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COMMENTS

AN ATTEMPT TO RESTRICT UNION AND CORPORATE POLITICAL ACTIVITY

Throughout the history of the United States, various attempts have been made to prevent the corporate giants from controlling elections and political parties. As the trade labor movement developed and produced hugh labor unions, it was felt by many that the evil of allowing unions to exert great influence in the area of partisan politics was as great as allowing corporations to exert this influence. This concern culminated in a provision which was incorporated into the Taft-Hartley Labor Act in 1947 and which is now designated as 18 U.S.C. 610.¹ The statute reads:

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

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if the violation was wilful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or condition of work.

It should be pointed out that this criminal statute prohibits both contributions and expenditures, and that the statute restricts labor organizations as well as corporations. Of course this Federal statute ap-

¹ Section 304 of the Taft-Hartley Act is basically the same as 18 U.S.C. 610.

plies only to Federal elections, so that individual states are free to enact state Corrupt Practice Acts to apply to state political activity.

HISTORICAL BACKGROUND

In the years following the Civil War and continuing into the Twentieth century, the voices calling for Congressional action to curb the political activity of corporations became louder and louder. This concern was directed primarily toward the powerful railroads and insurance companies. As a democracy depends upon an intelligent electorate for survival, it was felt that massive political spending by the corporations of the nation was, in effect, taking the freedom of choice from individuals and granting it to the corporate leaders who could control elections as well as politicians with money. In 1907 a statute was enacted by Congress which made it unlawful for any corporation to make a money contribution in connection with any election of any political candidate.² This "Act of 1907" was merely the first concrete manifestation of a continuing Congressional concern for elections "free from the power of money."³

This 1907 legislation was strengthened in 1925 by changing the term "money contribution" to "contribution" and by penalizing the recipient of any forbidden contribution as well as the contributor.⁴ With the enactment of that statute it seems that adequate legislation was on the books to keep corporations from making direct contributions to candidates and parties. In 1943 labor organizations were placed under the same restrictions for the duration of the war.⁵

After the termination of the war, great concern was heard that the present restrictions were not stringent enough. A large area of dispute centered around the word "contribution". "Of what avail would a law be to prohibit the contributing direct to a candidate and yet permit the expenditure of large sums in his behalf."⁶ This segment of a report of the House Special Committee to Investigate Campaign Expenditures (1946) indicates that the present prohibition against direct contributions was being circumvented by making indirect contributions for the benefit of a candidate rather than directly to him. In 1947 the Taft-Hartley Act was passed by Congress and our present prohibition against both contributions and expenditures by labor organizations as well as corporations came into existence.

² 34 Stat. 864 (1907).

³ *United States v. International Union Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO)*, 352 U.S. 567, 575, (1957). The last six words are from a quote by Samuel Gompers, President of the American Federation of Labor.

⁴ 43 Stat. 1070 which was Section 313 of the Federal Corrupt Practice Act of 1925 (1925).

⁵ 57 Stat. 163, 167 (1943). Section 313 of the Corrupt Practices Act was extended to labor unions for the duration of the war as part of the Smith-Connally Act.

⁶ H.R. Rep. No. 2739, 79th Cong., 2d Sess. 36-37.

LEGISLATIVE INTENT IN ENACTING 18 U.S.C. 610

Senator Taft (R-Ohio), co-author of the Taft-Hartley Act, described the purpose of the statute we are concerned with very clearly.

But the prohibition is against labor unions using their members *dues* for political purposes, which is exactly the same as the prohibition against a corporation using the stockholders' money for political purposes, and perhaps in violation of the wishes of many of its stockholders. [emphasis added]⁷

By this expression of intent Senator Taft indicated that unions could organize separate associations as the CIO had already done with its Political Action Committee and the AFL-CIO later did with its Committee on Political Education. The test was that these separate associations must be supported solely by voluntary contributions with no use of any union member's dues. If money from dues was used, it would be a violation of the statute. The reason for this test becomes apparent when one considers that many individuals are required to join a union as a condition to the continuance of employment.

Many sections of the Taft-Hartley Act were hotly opposed in Congress, and Section 304, which was essentially the same as 18 U.S.C. 610, was no exception. Senator Pepper (D-Fla.) was one of the leading Congressional opponents of the statute. His contention was:

This prohibition, therefore, is denying to citizens of this nation the right of free press, the right of free speech, the right of disseminating information of public value. It is a chain upon the citizens activity, and we well know that these labor organizations are composed of working people. They do not have people who are their members who can contribute hundreds of thousands or millions of dollars to political campaigns. They have to do it collectively.⁸

Senator Pepper made this statement after Senator Taft had indicated that unions could validly form associations by which union members would be able to collectively support political parties or candidates as long as this support was through voluntary contributions. This makes it rather difficult to follow Senator Pepper's argument. Certain it is, however, that Senator Pepper, although opposed to the section, understood it to mean that labor unions and corporations would be barred from "disseminating information of public value."⁹ This apparently would include any expenditure for newspaper advertisements or radio and television time.

JUDICIAL INTERPRETATION OF THE WORD "EXPENDITURE"

Although the prohibition against "contributions" failed to evoke much controversy, the ban on "expenditures" was immediately chal-

⁷ Cong. Rec. 93: 6440.

⁸ Daily Cong. Rec. 93: 6448.

⁹ *Ibid.*

lenged. A few weeks after the prohibition was enacted, the regular CIO newspaper printed a statement by Phillip Murray, President of the CIO, stating, in essence, that all CIO members should vote for a certain candidate in a Maryland election. Mr. Murray and his union were promptly indicted under the statute. The Federal District Court dismissed the indictment on the ground that 18 U.S.C. 610 "is an unconstitutional abridgment of freedom of speech, freedom of the press and freedom of assembly."¹⁰ On appeal, it was conceded by both sides that Murray's activity was covered by the word "expenditure", and the only issue was the constitutionality of the statute.¹¹ However, the United States Supreme Court, in *United States v. Congress of Industrial Organizations*,¹² declined to rule on the constitutionality of the statute and held that the publication by a union, financed by its general funds, of a regular periodical advertising the election to federal office of a particular candidate, was not an expenditure as contemplated by 18 U.S.C. 610. This result seemed contrary to the legislative intent, as Senator Taft had stated specifically that an expenditure^o of this type would be barred,¹³ and Senator Pepper's statement quoted earlier indicated that he also felt that this type activity would be prohibited.

The following year a case involving the statute arose in Connecticut. A small painter's local took regular union funds and sponsored a political broadcast urging defeat of Senator Taft and rejection of all Republican incumbent Congressmen. This broadcast was carried over a general, commercial radio station. As in the CIO case, no contention was made that the statute was inapplicable; the sole defense being the unconstitutionality of the statute. In *United States v. Painters Local Union No. 411*,¹⁴ the Second Circuit Court of Appeals also avoided the constitutional issue and held this advertisement was not a prohibited expenditure as "it seems impossible, on principle, to differentiate the scope of that decision (*U.S. v. CIO*) from the use we have before us."¹⁵

These two decisions rendered the ban on "expenditures" virtually worthless, at least in the area of commercial communication. They also terminated any indictments for seven years. However, in 1956, the United Auto Workers union was indicted for using dues money to pay for broadcasts "urging and endorsing" the election of Senator McNamara and certain other Democrats for Congress. The Federal District Court for the Eastern District of Michigan held that union-paid tele-

¹⁰ *United States v. Congress of Industrial Organizations*, 77 F. Supp. 355, 357 (D.D.C. 1948).

¹¹ Rauh, *Legality of Union Political Expenditures*, 34 S. CAL. L. REV. 156 (1960-61).

¹² 335 U.S. 106 (1948).

¹³ *Supra* note 7, at 6598.

¹⁴ 172 F. 2d 854 (2nd Cir. 1949).

¹⁵ *Id.* at 856.

vision advertisements were not prohibited by the statute.¹⁶ The District Court stated: "what the Supreme Court has said (in *U.S. v. CIO*) is not ambiguous to us."¹⁷ On appeal, however, the Supreme Court distinguished the two cases. Mr. Justice Frankfurter, writing for the majority in *United States v. International Union United Automobile, Aircraft and Agriculture Implement Workers of America (UAW-CIO)*,¹⁸ said that in the *CIO* case the union had "merely distributed its house organ to its own people", while here they were using "union funds to influence the public at large to vote for a particular candidate or a political party."¹⁹ So, this case determined that a political advertisement by a union, if paid with dues money, over a television station beamed to the general public was prohibited by 18 U.S.C. 610. This is the last time the Supreme Court has acted directly on the statute.

The most recent case involving the statute was *United States v. Anchorage Central Labor Council*.²⁰ In a fact situation practically the same as in *U.S. v. UAW*, a labor union organization was indicted for violating 18 U.S.C. 610 by sponsoring television programs which were expressions of political advocacy and were intended to influence both union members and non-members. The Federal District Court for the District of Alaska distinguished the two cases in that, here, the labor organization was not an individual union, but rather an association of some twenty-six local labor unions which obtained the money to pay for the television broadcasts from contributions made by the individual unions. The judge referred to the *UAW* case and the elements that Mr. Justice Frankfurter suggested are necessary for a violation. The judge felt that the most important element for consideration is whether or not the broadcast complained of was paid for out of the general union dues of the union membership or whether the funds may be "fairly said to have been obtained on a voluntary basis."²¹ He arrived at the conclusion that even though the money came from the general treasury of the individual unions, it was obtained on a voluntary basis because the union membership voted to pay it to the association which ultimately made the expenditure.

No union was called upon to pay for this program. Each union decided by a vote of its membership, according to the testimony, first, whether they would contribute, and second, how much.

¹⁶ *United States v. International Union United Automobile, Aircraft and Agricultural Implement Workers of America (AUW-CIO)*, 138 F. Supp. 53 (E.D. Mich. 1956).

¹⁷ *Id.* at 59.

¹⁸ *Supra* note 3.

¹⁹ *Id.* at 589.

²⁰ 193 F. Supp. 504 (D. Alaska 1961).

²¹ *Id.* at 506. Quoting from Mr. Justice Frankfurter's opinion in the *UAW* case at 352 U.S. 567, 592.

Surely, that is voluntary; and that, I think, is the crux of the situation here.²²

It appears that the only differentiation between the facts in the *UAW* case and the *Anchorage* case was that in the former the expenditure was prohibited because it was made directly from a union's treasury to a political activity while in the latter the expenditure was made from a union's treasury to an association of unions and then to the political activity. It is questionable whether this distinction in method should lead to different results as in both cases a union member's dues could be used for political purposes which he might not favor.

THE CONSTITUTIONALITY OF 18 U.S.C. 610

Besides being weakened by judicial interpretation, 18 U.S.C. 610 has also been directly attacked as being unconstitutional under the First Amendment of the Constitution of the United States. The theory behind this argument is that to bar expenditures by unions for partisan political activities is to deny unionists the right of expression. The United States Supreme Court has never directly ruled on the constitutionality of the statute, although some of the Justices have made it clear that they feel the statute is unconstitutional. Mr. Justice Douglas is one of these, as is evidenced by his dissent in the *UAW* case. He suggests, "if minorities need protection against the use of union funds for political speechmaking, there are ways of reaching that end without denying the majority their First Amendment rights."²³ In a footnote to his opinion, he suggests that an alternative would be to permit the minority to withdraw their funds from that activity if they do not sympathize with the cause.²⁴ The alternative suggested would seem to solve the problem by making the "expenditures" voluntary in nature, provided the individual would be allowed to receive back his pro-rata share of the expenditure made to a political cause he does not wish to support. But, if the alternative means that if a member of the minority does not wish to contribute, and makes this fact known so that his share is withdrawn from the expenditure but left in the treasury, this would be ineffective in protecting the member because it would allow the union majority to use his funds for regular union expenses and free the rest of the treasury for political activities.

Although Justices Douglas and Black and Chief Justice Warren are often pointed out as the guardians of minority groups, their well-known philosophies do not seem to extend to minorities in unions who do not sympathize with the political views of the majority of the union.

Behind this question is the idea that there may be a minority of union members who are of a different political school than their

²² *Id.* at 506.

²³ *Supra* note 3, at 597.

²⁴ *Id.* at 597.

leaders and who object to the use of their union dues to espouse one political view. This is a question that concerns the internal management of union affairs. To date, unions have operated under a rule of the majority. *Perhaps minority rights need protection.* But this way of doing it is, indeed, burning down the house to roast the pig. All union expenditures for political discourse are banned because a minority might object. [emphasis added]²⁵

Although few will argue that unions should and must operate under a rule of the majority of their members, a strong argument can be made that this majority rule should be applied only to activities for which unions were founded, and not for activities which are outside that realm. It is highly doubtful that participation in partisan politics is a real reason why labor has organized. This is especially true where the political activities correlate in no way with legitimate union activities. Men join unions to increase their bargaining power with management, not to increase their political power through a pooling of money to back political candidates. The Code Provision, 18 U.S.C. 610, was enacted for the purpose of prohibiting the union's use of member's money for such partisan political activities.

The First Amendment guarantee of freedom of expression is one that every true American holds in high esteem. However, it is difficult to follow the reasoning of those who claim that 18 U.S.C. 610 denies this freedom and should be struck down as being unconstitutional. The guarantee of freedom of expression is one that belongs to the individuals, and the statute in no way prevents the individuals from expending their own money for political purposes, or from having the union collect it and expend it together with that collected from other unionists. The only requirement should be that it be given *voluntarily* for that purpose. Even if 18 U.S.C. 610 was enforced according to the strict letter of the statute, individual union members would be able to participate in partisan political discourse through organizations such as the Committee on Political Education, as long as they are financed through such voluntary contributions.

After about 15 years, 18 U.S.C. 610 seems to be a very ineffective method of preventing unions from using dues money for partisan political activity as is evidenced by the *Anchorage* case. This is apparent when radio, television and newspaper advertisements paid for by labor unions with dues money are heard and seen in the midst of campaigns advocating election of certain candidates, or when tickets for high-priced political dinners, which in effect are contributions to a candidate or party, are purchased from union treasuries. The blame for its ineffectiveness must be placed to some extent on the courts. By declaring certain ex-

²⁵ *Id.* at 596.

penditures by unions not to be "expenditures" under the statute, the courts seem to have followed neither the letter nor the spirit of the statute and have made it a near nullity. They have also made it very difficult for the unions to know when they are violating the law. Its present status is certainly unsatisfactory as the result intended has not been realized. The statute should either be enforced vigorously, declared unconstitutional or repealed.

MACHINISTS V. STREET

It is entirely plausible that the protection of the unionist in the political minority of the union may be reached under the decision of *International Association of Machinists v. Street*²⁶ without even using 18 U.S.C. 610. This 1961 Supreme Court decision involved suit by a group of railroad employees to enjoin enforcement of a union-shop agreement, entered into between their employer railroad and the Machinists union, which required all employees to join the union and pay initiation fees, assessments, and dues in order to keep their jobs. The complaint alleged that a substantial part of the money each of these employees was compelled to pay was used, over his protest, to finance the campaigns of political candidates whom he opposed, and to promote the propagation of political and economic doctrines, concepts, and ideologies with which he disagreed.²⁷ The Georgia Supreme Court affirmed a lower court decision which enjoined the enforcement of the union-shop agreement and awarded some of the employees money judgments for the money they had been required to pay.²⁸ The United States Supreme Court reversed and remanded, disallowing any injunction. However, the court interpreted 45 U.S.C. 152 Eleventh (a part of the Railway Labor Act) "to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes."²⁹ This pertinent section of the Railway Labor Act gives railroad unions the power to form a union-shop, and it should necessarily follow that a similar provision of the National Labor Relations Act³⁰ would be construed in the same fashion to prohibit the use of dues money for political purposes by all the unions governed by the National Labor Relations Act, over an employee's objection.

The court made it very clear that "Any remedies, however, would properly be granted only to employees who have made known to the union officials that they do not desire their funds to be used for political causes to which they object."³¹ The court then suggested two possible remedies:³²

²⁶ 367 U.S. 740 (1961).

²⁷ *Id.* at 744.

²⁸ 215 Ga. 27, 108 S.E. 2d 796 (1959).

²⁹ *Supra* note 26, at 740-41.

³⁰ 29 U.S.C. 157.

³¹ *Supra* note 26, at 774.

³² *Id.* at 774-75.

1. Injunction against expenditures for political causes opposed by each complaining employee of a sum, from those moneys to be spent by the union for political purposes, which is so much of the moneys exacted from him as is the proportion of the union's total expenditures made for such political activities to the union's total budget.

2. Restitution to each individual employee of that portion of his money which the union expended, despite his notification, for the political causes to which he had advised the union he was opposed.

The crux of the decision is that by Section 2, Eleventh of the Railway Labor Act, Congress intended to, and impliedly did, limit the use that railroad labor unions may make of dues, fees, and assessments of union members. The same result will probably be arrived at under the Labor-Management Relations Act.

The *Machinists* case shows that 18 U.S.C. 610 is not needed in preventing unions from expending dues money for political purposes which a unionist does not want spent. Although it places an affirmative duty on the individual union member to notify his union officers that he does not desire to have his money spent to support political causes which he opposes, it does give the minority member a definite weapon. No contention was made in this case that any of the expenditures involved were made in violation of the Federal Corrupt Practices Act, 18 U.S.C. 610, or any state corrupt practice legislation.³³

CONCLUSION

It should be noted that although 18 U.S.C. 610 applies to corporations as well as labor unions, the litigation has been directed towards labor unions exclusively. It is difficult to determine whether the statute has succeeded in preventing corporations from expending the stockholders' money for partisan political activity, or whether the statutory ban is being avoided by other means. One apparent danger in the corporate area is that if, under the statute, labor unions have the power to spend the members' dues money for activities which the courts do not consider "expenditures" under the statute, then similarly corporations are able to make the same type expenditure. This places the corporations themselves right back into the political arena.

After about 15 years under 18 U.S.C. 610, it is quite apparent that the statute has failed in its attempt to protect minorities which do not desire to finance political activities which they are not in favor of. Although *Machinists v. Street* had indicated that relief may be granted to these minorities without the use of the statute, it is still too early to know the full impact of the case. There is something to be said also in favor of relaxing any limitations on union and corporation spending in politics for the simple reason that both groups are somewhat depend-

³³ *Id.* at 773 (footnote).

ant on a legislative attitude favorable to them for further gains. The high cost of seeking public office today practically necessitates obtaining financial backing from various groups. However, the wiser policy would appear to be to allow union and corporate contributions and expenditures to be allowed only when purely voluntary, so as not to smack of extortion in any way.

Certainly labor unionists should be allowed to actively support those political candidates who will support the union position. The same holds true of stockholders in regard to candidates who support their position. But, on the other hand, individual members of both groups should be allowed to support the political candidates and parties of their own choice, and if they do not wish to help finance any candidate or party, they should be allowed to realize this desire. 18 U.S.C. 610 has largely been a failure in this respect. *Machinists v. Street* has probably opened the door to a favorable conclusion that will help protect the individual members while allowing unions to be active in politics.

This article is not intended to cover groups other than corporations and labor organizations in which a similar problem may be present. For example, if an attorney must belong to an integrated bar association in order to practice law in a particular state, it should not be proper for the bar association to expend funds paid by him, as required dues, for the furtherance of political activities which he may be opposed to. Mr. Justice Black in his dissent in the *UAW* case summed it up very well by quoting from Thomas Jefferson.

To compel a man to furnish contributions of money for the propagation of opinion which he disbelieves, is sinful and tyrannical.³⁴

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³⁴ BRANT, JAMES MADISON: THE NATIONALIST, 354 (1948).