressman who exhibited an inclination toward restrictive labor legislation.<sup>83</sup> The power over "public officials" that labor has seemingly purchased is perhaps most sadly evident in the anxiousness with which prospective recipients have looked after labor's interests and the extent to which some politicians have gone to make sure that the right people know they are keeping the faith.<sup>84</sup> If calculations of labor's "success ratio" are an accu-

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in the United States Senate. We trust that the Members of Congress are cognizant of the fact that the political strength of the American Federation of Labor has increased many times since then.

89 CONG. REC. 5226 (1943). After a threat of such dubious propriety, Congress was motivated to add the limitations on union political spending.

82. *Hearings on H.R. 804 and H.R. 1483 Before a Subcomm. of the House Comm. on Labor*, 78th Cong., 1st Sess. 2, 4 (statement of G.W. Landis, Representative in Congress from Indiana) (1943).

83. N.Y. Times, May 27, 1946, at 1, col. 6.

84. The problem was illustrated by a commentator as follows:

While labor lobbyists never considered [John F. Kennedy] a tool of labor, as the author has heard one union lobbyist brutally refer to some congressmen, Congressman Kennedy's views . . . and the legislative program of the CIO or, later, the AFL-CIO, were always extremely close.

. . . During the debate over labor regulation, which resulted in the Landrum-Griffin Act of 1959, Senator Kennedy was on the phone with George Meany many days and often late into the night, discussing, arguing, compromising, and most of all reassuring the AFL-CIO head that while bitter defeat was ahead, presidential aspirant Kennedy had kept the faith and done everything humanly possible to salvage as good a bill as possible.

Crown, *Organized Labor in American Politics: A Look Ahead*, N.Y.U. 14TH ANN. CONF. ON LAB. 261, 263-64 (1961).

rate indication of its political effectiveness,<sup>85</sup> the efforts of these political aspirants, while not commendable, are understandable.

The detrimental effects of labor's extensive financial commitment to the political process have been felt as deeply by the voting public as by the public official. During 1940, Congress noted this concern in the following language:

[B]ut we also know that large sums of money are used for the purpose of conducting expensive campaigns through newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue.<sup>86</sup>

Congress' concern appears to be well-founded when one contemplates the volume of what many consider to be "political propaganda"<sup>87</sup> that is forced upon an unsuspecting public.<sup>88</sup> This barrage of political persuasion puts the individual voter at almost impossible odds as he competes to influence the political process. In addition, it has been suggested that the individual voter may be deprived of the opportunity to make an informed choice by the very nature and frequency of biased information that he receives.<sup>89</sup> Not only may this deluge of publicity that passes for unanimity of purpose represent but a bare majority of the labor constituency, it may, in fact, reflect little more than the personal political desires of the few who pull the purse strings.<sup>90</sup>

A number of arguments have been consistently forwarded by union supporters in an effort to deny the "undue influence" of labor's political spending. Perhaps the one most often expressed is labor's claim that if expenditures on its part are curtailed, the education and political awareness of the electorate will suffer. In the words of one union spokesman:

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85. See, e.g., Zon, *Labor in Politics*, 27 *LAW & CONTEMP. PROB.* 234, 246, 248 (1962).

86. 86 *CONG. REC.* 2720 (1940).

87. E.g., *Political Contributions by Labor Unions*, *supra* note 15, at 673-74.

88. In 1944, the CIO's Political Action Committee entered upon a political paper drive unprecedented in American politics. It appears that 85 million copies of various campaign literature were produced by the committee in that year, which included 2 million pamphlets, 57 million leaflets, and over 400,000 posters. Barbash, *Unions, Government, and Politics*, 1 *INDUS. & LAB. REL. REV.* 66, 74 (1947). Similarly, the 1945 Report of the House Special Committee to Investigate Campaign Expenditures noted, with some concern, the magnitude of union spending for "educational" purposes. See note 26 and accompanying text *supra*. Unquestionably, the extent of media and communications exploitation has increased significantly in the last 31 years.

89. See Comment, *Freedom from Political Association: The Street and Lathrop Decisions*, 56 *NW. U.L. REV.* 777, 789 (1962).

90. See *Political Contributions by Labor Unions*, *supra* note 15, at 675.

The prime instrument for making issues the basis of votes is *education*. The continuing work of the labor movement in educating members, family and the public to study issues, make up their minds on issues, and cast a vote for issues is building a broad base of principle for American politics. No other organized force in American life carries on this political missionary work . . . instilling the ideal of casting a ballot for a set of ideas.<sup>91</sup>

It is doubtful whether, in practice, organized labor's motives are quite so altruistic or its accomplishments quite so pure. In truth, labor's goal is practical—winning support for union advancement—and its approach “propagandistic.”<sup>92</sup> Union claims appear to give too little credit to the American public and too much credit to itself.

A second argument, which, according to unionists, militates against any concern regarding the undue influence of union money upon the electoral process, was fervently asserted by the director for the Department of Politics, Education, and Training of the ILGOW as follows:

To provide some financial counterweight to the generally conservative position of the money lords is vital to a democracy. And it is the labor movement that, in recent years, has moved toward supplying some, even if not enough, financial counterbalance to the voice of our monied aristocracy in elections.<sup>93</sup>

Put in somewhat less sensational terms, unions supposedly supply the financial counterweight to corporate political spending that is seen as conservative and therefore opposed to the general thrust of the labor movement.

This characterization of labor's purpose in the political arena appears inaccurate in light of closer observations. In the first place, while it is true that unions and corporations operate in the same general sphere, courts and scholars alike have long recognized that basic differences in their inherent nature and formulation suggest that each should be considered separately in terms of the problems of undue influence.<sup>94</sup> Secondly, as the law is pres-

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91. Tyler, *The Role of Trade Unions in a Democratic Society*, N.Y.U. 14TH ANN. CONF. ON LAB. 277, 279-80 (1961).

92. Stein, *Trade Unions in a Democracy: A Comment*, N.Y.U. 14TH ANN. CONF. ON LAB. 289, 293 (1961).

93. Tyler, *supra* note 91, at 280.

94. As one author noted:

But lumping unions and corporations together . . . may not result in equality between them because of differences in structure, wealth, membership, [etc.].

ently structured, any regulation of union expenditures would apply equally to corporate spending.<sup>95</sup> Finally, while labor repeatedly cites corporate spending as money without balance,<sup>96</sup> it must hesitantly admit that corporate expenditures have generally been self-balancing, being split almost equally between Democratic and Republican candidates.<sup>97</sup> In contrast, labor money was spent almost exclusively for Democratic candidates. So secure, in fact, has the marriage between labor and Democrats become, that unions have come to be viewed as "a dependable part of the Democratic political apparatus."<sup>98</sup>

Certain scholars have expressed the opinion that the major obstacle in the way of labor's attempt to achieve its full political potential is the "taint of corruption" that encumbers its public image.<sup>99</sup> While stories circulate about "under-the-table deals" between unions and politicians,<sup>100</sup> labor is often hard pressed to satisfactorily counteract all accusations. In a partial attempt to justify this public image, if not completely eradicate it, a certain high-ranking unionist offered the following rationalization:

This means that union political action is, in methodology, closely akin to practical political action. The practical politician

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. . . [D]istinctions should be made between corporations and unions. There are, for example, differences in structure, history, and legal context of the decision making process, especially concerning minority members; in the type of interest of union members and investors due to differences in purpose and function; in the potential size of political contributions and expenditure; and in the scope of federal and state regulation. These and other distinctions may warrant different legislative treatment of corporations and unions. They certainly suggest that each organization should be considered separately in connection with the problems of undue influence and minority protection.

*British and American Experience*, *supra* note 24, at 387; *accord*, *United States v. CIO*, 335 U.S. 106, 154 (1948) (Rutledge, J., concurring).

95. Regulation of union political spending, as originally enacted, was nothing more than a wholesale application of corporate restrictions to the labor context. This close joinder of corporate and union interests has continued throughout the evolution of the regulatory scheme and is contained in the present § 441b provisions. The only difference in treatment appears in the first sentence of § 441b, where corporations "organized by the authority of any law of Congress" are prevented from expending money in connection with any election or primary. Labor organizations and all other corporations, on the other hand, are restricted only with respect to federal elections and primaries. 2 U.S.C.A. § 441b (a) (1976).

96. Tyler, *supra* note 91, at 280.

97. See *British and American Experience*, *supra* note 24, at 386 n.106.

98. Crown, *supra* note 84, at 263. See *id.* at 261-62, 267; Masters, *The Organized Labor Bureaucracy as a Base of Support for the Democratic Party*, 27 *LAW & CONTEMP. PROB.* 252 (1962).

99. Crown, *supra* note 84, at 274-75.

100. See *id.* at 267.

must win elections . . . The practical politician must reach for power, however limited, unlike the political scientist who can prove the inevitably corrosive influence of power in human hands.

Because labor must move realistically in an immoral civilization, the methodology of labor . . . is necessarily molded by the imperatives, often distasteful, of our hypocritical culture.<sup>101</sup>

If for no other reason, such an approach to the political arena clearly requires both watchful concern and careful regulation.

The undue influence of monied labor interests, at least in the public eye, is further manifested by the use of labor financial support in predominantly rural, agricultural, and nonindustrial states. The extent to which national union money has been channeled into various "outside" states, particularly western, is illustrated by the 1956 congressional campaigns when Democratic candidates for both the Senate and the House received "national labor gifts" in almost every state in the nation.<sup>102</sup> The conflict of interest that voters justifiably fear will be created by this large-scale political involvement outside labor's immediate areas of concern is demonstrated by the recent emphasis in many campaigns upon the opposition's "domination by the monied interests from the East."<sup>103</sup> While a Congressman favorable to labor is a union asset, whether elected in Idaho or Michigan, the nonindustrial electorate is understandably concerned that their duly elected representatives will be more responsive to the hand that held the check than to the hand that cast the ballot.

In light of such troublesome symptoms,<sup>104</sup> the Supreme Court's approach to the problem of undue influence in *Pipefitters* was unique. Noting Congress' dual objectives in passing the law, *i.e.*, minority protection and the elimination of disproportionate influence, Justice Brennan explained on behalf of the Court that "the aggregate wealth [that Congress] plainly had in mind was the general union treasury—not the funds donated by union members of their own free and knowing choice."<sup>105</sup> It appears from this analysis that Justice Brennan confused the two separate purposes, and, by compounding them into one objective, imposed the vehicle for minority protection as a limitation upon the process

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101. Tyler, *supra* note 91, at 287.

102. Masters, *supra* note 98, at 257.

103. *Id.*

104. See notes 99-103 and accompanying text *supra*.

105. 407 U.S. 385, 416 (1972).

of insuring against undue influence. In any event, as the United States Court of Appeals for the D.C. Circuit explained a year later, because of the *Pipefitters* decision, "unions may now contribute *any amount* so long as it is from a proper source."<sup>106</sup> Dissenting from the majority decision in *Pipefitters*, Justice Powell, joined by Chief Justice Burger, expressed firm disagreement with the majority's interpretation:

The decision of the Court today will have a profound effect upon the role of labor unions and corporations in the political life of this country. The holding, reversing a trend since 1907, opens the way for major participation in politics by the largest aggregations of economic power, the great unions and corporations.<sup>107</sup>

From *CIO* to *Pipefitters*, the courts have continually restricted the scope of legislation regulating the use of union money in politics. The law, as presently construed, affords little protection against any undue influence that labor might have. If, as Congress originally contended, labor's influence is a legitimate legislative concern, the consistent failure of existing federal prohibitions to remedy the situation indicates a critical need for more rigorous and comprehensive means of control.

### B. *Minority Protection*

Most scholars agree that the strongest argument in favor of federal regulation of union political expenditures is that of minority protection.<sup>108</sup> The thrust of the minority protection argument was outlined in *United States v. Boyle*:

[A] second purpose of [section 304 is] to assure that a dissenting union member is not forced to contribute, in the form of mandatory dues and assessments, to support political views with which he disagrees.

. . . By definition the protection of minority interests requires that the majority be restrained in exercising its will over the minority. If a union could expend "involuntary" funds upon the vote of a majority of its members, minority interests would not be protected—they would be rendered irrelevant.<sup>109</sup>

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106. *United States v. Boyle*, 482 F.2d 755, 763 (D.C. Cir.), *cert. denied*, 414 U.S. 1076 (1973).

107. 407 U.S. at 442-43 (Powell, J., dissenting).

108. See, e.g., Ruark, *Labor's Political Spending and Free Speech*, 53 Nw. U.L. Rev. 61, 77 (1958).

109. 482 F.2d 755, 763 (D.C. Cir.), *cert. denied*, 414 U.S. 1076 (1973).

In an effort to mitigate the initial appeal of this rationale, union supporters have fashioned a number of contrary arguments. Foremost among these is the claim that since "unions are more homogeneous" than most organizations as well as the country as a whole, protection of dissenters' rights naturally plays a less significant role in the government of union affairs.<sup>110</sup> While the contention is questionable even if its premise were assumed to be accurate, closer examination demonstrates conclusively that the homogeneity of union political sentiment and membership is a proposition that will not stand. Union officials themselves have found it necessary to admit that primary among the factors that have presented serious obstacles in the way of planned political action is "lack of political solidarity among union members."<sup>111</sup> Surveys polling rank-and-file union membership clearly substantiate this observation. One survey conducted among the unions in St. Louis, Missouri, showed that in response to the question "should the union advise members how to vote," 62.2 percent of the union membership answered "no."<sup>112</sup> The same survey showed only a slight majority of the membership in agreement with the idea of having the union collect a dollar from each member in order to support friendly candidates. In a second survey, "over half the members (57 percent) state[d] that they should neither be told whom to vote for by the union nor be asked for voluntary donations to finance union political action."<sup>113</sup> Thus, the idea that union membership is politically homogeneous and, therefore, less susceptible to problems concerning dissenters' rights is little more than a well conceived fiction. As the author of one survey concludes, "[t]he rank and file is split right down the middle about whether or not the union should be active in politics at all."<sup>114</sup>

Recognizing that a substantial minority interest exists, union supporters have resorted to an alternative argument appealing to the "democratic" processes within the union and the maxim of majority rule. The argument claims that since the hallmark of democratic government is rule by the majority, and since it is the recognized course of all organizations that a minority of its members must at times endure actions against its wishes and, further,

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110. See Tyler, *supra* note 91, at 284.

111. Chang, *supra* note 6, at 554.

112. *Id.* at 557 n.19.

113. Hudson & Rosen, *Union Political Actions: The Member Speaks*, 7 INDUS. & LAB. REL. REV. 404, 410 (1954).

114. *Id.* at 408.

since dissenters have ample opportunity before the fact to actively participate in determining organizational policies, minority union members are left without grounds for complaint when the majority takes action contrary to their desires.<sup>115</sup> As one writer sums up the argument, "[t]he injury to the dissenters is so minor, . . . when compared with the benefits to the majority, that the promotion of a minor indignancy to a constitutional wrong would be injudicious."<sup>116</sup>

When one looks closely at the forms of union democracy, however, the unionist position becomes immediately suspect. In the first place, labor itself admits that the unique "institutional qualities" peculiar to unions fashion a mode of democracy that is neither related nor readily comparable to the models that characterize the nation as a whole.<sup>117</sup> Union democracy seldom if ever takes the form of organized elections to determine which candidates or political programs union money will support. More accurately, the process is one of official discretion and member conversion—labor hierarchy spending member contributions in an effort to convince union membership of the quality of chosen candidates. Furthermore, it seems that majority rule as an institutional philosophy is properly applied only in the context of organizations whose membership is voluntary.<sup>118</sup> The pervasiveness in our society of union security agreements in the form of union shop and agency shop contracts makes its application to labor organizations dubious. If majority rule has any place at all in the union context, it should be restricted to activities for which unions were organized and not allowed beyond that realm. As one author puts it, "[m]en join unions to increase their bargaining power with management, not to increase their political power through a pooling of money to back political candidates."<sup>119</sup>

A third argument that labor expounds in refutation of the minority protection concern is that the actions and political ide-

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115. See Woll, *Unions in Politics: A Study in Law and the Workers' Needs*, 34 S. CALIF. L. REV. 130, 141 (1961). The judiciary has occasionally shown sympathy for this argument. See *International Ass'n of Machinists v. Street*, 367 U.S. 740, 808 (1961) (Frankfurter, J., dissenting); *United States v. CIO*, 335 U.S. 106, 148 (1948) (Rutledge, J., concurring).

116. Comment, *The Compelled Contribution in the Integrated Bar and the All Union Shop*, 1962 WIS. L. REV. 138, 149 (1962).

117. Tyler, *supra* note 91, at 285.

118. *International Ass'n of Machinists v. Street*, 367 U.S. 740, 789 (1961) (Black, J., dissenting).

119. *An Attempt to Restrict*, *supra* note 33, at 370. See *International Ass'n of Machinists v. Street*, 367 U.S. 740, 777-78 (1961) (Douglas, J., concurring).

ologies of an organization are not necessarily meant to reflect the views of all of its members; thus, whatever the organization's position, membership is free to dissent and register its support for candidates and issues of its own choosing.<sup>120</sup> Unfortunately, this argument ignores one basic issue. The question is not whether a union member will be free to support his own political ideologies, but whether he will be free to refrain from supporting policies and candidates he opposes. Moreover, the history of internal union discipline is not as supportive of the contention that individual members are at liberty to dissent as unionists might wish. A classic example is *Mitchell & Mulgrew v. International Association of Machinists*,<sup>121</sup> where a California court upheld the expulsion by a union of three longtime members for "conduct unbecoming a member." The conduct so repulsive to the union was active campaigning for a "right to work" law which the union enthusiastically opposed. The impact of this kind of punitive action is particularly troublesome when viewed in terms of the general acceptance and governmental approval of agency shop and union shop agreements. Where union membership is made a condition of employment—such that, contrary to a worker's wishes, he must join or at least financially support a union—to say that the individual is free actively to support his own candidate may merely offer an alternative without substance.

It is ironic that unions, which came to power by championing the cause of individual freedom, now provide a new arena for the conflict between the interests of the individual and those of aggregate power.<sup>122</sup> On the one hand, union interest in self-preservation encourages explicit political action that demands the use of union money. On the other hand, the individual member is often motivated by more personal concerns, such as race, religion, or personal preference, which may oppose the political orientation of his union. When these different stances collide, labor would have its members believe that the union perception of the common good must be more correct because it is "democratic" and be-

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120. Woll, *Unions in Politics: A Study in Law and the Workers' Needs*, 34 S. CALIF. L. REV. 130, 151 (1961).

121. No. 730083 (Cal. Super. Ct. Jan. 1960) cited in Note, *Political Free Speech for the Union Man*, 11 W. RES. L. REV. 661, 662-63 (1960). See also *DeMille v. American Fed'n of Radio Artists*, 187 P.2d 769 (1947) (Cecil B. DeMille lost union membership and a \$98,000-a-year job because he opposed the union's one dollar per member assessment to prevent passage of a California "right to work" law).

122. See Note, *Political Free Speech for the Union Man*, 11 W. RES. L. REV. 661 (1960).

cause labor's enemy cannot be the worker's friend. The concern of one political scholar seems appropriate as he writes:

Until general economic ethics change, unions could do nothing better than to post on every local's wall the warning of Oswald Spengler:

In the beginning the leadership and the apparatus come into existence for the sake of the program. Then they are held on to defensively by the incumbents for the sake of power and booty . . . . Lastly the program vanishes from memory and the organization works for its own sake alone.<sup>123</sup>

#### IV. A SUGGESTED APPROACH

##### A. *Basic Policies and New Legislation*

Congress' struggle with the problems of union political spending has been frustrating and long. The result is a law the interpretation of which is uncertain, and the effect of which is questionable. Moreover, it appears that judicial interpretation has eliminated "undue influence" and "purity of elections" as workable objectives of campaign finance regulation. Whether this is the result of a developing attitude that unions and politics have moved beyond the need for such restrictions or merely the gradual effect of continual labor pressure and involvement is immaterial. It remains unlikely that more relevant objectives than those originally espoused can be invented from which to fashion meaningful regulation.

Courts and congressmen alike presently admit that minority protection is a major justification for limiting labor spending in politics. Section 441b, the latest codification of the law regulating union political spending, attempts to deal with this problem in two ways: (1) by providing that all member contributions be made to a "separate segregated" fund, and (2) by mandating that all such contributions be made knowingly and voluntarily.<sup>124</sup>

Although the wording of the statute appears to offer an encouraging thrust, much of its positive power has been sapped through recent judicial definition. In *Pipefitters*, the Supreme Court made three crucial observations. First, it construed the words "separate" and "segregated" as being synonymous, holding that political funds needed to be separate from the sponsoring

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123. Crown, *supra* note 84, at 276.

124. 2 U.S.C.A. § 441b (b)(2)-(3)(A) (1976).

union only in the sense that the money had to be distinct from dues and assessments.<sup>125</sup> Second, the Court stated that while such a fund could not expend money from the general union treasury for political purposes, it could be established, administered, and maintained from such money.<sup>126</sup> Finally, concerning voluntariness, the Court concluded that contributions to a segregated fund had to be "knowing, free-choice donations." It added, however, that those donations could be actively solicited by union officials, the determinative factor being whether the individual member was informed that he was free to refuse his support.<sup>127</sup>

The Court's rendition of the statute created significant deficiencies in all three areas of its definition. First, while the statute by its language prohibited the threat or use of force, discrimination, or reprisals in obtaining contributions,<sup>128</sup> the Court's interpretation prevented the statute from recognizing the more subtle coercion that was all too prevalent in the *Pipefitters* case. In spite of assertions on the part of the Pipefitters union officials that all donations were "voluntary," members' contributions were, as the Court itself recognized, voluntary only in the "same sense that [members] paid their dues or other financial obligations."<sup>129</sup> Quoting with approval from the lower court, Justice Brennan conceded that "[i]t would appear to be unrealistic to believe that such a large number of workmen would make such substantial voluntary contributions to be used for political purposes unless they felt that their job security required them to do so."<sup>130</sup> The fact that such circumstances would satisfy the letter of the law offers perhaps the most conclusive evidence of its weakness.

Thus, from the standpoint of minority protection, and in order to insure that political donations are not only knowingly made, but are voluntary in a sense broader than the fact that an authorization card defines them to be so, the law regulating political spending demands revision. It appears that the only certain way to guarantee protection to dissenting union members is to remove the crucial factor of identity from the donation process by making member contributions anonymous. Anonymity might be accomplished in a number of ways. One possible means would be

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125. 407 U.S. 385, 414, 421-22 (1972).

126. *Id.* at 429-30.

127. *Id.* at 414, 415.

128. Federal Election Campaign Act § 205, 86 Stat. 10 (1972).

129. 407 U.S. at 393.

130. 407 U.S. at 393 n.4. For a discussion of the British experience with similar problems, see *British and American Experience*, *supra* note 24, at 383.

through the use of prepared donation envelopes and designated collection boxes. This would permit vigorous solicitation, even by union officials, while maintaining personal security for union membership. Undoubtedly, union supporters will complain that such a procedure would severely limit available funds. This lament, however, argues more for the claim that the present system produces coerced donations than it does for the preservation of that system.

The second weakness created by the Court's reading in *Pipefitters* of the statutory prohibitions on union spending is that while general union dues money cannot itself be expended for political purposes (thus, protecting minority members who opposed ideologies which those funds would support), it can be utilized to establish and administer the fund that finances political activity. In light of the policy against mandatory political support, it is a distinction without a difference to protect a union member against forced financial backing of a political candidate and at the same time require him to maintain the organization that will finance that candidate. The most plausible alternative would be to require a political fund to originate and maintain itself from the source of its money, namely, "voluntary" contributions.

The third weakness infused into the statute by *Pipefitters* resulted from the Court's narrow reading of the phrase "separate segregated fund." Justice Brennan, without justifying his preference for a more restrictive reading, was generous enough to concede that the words "separate" and "segregated," as used by the legislature in defining the restrictions on union spending, *normally* would not be read as synonymous, and that their combined use *normally* would mean "an apartness beyond segregated."<sup>131</sup> Since Congress admittedly was seeking to further the objective of minority protection, the normal reading appears to offer the better alternative. Not only would the danger of commingling and misuse of funds, inadvertent as well as willful, be less likely under the application of a broader definition, but the unhealthy domination and control by interested union officials of this kind of "segregated" fund could be avoided with more certainty. By requiring the fund to be separated from the union, both as to money and personnel, and by forbidding salaries and expenses to be drawn from union treasuries, the ideal of minority protection could be more realistically served.

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131. 407 U.S. at 421-22.

Although undue influence and purity of elections have arguably been eliminated as viable objectives of existing regulation of labor political expenditures, it would be naive, particularly in view of present legislative efforts to police campaign financing, to assume that lawmakers have forgotten the significance of such concerns. Numerous suggestions have been made by scholars as to the best way to incorporate these objectives into new legislation regulating union spending.<sup>132</sup> Of these suggestions, a dollar limitation on allowable labor spending appears to be the most direct and effective means to achieve the desired purpose. Earlier attempts in this vein have been unsuccessful, but their failure derived more from flabby draftsmanship than inherent weakness. To insure that prior failures are not repeated, two supplementary points of focus might be useful. First, Congress should establish a dollar limitation on the amount of "segregated" union money that politicians and party campaign committees may accept.<sup>133</sup> Second, Congress should restrict the dollar amount of "expenditures" that segregated union campaign funds would be allowed to make.<sup>134</sup>

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132. *E.g.*, Chang, *supra* note 6, at 572; Ruark, *Labor's Political Spending and Free Speech*, 53 Nw. U.L. REV. 61, 76-77 (1958); Comment, *Restraints on Labor and Corporate Expenditures in Federal Elections*, 24 Mo. L. REV. 528, 537 (1959); Comment, *Unions in the Political Arena: Legislative Attempts to Control Union Participation in Politics*, 23 Sw. L.J. 713, 723-25, 726-27 (1969); *Political Contributions by Labor Unions*, *supra* note 15, at 673.

133. Such a restriction was explicitly declared constitutional in *Buckley v. Valeo*, 424 U.S. 1, 25 (1976).

134. The suggestion that a ceiling be placed upon dollar "expenditures" as well as "contributions" immediately faces two significant obstacles. First, the legislature must carefully draft any such limitation to avoid a loophole similar to that which unions exploited in the early 1940's in order to escape the \$5000 Hatch Act restrictions. See notes 18-19 and accompanying text *supra*. In this regard, Congress must take care to insure that expenditure limitations are not nullified through fractionalization of segregated union political funds into numerous organizations, each expending the allotted amount. Likewise, Congress must avoid the use of local labor organizations which might circumvent the effect of expenditure limitations that would otherwise apply if fewer national or regional organizations controlled the distribution of money.

A second, and certainly more substantial, obstacle to expenditure limitations is posed by the United States Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976). In that case, the Court upheld contribution restrictions imposed by the 1974 amendments to the Federal Election Campaign Act, but declared that limitations on political expenditures amounted to an unconstitutional burden upon free speech. The Court's distinction between contributions and expenditures was questioned by Justice White in a separate opinion, concurring in part and dissenting in part, as he urged that the expenditure limitation be upheld:

In sustaining the contribution limits, the Court recognizes the importance of avoiding public misapprehension about a candidate's reliance on large contributions. It ignores that consideration in invalidating [the expenditure limita-

### B. Constitutionality

Since the enactment of the Taft-Hartley Act, constitutionality has been a nagging sore for advocates of restrictive legisla-

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tions]. In like fashion, it says that Congress was entitled to determine that the criminal provisions against bribery and corruption, together with the disclosure provisions, would not in themselves be adequate to combat the evil and that limits on contributions should be provided. Here, the Court rejects the identical kind of judgment made by Congress as to the need for and utility of expenditure limits.

424 U.S. at 262. Justice White's hypothetical concerning two brothers, each with a million dollars to spend, one of whom contributes money, while the other expends it, clearly illustrates the basic concern. Scholars, likewise, have been ill at ease with the Court's decision. This disapproval was appropriately articulated by one writer in the following words:

White felt the expenditure limits should be upheld because the purposes served were legitimate and substantial. First, the expenditure ceilings reinforce the contribution limits. With the rising costs of campaigns, the pressure to raise funds will constantly build. This tempts the candidate to resort to those individuals having large sums of money who are sufficiently confident of not being caught to risk flouting the contribution limits. The regulations saved the candidate from this dilemma by imposing a reasonable ceiling on all candidates. Second, the expenditure limits have their own potential for preventing the corruption of federal elections: 'There are many illegal ways of spending money to influence elections. One would be blind to history to deny that unlimited money tempts people to spend it on whatever money can buy to influence an election . . . . [T]he expenditure limits could play a substantial role in preventing unethical practices. There just wouldn't be enough of "that kind of money" to go around.' Third, the expenditure limits would ease the candidates' obsession with fund-raising, thereby freeing them and their staffs to communicate in more places and ways unconnected with the fund-raising function. Fourth, the ceilings would help restore and maintain public confidence in federal elections; it is critical to dispel the impression that federal elections are purely and simply a function of money. Justice White concluded by saying that because the ceilings were not too low, the limitations would ensure that the election could not turn on the difference in the amounts of money candidates have to spend. He expressed his alarm that '[t]he [Court's] holding perhaps is not that federal candidates have the constitutional right to purchase their election, but many will so interpret the Court's conclusion in this case.' . . . Justice White's arguments are persuasive. As the cases concerning corporations, unions . . . demonstrate, the Court has historically been concerned with the corrosive effect which unregulated spending has on the integrity of the electoral process and the public's faith in it.

Comment, *The Constitutionality of Limitations on Individual Political Campaign Contributions and Expenditures: The Supreme Court's Decision in Buckley v. Valeo*, 25 EMORY L.J. 400, 439-40 (1976) (footnotes omitted).

It is possible, although uncertain, that the *Buckley* decision comprises a less impressive obstacle to expenditure limitations than one would at first suppose. In upholding the contribution restrictions in that case, the Court declared that such a limitation "entails only a marginal restriction on the contributor's ability to engage in free communication." 424 U.S. at 20. In light of this language, a somewhat less severe restriction on expenditures than the \$1000 limitation might pass as a "marginal restriction on the contributor's ability."

tive governing the political use of labor money. For nearly thirty years, the Supreme Court has deftly avoided speaking directly to this issue. Instead, it has teased and intimidated Congress and the Justice Department with "grave doubts" and stirring dissents denouncing regulation to the point that no one is certain what the status of the law actually is. Thus, although regulation of union political involvement has never authoritatively been declared unconstitutional, it is clear that any new legislation must necessarily contend with the specter of that possibility.

The constitutionality of Congress' power to regulate the use of money in the political arena was established as early as 1916 in the case of *United States v. United States Brewers' Ass'n*.<sup>135</sup> The constitutional basis justifying such regulation was two-pronged: (1) the clause in article I, section 4 that permits Congress to control "the Times, Places, and Manner of holding Elections," and (2) the "necessary and proper" clause of article I, section 8, which allows the legislature broad power in preserving the purity of the political process. The Supreme Court sanctioned the application of this power to labor political spending in the *CIO* case:

There can be little doubt of Congress' power to regulate the making of political contributions and expenditures by labor unions, as well as by other organizations and individuals, in the interest of free and pure elections and the prevention of official corruption . . . .<sup>136</sup>

Congressional power in this regard, as in every other, however, is not absolute. As political theorists have been quick to point out, any federal regulation that invades the realm of political expression necessarily must be weighed against the importance of first amendment rights.<sup>137</sup>

Just as congressional power is not absolute, neither are the constitutional freedoms against which legislative action is measured. Political theorists likewise have consistently expressed the opinion that

"freedom [of speech and press] does not deprive a state of the primary and essential right of self-preservation, which, so long

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135. 239 F. 163 (W.D. Pa. 1916).

136. 335 U.S. 106, 139 (1948) (Rutledge, J., concurring).

137. E.g., Goodman & Thomason, *Prohibition of Expenditures by Labor Unions in Connection with Federal Elections*, 21 GA. B.J. 575, 579-80 (1959); Comment, *Restraints on Labor and Corporate Expenditures in Federal Elections*, 24 MO. L. REV. 528, 533 (1959).

as human governments endure, they cannot be denied." Preservation of the electoral process would . . . appear essential to the preservation of our form of government.<sup>138</sup>

The issue, therefore, is not so much whether a particular enactment of campaign finance regulation affects the enjoyment of first amendment rights, but whether it constitutes an infringement severe enough to warrant a remedy. The courts have developed two closely related standards in order to define the permissible limits beyond which invasion by Congress of first amendment guarantees cannot go. The first requires that before first amendment freedoms may be infringed, a "clear and present danger" must exist, threatening substantive evils that the government is empowered to prevent.<sup>139</sup> The second similarly demands a "compelling state interest" that necessitates the abridging legislation.<sup>140</sup> In terms of undue influence, the judiciary and the legislature have long recognized the inherent threat to the integrity of democratic government associated with accumulated wealth. The fears expressed have not been disproven in practice. Labor unions as well as other powerful interest groups have produced such a disproportionate effect upon the political arena and so jeopardized the integrity of the system that extensive energy has been expended in the lawmaking bodies to develop workable laws restricting their activity. As Justice Powell so aptly noted in his *Pipefitters* dissent, unnecessary restrictions upon congressional efforts to prevent undue influence and preserve the purity of elections are occurring "at a time paradoxically when public and legislative interest has focused on limiting—rather than enlarging—the influence upon the elective process of concentrations of wealth and power."<sup>141</sup>

The need for minority protection offers perhaps the most compelling reason for federal regulation of organized labor political spending. Undoubtedly, this derives partially from the nature of the interest involved. That is, the conflict concerns the balancing not of a public interest against a constitutional right but of the first amendment rights of an individual against those of an institution. Although the question of whether or not first amendment rights apply to institutions, and if so to what extent, has

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138. Goodman & Thomason, *Prohibition of Expenditures by Labor Unions in Connection with Federal Elections*, 21 GA. B.J. 575, 580 (1959).

139. Originally stated in *Schenck v. United States*, 249 U.S. 47, 52 (1919).

140. *United States v. Pipefitters Local 562*, 434 F.2d 1116, 1123 (8th Cir. 1970), *rev'd*, 407 U.S. 385 (1972).

141. 407 U.S. 385, 443 (1972) (Powell, J., dissenting).

never been conclusively answered,<sup>142</sup> there can be little argument that, as between institutions and individuals, the latter enjoy a preferred status. Moreover, in the realm of labor political involvement, it appears that the conflict is not between the organization's right of free speech and the individual's same right as much as it is between convenience to the union in communicating political preferences and the right of the member to refrain from supporting repugnant ideologies. After all, the union can still voice its opinion loudly. It must do so, however, without the money of dissenting members. In any event, the courts have registered an influential vote confirming the compelling interests that underlie the regulation of spending to insure minority protection. In its consideration of the *Pipefitters* case, the United States Court of Appeals for the Eighth Circuit articulated its vote as follows:

Congress in passing [Section 304 of the Taft-Hartley Act] was attempting to protect the individual union member's right to his own political views and the right to support or not to support them through money contributions. In light of the substantial interest each individual has in his own political activities, it follows that Congress in passing the legislation was responding to a compelling interest.<sup>143</sup>

## V. CONCLUSION

Existing legislative restrictions upon the financial involvement of labor organizations in the political arena have suffered extensively from the eroding elements of judicial interpretation, union exploitation, and legislative repair. As presently constituted, the law offers an explicit example of the consequences that follow from placing "new wine into old bottles"—neither is the wine enhanced nor are the bottles preserved. If the problems of union political involvement are to be resolved in understandable and effective terms, lawmakers need to clear the table and begin a fresh legislative structure upon the foundational objectives of preventing undue influence, preserving the purity of elections, and protecting the interests of the political minority.

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142. See, e.g., Goodman & Thomason, *Prohibition of Expenditures by Labor Unions in Connection with Federal Elections*, 21 GA. B.J. 575, 577-78 (1959); Kovarsky, *Unions and Federal Elections—A Social and Legal Analysis*, 12 ST. LOUIS U.L.J. 358, 374 (1968); Ruark, *Labor's Political Spending and Free Speech*, 53 NW. U.L. REV. 61, 73-74 (1958); Comment, *Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity*, 57 YALE L.J. 806, 816 (1948).

143. 434 F.2d 1116, 1123 (8th Cir. 1970), *rev'd*, 407 U.S. 385 (1972). See *International Association of Machinists v. Street*, 367 U.S. 740, 777-78 (Douglas, J., concurring), 783-84 (Black, J., dissenting), 788-89 (Black, J., dissenting) (1961).