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## The Use of Union Dues for Political Purposes: A Discussion of Agency Fee Objectors and Public Policy

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### **ABSTRACT**

The issue of the use by unions of dues and fees for political activities is receiving increased scrutiny. In particular, many bills have been introduced in the 105<sup>th</sup> Congress that would either codify the Supreme Court decision in *Beck*, or strengthen the rights of employees to object to the use of union dues or fees for political activities. This report discusses policy issues raised by *Beck*, and tracks legislation on the use of union dues for political activities that has come before the 105<sup>th</sup> Congress. This report will be updated as needed..

# The Use of Union Dues for Political Purposes: A Discussion of Agency Fee Objectors and Public Policy

## Summary

Union security agreements are agreements between employers and unions which require employees to give financial support to unions as a condition of employment. Individuals who are members of a bargaining unit covered by a union security agreement, who object to the use of their dues for political purposes, are called agency fee objectors. The right of non-member agency fee payers to object to the use of their agency fees for political activities is often referred to as a *Beck* right after the Supreme Court ruling in *Communications Workers of America v. Beck*. Under current law, in order to pay a reduced agency fee, however, employees must be aware of their right to object to payment of unions' political expenses, and they must resign their union membership. Concerns have been expressed about whether individuals covered by union security agreements are being required to support political activities to which they might object, and whether they are being adequately informed of their right to object to the use of their dues for such expenditures.

Proponents of legislation to strengthen *Beck* enforcement argue that unions are not providing members with sufficient notice of *Beck* rights, and the National Labor Relations Board (NLRB) has not been vigorous enough in enforcement of *Beck*. On the other hand, labor unions argue that the increased scrutiny of unions is prompted by the increased activism of unions and they assert that the real objective of proposals to strengthen *Beck* is the abolition of union security agreements altogether.

On May 21, 1998, the House began consideration of campaign finance reform legislation. On June 11, 1998 the House defeated H.J.Res. 119 (Delay), a proposed constitutional amendment. The first of 11 substitute amendments (H.R. 3502/White) to H.R. 2183 (Allen/Hutchinson) was defeated on June 17. Some supporters of H.R. 3502 agreed to vote present, and allow the bill to be defeated, with the understanding that it would later be attached as an amendment to H.R. 3526 (Shays/Meehan), the second of the 11 substitute amendments that have been ruled in order. The Shays/Meehan amendment would codify the *Beck* decision. Four of the other substitute amendments would require prior written authorization by employees for union use of member or non-member dues and fees for political activities.

In February 1998, the full Senate considered campaign finance reform legislation, for a second time in the 105<sup>th</sup> Congress. On February 23, 1998, Senator Lott introduced S. 1663, the Paycheck Protection Act. The text of S. 25, as revised, was offered by Senators McCain and Feingold as an amendment in the nature of a substitute to S. 1663. On February 26, 1998, the Senate declined to invoke cloture on S. 1663 or the McCain-Feingold amendment.

This report will be updated as needed.

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# The Use of Union Dues for Political Purposes: A Discussion of Agency Fee Objectors and Public Policy

Unions can spend money to influence the political process through two principal mechanisms. One mechanism is the use of separate segregated funds (called political action committees (PACS)), which consist of voluntary union member contributions and can be directly contributed to federal campaigns (called hard-money).<sup>1</sup> The second mechanism is through soft-money, which is financed directly out of union revenue, and consequently, is largely paid for by union member and nonmember dues and fees. Soft-money cannot be directly contributed by unions to federal campaigns, but may be used for: (1) contributions to state and local elections (including contributions to national parties for use by state and local candidates); (2) public service activities that promote the union's public policy perspective (also referred to as issue advocacy); and, (3) expenditures aimed at union members and their families including internal communications, voter registration and get out the vote drives, and the costs of administering a separate segregated fund (PAC).

Union security agreements, which are permitted for private sector workers in 29 states and the District of Columbia, require all individuals covered by a union agreement to financially support the union through payment of agency fees. These union member and nonmember dues and fees can be used for union soft-money expenditures. This has raised concerns about whether individuals covered by unions with union security agreements are being required to support political activities to which they might object, and whether they are being adequately informed of their right to object to the use of their dues for such expenditures.

This report looks at union security agreements and agency fee objectors, as well as proposed executive and legislative action to address these issues. On May 21, 1998, the House began consideration of campaign finance reform legislation. On June 11, 1998 the House defeated H.J.Res. 119 (Delay), a proposed constitutional amendment. The first of 11 substitute amendments (H.R. 3502/White) to H.R. 2183 (Allen/Hutchinson) was defeated on June 17. Some supporters of H.R. 3502 agreed to vote present, and allow the bill to be defeated, with the understanding that it would later be attached as an amendment to H.R. 3526 (Shays/Meehan), the second of the 11 substitute amendments that have been ruled in order. The Shays/Meehan

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<sup>1</sup>U.S. Library of Congress. Congressional Research Service. *Political Spending by Organized Labor: Background and Current Issues*. CRS Report 96-484 GOV, by Joseph Cantor. February 18, 1998.

amendment would codify the *Beck* decision. Four of the other substitute amendments would require prior written authorization by employees for union use of member or non-member dues and fees for political activities.<sup>2</sup>

On March 30, 1998, the House considered four separate bills related to campaign finance under a suspension of the rules; two passed and two were defeated. One of the defeated bills was H.R. 2608, the Paycheck Protection Act. A broad bipartisan campaign finance reform bill (H.R. 3526, Shays/Meehan) was not considered. Some House members, including proponents of H.R. 3526, began an effort to get the 218 signatures necessary for a discharge petition which would force the House to consider the legislation. In response, the Republican leadership agreed to allow campaign finance legislation to come to the floor at the end of May<sup>3</sup>

In February 1998, the full Senate considered campaign finance reform legislation, for a second time in the 105<sup>th</sup> Congress. On February 23, 1998, S. 1663, the Paycheck Protection Act, was introduced by Senator Lott. Among other things, S. 1663 would require written, voluntary authorization before a union could use member or nonmember dues or fees for political activities. On February 26, 1998, the Senate declined to invoke cloture on S. 1663. S. 25 as revised, was offered on February 23, 1998, by Senators McCain and Feingold, as an amendment in the nature of a substitute to S. 1663 (amendment no. 1646). Among other things, amendment no. 1646 includes a provision that would require unions to notify non-union members of their right to request a refund of the portion of their agency fees that is used for political activities. On February 26, 1998, the Senate declined to invoke cloture on the McCain-Feingold amendment.

In October, 1997 the Senate had also declined to invoke cloture on the McCain-Feingold bill; and on the Lott amendment to require written authorization before unions could use member or nonmember dues or fees for political activities.

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<sup>2</sup>See: U.S. Library of Congress. Congressional Research Service. *Campaign Financing*. CRS Issue Brief 87020, by Joseph E. Cantor. Updated Regularly.

<sup>3</sup>See: U.S. Library of Congress. Congressional Research Service. *Campaign Finance Debate in the House: Substitute Amendments to H.R. 2183 (105<sup>th</sup> Congress)*. CRS Report 98-494 GOV, by Joseph E. Cantor. May 29, 1998.

**Table 1. States That Permit Union Security Agreements**

ALASKA	MISSOURI
CALIFORNIA	MONTANA
COLORADO	NEW HAMPSHIRE
CONNECTICUT	NEW JERSEY
DELAWARE	NEW MEXICO
DISTRICT OF COLUMBIA	NEW YORK
HAWAII	OHIO
ILLINOIS	OKLAHOMA
INDIANA	OREGON
KENTUCKY	PENNSYLVANIA
MAINE	RHODE ISLAND
MARYLAND	VERMONT
MASSACHUSETTS	WASHINGTON
MICHIGAN	WEST VIRGINIA
MINNESOTA	WISCONSIN

## Union Security Agreements

Union security agreements are agreements between employers and unions which require employees to give financial support to unions as a condition of employment. These agreements are permitted by section 8(a)(3) of the National Labor Relations Act (NLRA) and section 2 Eleventh of the Railway Labor Act.<sup>4</sup> Twenty-nine states and the District of Columbia currently permit union security agreements (see table). Union security agreements and the requirement of financial support were permitted under these labor laws, in part, in response to union concerns about so-called “free-riders,” workers who benefit from a union’s collective bargaining efforts but do not voluntarily choose to provide financial support to it.

However, section 14(b) of the NLRA grants states the right to supersede section 8(a)(3) and to enact right-to-work laws prohibiting union security agreements, if they so choose. Twenty-one states currently have right-to-work laws.<sup>5</sup> States may not supersede union security agreements under the Railway Labor Act, which covers the railroad and airline industries. In addition, it should be noted that the NLRA covers only private sector employees. Union security agreements are prohibited in federal employment. Union security agreements for state and local employees are determined by state law: a few states allow such agreements, while most prohibit them.<sup>6</sup>

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<sup>4</sup>29 U.S.C. Section 158(a)3, and 45 U.S.C. Sections 151-158.

<sup>5</sup>For more information on right-to-work laws see: U.S. Library of Congress. Congressional Research Service. *Right-To-Work Laws: An Overview*. CRS Report 95-805 E, by Gail McCallion. Updated July 15, 1996.

<sup>6</sup>Smith, Russell, Harry Edwards and R. Theodore Clark, eds. *Labor Relations Law in the* (continued...)

Over the years the courts have refined what constitutes permissible union security agreements under section 8(a)(3) of the NLRA. The Supreme Court has ruled that a union security agreement may not require an employee to actually join a union but only to pay union initiation fees and dues.<sup>7</sup> An employee who chooses not to join is called a “financial core member” or “dues-paying non-member” because he or she continues to provide financial support to the union but does not participate in other union activities, such as membership meetings, election of union officers, and ratification of contracts. A financial core member is not subject to union discipline and is not covered by the by-laws of the union.<sup>8</sup>

Since the adoption by many states of right-to-work laws, much of the conflict between right-to-work opponents and proponents has shifted to the courts. In *Communications Workers of America v. Beck.*, the Supreme Court considered whether or not employees covered by union security agreements who choose not to join the union may be required to pay an agency fee equivalent to all union fees and dues, or whether their liability should be reduced by a pro rata share of union expenses that are attributable to expenses not germane to collective bargaining (political and ideological expenses). In 1988, the Supreme Court ruled in *Beck* that these employees may only be charged a pro rata share of union dues and fees that are attributable to collective bargaining, contract administration, or grievance adjustment; they may not be charged a pro rata share of union dues and fees that are attributable to union expenses for political or ideological purposes.<sup>9</sup>

## Agency Fee Objectors

Individuals who are members of a bargaining unit covered by a union security agreement, who object to the use of their dues for political purposes, are called agency fee objectors. However, in order to pay a reduced agency fee, an employee must be aware of his/her right to object to payment of union political expenses, and then must express his/her objection to the union. In addition, in order to qualify as an agency fee objector, a union member must resign his/her union membership. Questions have been raised about whether unions are currently providing sufficient notice of *Beck* rights to agency fee objectors, and about how many individuals currently choose to, or might choose to, avail themselves of their *Beck* rights.

Some proponents of legislation to strengthen *Beck* enforcement argue that unions are not providing members with sufficient notice of *Beck* rights, and the NLRB has not been vigorous enough in enforcement of *Beck*:

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<sup>6</sup>(...continued)

*Public Sector*. NY, The Bobbs-Merrill Co., Inc., 1974. p. 595-597.

<sup>7</sup>NLRB v. General Motors Corp., 373 U.S. 734 (1963).

<sup>8</sup>Feldacker, Bruce. *Labor Guide to Labor Law*. Reston, Va., Reston Publishing Co. Inc., 1990. p. 237.

<sup>9</sup>See: U.S. Library of Congress. Congressional Research Service. *The Use of Union Dues For Political Purposes: A Legal Analysis..* CRS Report 97-618 A, by John Contrubis and Margaret Mikyung Lee. Updated as needed.

Now, it's been eight years since *Beck*, and it's only a few months ago, in December, that the Labor Board issued its first decision regarding the implementation of *Beck*. So, we've had eight years of some significant real uncertainty as to how *Beck* is going to be implemented... Most recently in the *California Saw and Knife* case, the Labor Board decided that if information is placed in a union newsletter about *Beck* rights, that's sufficient. Although it also said that union members have to be told that they do have *Beck* rights in some fashion if they are a new employee in the company. I've never understood why there has been so much opposition to notice posting in the workplace following the approach of the Bush Administration.<sup>10</sup>

On the other hand, labor unions argue that the increased scrutiny of unions is prompted by the increased activism of unions under the AFL-CIO's new president John Sweeney, and assert that the real objective of proposals to strengthen *Beck* enforcement is the abolition of union security agreements altogether. Labor unions argue that the NLRB and the Courts have provided thorough and detailed requirements for unions to follow in providing notice to potential agency fee objectors.<sup>11</sup> They also argue that they are democratic organizations, and union membership is voluntary. They contend that increased attention to *Beck* rights is politically motivated:

First, workers in both the public and private sector are free to join a union or not to join a union. It is flat out unlawful to restrict an employee's choice in this regard. If by "compulsory unionism" it is suggested that employees today are being compelled to become union members, that is simply not so...And finally, to return to *Beck*, employees subject to union security clauses are free to insist that their fee payments fund only those union activities that are, in the Supreme Court's words, "germane to collective bargaining," and not to fund lobbying, political, or other activities of an ideological nature. In other words, no employee

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<sup>10</sup>Testimony of Marshall Breger, Solicitor of Labor during the Bush Administration, before U.S. Congress. House. Committee on Economic and Educational Opportunities. Subcommittee on Employer-Employee Relations. Hearings on H.R. 3580, The Worker Right to Know Act. 104<sup>th</sup> Congress, 2d Sess. April 18 and June 19, 1996. Washington, U.S. Govt. Print. Off., 1996. p. 5.

<sup>11</sup>Testimony of Allison Beck, General Counsel of the International Association of Machinist and Aerospace Workers, before the U.S. Congress. House. Committee on Education and the Workforce. Subcommittee on Employer-Employee Relations. Hearings on Mandatory Union Dues. 105<sup>th</sup> Congress, 1<sup>st</sup> Sess. March 18, 1997. Washington, U.S. Govt. Print. Off., 1997. p. 58-66. In addition, in a recent ruling, Service Employees International Union, 323 NLRB No. 39, March 21, 1997, the NLRB ordered an SEIU local to take affirmative steps to notify individuals covered by the collective bargaining agreement of their rights to remain nonmembers of the union, and to abstain from paying that part of agency fees attributable to political expenditures.

represented by a union can be required over his or her objection to financially support union political efforts.<sup>12</sup>

## Numbers of Agency Fee Objectors

It is difficult to ascertain how many individuals avail themselves of the right to object to the use of their union dues for political purposes because there are no reported aggregate statistics on union security agreements nor on the numbers of agency fee objectors.<sup>13</sup> However, the U.S. Bureau of Labor Statistics (BLS) does publish data on union membership classified by various characteristics, including the number of individuals who are members of unions and the number of individuals who are represented by unions.

For all private nonagricultural wage and salary workers (excluding government workers and agricultural wage and salary workers), BLS data for 1997 indicate that 9.3 million individuals age 16 and over were members of unions (9.8% of those employed); and, 10.2 million individuals were represented by unions (10.8% of those employed). Thus, in 1997, less than 1 million individuals (excluding government workers and agricultural workers) were represented by unions but were not union members.<sup>14</sup>

Those individuals included as represented by unions are: individuals who are members of labor unions and employee associations; individuals whose jobs are covered by union agreements without any union security clause who choose not to join the union, and, *individuals whose jobs are covered by union security agreements but who choose not to join the union.*

Separate figures are not available on the numbers of individuals in jobs covered by union security agreements who choose not to join the union. It is unlikely that a large share of those individuals who were represented by unions in 1996, but were not union members, were actually agency fee objectors. Many of the individuals who were represented by, but were not a member of a union, were probably in jobs covered by collective bargaining agreements without a union security clause.

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<sup>12</sup>Ibid., p. 59-60.

<sup>13</sup>BLS used to conduct periodic in-depth studies of union security provisions in collective bargaining agreements covering 1,000 or more workers. The last such study, published in May of 1982, covered 1,327 private agreements (excluding rail and airline agreements). The May 1982 study found 83% of the agreements studied contained some form of union security provision. Since these data do not include any agreements of under 1,000 workers, and are over 15 years old, their usefulness is limited.

<sup>14</sup>If we examine BLS union membership and representation data for all wage and salary workers 16 years and over (including government workers and agricultural wage and salary workers) we see that in 1997, 16.1 million individuals age 16 and over were members of unions (14.1% of those employed); and, 17.9 million individuals were represented by unions (15.6% of those employed). Thus, in 1997, 1.8 million individuals (including government workers many of whom cannot be covered by union security agreements, and agricultural workers) were represented by unions but were not union members.

However, more individuals might avail themselves of *Beck* rights if an affirmative duty rested with unions to get written permission before using dues for political activities. It is impossible to know how many individuals would choose to pay reduced union dues under these circumstances.<sup>15</sup>

## **Executive Actions**

Efforts to strengthen *Beck* rights and modify union financial reporting standards have been considered, both through executive actions, and through proposed legislation.

President Bush issued Executive Order 12800 on April 13, 1992 requiring federal contractors to post a notice to employees informing them of their *Beck* rights. A final rule to implement the posting requirements was issued on November 2, 1992; the posting requirement took effect 30 days later, on December 2, 1992.

On February 1, 1993, President Clinton issued Executive Order 12836, rescinding President Bush's Executive Order on posting of *Beck* rights.

President Bush's Executive Order required federal contractors to post notices to employees of their *Beck* rights. This Executive Order required all federal contractors or subcontractors with grants of \$25,000 or more, and with 15 or more employees, to post a notice informing employees that they are not required to join a union as a condition of their employment. In addition, the notices were to state that while union security agreements requiring employees to pay periodic dues and fees are valid under certain conditions, employees who are not union members may object to paying compulsory union dues for purposes unrelated to collective bargaining, contract administration, or grievance adjustment. Federal contractors and subcontractors who failed to post the required notice were subject to contract cancellation, suspension, termination, and debarment. Federal contractors in right-to-work states, and where no union was formally recognized or certified were exempted from the Executive Order. While the Executive Order would have affected only a limited number of employers, i.e., federal contractors, it received wide attention from both the labor and management communities.

## **Financial Reporting Requirements**

The Labor Management Reporting and Disclosure Act of 1959 (LMRDA), also known as the Landrum-Griffin Act, requires that unions file annual financial reports with the U.S. Department of Labor (LM forms). In addition to requiring unions to file financial reports, the LMRDA regulates other areas of union conduct as well; for example, it sets standards for union trusteeships and requires unions to have constitutions and bylaws.

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<sup>15</sup>Research on so-called free-riders (individuals who are covered by a union contract who choose not to join) indicates that in 1985, anywhere from 6.4% (average for non-right-to-work states) to 15.5% (average for right-to-work states) of individuals covered by collective bargaining agreements chose not to join unions. Davis, Joe and John Huston. Right-to-Work Laws and Free Riding. *Economic Inquiry*, V. 31, January 1993. p. 52.

In 1992, President Bush requested that the U.S. Department of Labor (DOL) reexamine the financial reporting requirements for unions under the LMRDA. The DOL recommended revising these financial reporting requirements in a proposed rule on April 17, 1992.<sup>16</sup> A final rule was issued on October 29, 1992, with an effective date of December 31, 1993, to apply to all financial forms filed by unions for fiscal year 1992 and thereafter. The rule was subsequently withdrawn before its effective date.<sup>17</sup>

The final rule would have required unions to change the method of reporting for LM financial reports filed with DOL. The new rule would have required reporting of expenditures by functional categories. Prior to this proposed change, and subsequent to its rejection on December 21, 1993, union expenditures were and are reported by object categories (type of expense) rather than functional categories. Object categories include officers' salaries, office and administrative expenses, etc. The proposed functional categories would have included: contract negotiation and administration, organizing, strike activities, political activities, lobbying and promotional activities, and other.

The Bush Administration argued that changes in reporting requirements would provide members and the public with more useful information on where union expenditures were going, and would enhance union democracy. Some advocates of changing reporting requirements also argued that it would make *Beck* enforcement easier.

On February 10, 1993, the DOL, under the Clinton Administration and then Labor Secretary Robert Reich, proposed a one-year extension in the effective date of these final rules.<sup>18</sup> DOL subsequently issued a final rule, which rejected most of the changes proposed by the Bush Administration, on December 21, 1993.<sup>19</sup> In addition, the Clinton Administration chose to retain cash basis reporting rather than the proposed accrual basis reporting, as the only allowable method for use in LM forms.

## State Initiatives

Proponents of legislation to require written authorization before union dues and fees can be used for political activities have been very active at the state level, working to get legislation introduced in as many states as possible. There are also several petition drives underway to get the issue on state ballots. Many of the state initiatives would extend *Beck* rights to all union members rather than limiting coverage to agency fee payers. Other state initiatives are narrow in scope, covering, for example, only automatic payroll deductions for union political action committees.

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<sup>16</sup>57 FR 14244-14246.

<sup>17</sup>57 FR 49282-49290.

<sup>18</sup>58 FR 9418-9419.

<sup>19</sup>58 FR 67594-67604.

Four states (Idaho, Michigan, Washington, and Wyoming) have passed laws or referendum, that in some way, restrict automatic pay deductions for union political activities. In addition, California's widely publicized Proposition 226, the Campaign Reform Initiative, was defeated in California's June 2, 1998 primary. Until recently, Proposition 226 had been expected to pass. However, independent polling data indicated its support was slipping as the primary approached. Opponents of Proposition 226 believe its defeat was due to education of the voters about the significance of the issue, and they argue that its defeat will have a chilling effect on other state efforts to enact similar legislation or referenda. Proponents of Proposition 226 contend that most voters believe Proposition 226 has merit, and only massive spending by unions enabled Proposition 226 to be defeated.

Although the experience of the states provides useful information to federal policymakers, there are also distinctions between state laws and proposed federal legislation that make direct comparisons difficult. And, provisions and coverage in state proposals vary considerably from state to state.

## **Legislation in the 105th Congress**

On May 21, 1998, the House began consideration of campaign finance reform legislation. On June 11, 1998 the House defeated H.J.Res. 119 (Delay), a proposed constitutional amendment. The first of 11 substitute amendments (H.R. 3502/White) to H.R. 2183 (Allen/Hutchinson) was defeated on June 17. Some supporters of H.R. 3502 agreed to vote present, and allow the bill to be defeated, with the understanding that it would later be attached as an amendment to H.R. 3526 (Shays/Meehan), the second of the 11 substitute amendments that have been ruled in order. The Shays/Meehan amendment would codify the *Beck* decision. Four of the other substitute amendments would require prior written authorization by employees for union use of member or non-member dues and fees for political activities.

On March 30, 1998, the House considered four separate bills related to campaign finance under a suspension of the rules; two passed and two were defeated. One of the defeated bills was H.R. 2608, the Paycheck Protection Act. A broad bipartisan campaign finance reform bill (H.R. 3526, Shays/Meehan) was not considered. Some House members, including proponents of H.R. 3526, began an effort to get the 218 signatures necessary for a discharge petition which would force the House to consider the legislation. In response, the Republican leadership agreed to allow campaign finance legislation to come to the floor at the end of May under an open rule.

In February 1998, the full Senate considered campaign finance reform legislation, for a second time in the 105<sup>th</sup> Congress. On February 23, 1998, S. 1663, the Paycheck Protection Act, was introduced by Senator Lott. Among other things, S. 1663 would require written, voluntary authorization before a union could use member or nonmember dues or fees for political activities. On February 26, 1998, the Senate declined to invoke cloture on S. 1663.

The text of S. 25, as revised, was offered on February 23, 1998, by Senators McCain and Feingold, as an amendment in the nature of a substitute to S. 1663 (amendment no. 1646). Among other things, amendment no. 1646 includes a provision that would require unions to notify non-union members of their right to request a refund of the portion of their agency fees that is used for political activities. On February 26, 1998, the Senate declined to invoke cloture on amendment no. 1646. An attempt to craft a compromise on the use of union and corporate funds close to elections, in lieu of S. 1663, that would garner sufficient votes to permit an up or down vote on the McCain-Feingold amendment, was introduced as an amendment by Senator Snowe and Senator Jeffords (amendment no. 1647). Amendment no. 1647 was adopted by voice vote on February 25, 1998. In spite of the inclusion of the Snowe-Jeffords amendment, cloture was not invoked on amendment no. 1646.

In October, 1997 the Senate had also declined to invoke cloture on the McCain-Feingold bill and, on the Lott amendment to require written authorization before unions could use member or nonmember dues or fees for political activities.

Other legislative proposals in the 105th Congress range from posting requirements regarding employee rights to more extensive restrictions on unions. Differing proposals contained in these bills include: requiring unions to receive written permission to use an individual's dues or agency fees for political purposes; completely revamping union financial reporting requirements; or eliminating of union security provisions altogether.

Proponents of these bills argue that there are essentially three *Beck*-related problems in need of legislative remedy, because, they argue, the NLRB has been neither vigorous nor swift enough in enforcement of *Beck*. The three *Beck* problems cited are: individuals are generally unaware of their *Beck* rights; they have trouble receiving refunds from their unions if they exercise their *Beck* rights; and, the appropriate amount of the refund is often in dispute.<sup>20</sup> Proponents of stricter *Beck* enforcement argue that if unions want to retain the right to exclusive representation and union security provisions, then they must be willing to more effectively notify potential agency fee objectors of their *Beck* rights and ensure that these rights can be effectively exercised. Some proposed legislation would eliminate union security provisions altogether.

Labor unions counter that they are democratically run organizations elected by majority support and removed if the majority no longer supports them. They contend that unions already have sufficient procedures in place to inform potential agency fee objectors of their *Beck* rights, as required by the NLRB. Labor unions argue that proposed legislation is intended to punish unions for their political activism. Stricter *Beck* enforcement is unnecessary, and greater scrutiny of union finances unwarranted and unnecessarily burdensome, they argue. They believe current law already

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<sup>20</sup>Testimony of Marshall Breger before U.S. Congress. House. Committee on Economic and Education Opportunities. Subcommittee on Employer-Employee Relations. Hearings on H.R. 3580, The Worker Right to Know Act. 104<sup>th</sup> Congress, 2d Sess. April 18 and June 19, 1996. Washington, U.S. Govt. Print. Off., 1996. p. 12-17.

represents a delicate balancing of the interests of the majority of workers in a union, and the rights of workers in a minority:

...the collective rights of workers should not act to impinge upon an individual's right to independent expression, but equally nor should an individual's right to independent expression serve to nullify the collective rights of the workers.<sup>21</sup>

## **A Description of the Bills<sup>22</sup>**

**S. 9 (Nickles)**, The Paycheck Protection Act would amend the Federal Election Campaign Act of 1971 to require written authorization before any employee or shareholder dues or fees could be used by corporations or national banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities.

Introduced January 21, 1997; referred to Committee on Rules and Administration. Hearings held June 25th, 1997 by the Committee on Rules.

**S. 25 (McCain/Feingold)**, the Bipartisan Campaign Reform Act of 1997. The current version of this bill, among other things, includes a provision that would require unions to notify non-union members of their right to request a refund of the portion of their agency fees that is used for political activities.

Introduced January 21, 1997; referred to the Committee on Rules and Administration. Measure laid before Senate by unanimous consent on September 26, 1997. Considered September 29, 1997 by the Senate, modified by unanimous consent, amendments SP 1258 through 1265 proposed. On October 7, 1997 cloture on the Lott amendment (SP 1258) not invoked (52-48); first cloture on the bill as modified not invoked (53-47). On October 8, 1997, second cloture on the bill as modified not invoked (52-47). On October 9, 1997, third cloture on the bill as modified not invoked (52-47); second cloture on the Lott amendment (SP 1258) not invoked (51-48). The text of S. 25, as revised, was offered as an amendment (amendment no. 1646) to S. 1663, the Paycheck Protection Act, on February 23, 1998; and was modified by amendment no. 1647 on February 25, 1998. A cloture motion on modified amendment no. 1646 failed February 26, 1998 (51-48).

**S. 65 (Hatch)/H.R. 480 (Herger)**, legislation to amend the Internal Revenue Code of 1986 would, among other things, ensure that union members receive notice of the portion of their dues used for political and lobbying activities.

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<sup>21</sup>Ibid., Statement of Congressman Martinez, p. 3.

<sup>22</sup>This section does not include the 11 substitute amendments that have been ruled in order under H. Res. 442 for consideration in the House. See: U.S. Library of Congress. Congressional Research Service. *Campaign Finance Legislation Debate in the House: Substitute Amendments to H.R. 2183 (105<sup>th</sup> Congress)*. CRS Report 98-494 GOV, by Joseph E. Cantor. Updated as needed.

S. 65 introduced January 21, 1997; referred to House Committee on Ways and Means. H.R. 480 introduced January 21, 1997; referred to the Committee on Finance.

**S. 179 (Hutchinson)**, the Campaign Finance Reform and Disclosure Act of 1997. section 13, Rights of Employees Relating to the Payment and Use of Labor Organization Dues, would amend sections 7 and 8 of the NLRA to specify that employees could not be required to become union members under a union security provision, but only to pay dues or fees for collective bargaining, contract administration, or grievance adjustment (percentage verified by an independent auditor). Notification of these rights in writing for each new employee would be required, as well as annual written notification for all employees. In addition, posting of section 7 rights would be required, including clarification that employees can only be required to pay dues or fees attributable to collective bargaining, contract administration, or grievance adjustment. S. 179 would also require that labor unions with union security agreements permit agency fee objectors to remain union members. Additionally, the bill would amend the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) to require unions to file annual union financial reporting forms with the DOL on a functional (rather than object) accounting basis.

Introduced January 22, 1997; referred to the Committee on Rules and Administration.

**S. 497 (Coverdell)/ H.R. 59 (Goodlatte)**, The National Right to Work Act, would repeal the provisions of the NLRA and RLA, that require employees to pay union dues or fees as a condition of employment.<sup>23</sup>

S. 497 introduced March 20, 1997; referred to the Committee on Labor and Human Resources. H.R. 59 introduced January 7, 1997; referred to the Committee on Education and the Workforce and the Committee on Transportation and Infrastructure. Referred to the Subcommittee on Employer-Employee Relations January 31, 1997. Referred to the Subcommittee on Aviation and the Subcommittee on Railroads February 13, 1997.

**S. 976 (Brownback)**, the Common Sense Campaign Reform Act of 1997 would, among other things, require written authorization before any employee or shareholder dues or fees could be used by corporations or national banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities. require prior, voluntary, written authorization before unions could spend dues monies on political activities.

Introduced June 27th, 1997; referred to the Committee on Rules and Administration.

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<sup>23</sup>Of course, a national right-to-work law would obviate the question of agency fee objectors. In the 104<sup>th</sup> Congress, a right-to-work bill, S. 1788, was brought up in the Senate, but on July 10, 1996, a motion to invoke cloture and allow a vote on the legislation failed by a vote of 68 to 31.

**S. 1117 (Snowe)** would, among other things, require prior, voluntary authorization by members and nonmembers before a union could assess fees to be used for political activities.

Introduced July 31, 1997; referred to the Committee on Rules and Administration.

**S. 1190 (Allard)**, the Campaign Finance Integrity Act of 1997 would, among other things, In addition, the bill would require unions to submit annual reports to dues paying members and nonmembers enumerating all expenditures and contributions on political activities.

Introduced September 17, 1997; referred to the Committee on Rules and Administration.

**S. 1246 (Santorum)**, the Voter Empowerment and Campaign Disclosure Act of 1997 would, among other things, require prior, voluntary, written authorization by members and nonmembers before a union could assess fees to be used for political activities.

Introduced October 1, 1997; referred to the Committee on Rules and Administration.

**S. 1561 (Warner)**, the Constitutional and Effective Reform of Campaigns Act of 1997 would, among other things, require prior, voluntary authorization by dues-paying nonmembers before a union could assess fees to be used for political activities. S. 1561 would also require more disclosure of union annual financial reports.

Introduced November 13, 1997; referred to the Committee on Rules and Administration.

**S. 1663 (Lott)**, the Paycheck Protection Act would, among other things, require prior, voluntary authorization before any employee or shareholder dues or fees could be used by corporations or national banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities.

Introduced February 23, 1998 and considered by the Senate. Cloture motion rejected (45-54) on February 26, 1998.

**S. 1689 (Domenici)**, the Grassroots Campaign and Common Sense Federal Election Reform Act of 1998. Among other things, S. 1689 would prohibit unions, corporations and national banks from setting up separate segregated funds.

Introduced February 26, 1998; referred to the Committee on Rules and Administration.

**H.R. 480 (Herger)**, the Union Members Right to Know Act of 1997 would amend the Internal Revenue Code of 1986 to require that tax exempt organizations

inform members of how much of their dues are used for political and lobbying activities.

Introduced January 21, 1997; referred to the Committee on Ways and Means.

**H.R. 928 (Christensen)**, the Union Members Right to Know Act of 1997 would amend the LMRDA to require unions to file annual financial reporting forms with the DOL on a functional (rather than object) accounting basis.<sup>24</sup> This bill would also require unions to report: names of the lobbyists they use for political activities; names of PACs that received funds from the union; and, names of political candidates or organizations that received money or in-kind assistance from the union.

Introduced March 5, 1997; referred to the Committee on Education and the Workforce. Referred to the Subcommittee on Employer-Employee Relations March 21, 1997.

**H.R. 1303 (Portman)**, Restoring Trust in Government Act of 1997. Title V, Worker Right to Know, would amend sections 7 and 8 of the NLRA to specify that employees could not be required to become union members under a union security provision, but only to pay dues or fees for collective bargaining, contract administration, or grievance adjustment (percentage verified by an independent auditor). Annual written notification of these rights would be required for all employees. In addition, posting of section 7 rights would be required, including notice that employees can only be required to pay those dues or fees attributable to collective bargaining, contract administration, or grievance adjustment. Additionally, the bill would amend the LMRDA to require unions to file annual union financial reporting forms with the DOL on a functional (rather than object) accounting basis. This bill is similar, although not identical, to S. 179.

Introduced April 10, 1997; referred to the Committee on House Oversight and the Committees on Education and the Workforce, Government Reform and Oversight, and the Judiciary. Referred to the Subcommittee on Postal Service April 16, 1997. Referred to the Subcommittee on Employer-Employee Relations April 28, 1997. Referred to the Subcommittee on Crime May 7, 1997.

**H.R. 1458 (Tiahrt)**, the Wage Integrity Act. This bill would amend the Federal Election Campaign Act of 1971 to prohibit unions from spending funds withheld from wages for political activities.

Introduced April 24, 1997; referred to the Committee on House Oversight.

**H.R. 1625 (Fawell)**, the Worker Paycheck Fairness Act. When employees are covered by a union security agreement, it would require the union to get prior,

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<sup>24</sup>Unions would be required to report the amount (and percentage of total expenditures) spent annually on: contract negotiating and administration, organizing activities, strike activities, political activities, and activities attempting to influence the passage or defeat, or the content or enforcement of federal, state, or local legislation, and, activities related to voter education and issue advocacy.

voluntary, written permission from the employees for any portion of their dues that would be used for non-collective bargaining purposes. If a union violates that requirement it would be liable for double the amount of dues or fees involved, interest, as well as attorney's fees. The Worker Paycheck Fairness Act would also require employers to post a notice for employees of the requirement that a union covered by a union security agreement must obtain written permission from employees before dues could be used for political expenditures. It would also amend the LMRDA to require unions to use functional reporting categories in their annual LM reports. The DOL would be required to make available copies of these reports, upon written request.

Introduced May 15, 1997; referred to the Committee on Education and the Workforce. Referred to the Subcommittee on Employer-Employee Relations June 11, 1997. The Subcommittee on Employer-Employee relations held hearings July 9, 1997. Full Committee consideration and mark-up held on October 8, 1997. On the same day ordered reported (amended) by voice vote.

**H.R. 2147 (Smith)**, the Anti-Money Laundering and Paycheck Accountability Act. This bill would require prior, voluntary, written authorization before any wages could be withheld to be used for political activities.

Introduced July 10, 1997; referred to the Committee on House Oversight.

**H.R. 2573 (Hayworth)**, the Election Reform in Campaigns Act would, among other things, require labor unions to provide their members with information on the use of their dues for political purposes.

Introduced September 29, 1997; referred to the Committee on House Oversight.

**H. R. 2608 (Schaffer)**, the Paycheck Protection Act. Among other things, this bill would require written authorization before any employee or shareholder dues or fees could be used by corporations or national banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities.

Introduced October 6, 1997; referred to the Committee on House Oversight. Considered by the House, under suspension of the rules, on March 30, 1998. The measure failed by a vote of 166-246.

**H.R. 3019 (Smith)**, the Anti-Money Laundering and Paycheck Accountability Act. This bill would give employees the right to not have payroll deductions used for political activities by their union.

Introduced November 9, 1997; referred to the Committee on House Oversight, and the Committee on the Judiciary.

**H.R. 3315 (Snowbarger)**, the Fair Elections and Political Accountability Act. Among other things, this bill would require written authorization before any employee or shareholder dues or fees could be used by corporations or national

banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities.

Introduced March 3, 1998; referred to the Committee on House Oversight.

**H.R. 3399 (Shaw)**, the Campaign Finance Improvement Act of 1998. Among other things, this bill would require written authorization before any employee or shareholder dues or fees could be used by corporations or national banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities. The bill would also require unions to use functional reporting categories in their financial reports and to post these reports on the Internet.

Introduced March 5, 1998; referred to the Committee on House Oversight, and the Committee on Education and the Workforce.

**H.R. 3476 (Levin)**, the Campaign Finance Improvement Act of 1998. Among other things, H.R. 3476 would require unions to give agency fee-payers reasonable notice of their right to object to the use of their agency fees for political activities.

Introduced March 17, 1998; referred to the Committees on Education and the Workforce, Government Reform and Oversight, the Judiciary, and House Oversight.

**H.R. 3485 (Thomas)**, the Campaign Reform and Election Integrity Act of 1998. Among other things, H.R. 3485 would require written authorization before any employee or shareholder dues or fees could be used by corporations or national banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities.

Introduced March 18, 1998; approved by the House Committee on House Oversight.

**H.R. 3526 (Shays)**, the Bipartisan Campaign Reform Act of 1998. Among other things, H.R. 3526 would require unions to give agency fee-payers reasonable notice of their right to object to the use of their agency fees for political activities.

Introduced March 19, 1998; referred to the Committees on Education and the Workforce, Government Reform and Oversight, the Judiciary, and House Oversight..

**H.R. 3581 (Thomas)**, the Campaign Reform and Election Integrity Act of 1998. Among other things, H.R. 3485 would require written authorization before any employee or shareholder dues or fees could be used by corporations or national banks for political activities; and, it would require written authorization before a union could use member or nonmember dues or fees for political activities.

Introduced March 30, 1998; referred to the Committee on House Oversight. Considered by the House, under suspension of the rules, on March 30, 1998. The measure failed by a vote of 74-337.

## Potential Effects of Proposed Legislation on Unions

These bills include a variety of proposals that would, if enacted into law, have an impact on unions. They include new posting requirements, requiring unions to receive written permission to use an individual's dues for political purposes, revamping union financial reporting requirements, and eliminating union security provisions altogether. Although labor unions object to all of these proposals, some would be more onerous to labor unions than others.

Employer posting of *Beck* rights, for example, would not create any overt burden on a union. Posting would be the responsibility of the employer. The AFL-CIO publicly stated its willingness to accept codification of *Beck* rights during Senate consideration of S. 25. However, unions have also argued that it is unfair to single out *Beck* rights for special posting requirements. They argue that if new employer posting requirements are enacted, they should not be limited to *Beck* rights, but should include requirements to post employee rights to organize and join unions as well. Two of the bills introduced in the 105th Congress include requirements for posting of all section 7 rights, not limited to *Beck* rights.

Unions oppose a new requirement that they receive written permission to use dues for political purposes because of the administrative burdens it would entail and because it might result in more individuals choosing to become agency fee objectors. Supporters of this proposal argue that union members can only make educated decisions if they are fully informed of their *Beck* rights.

Proposed changes in union financial reporting requirements (from object to functional reporting) are intended to provide union members with more information so that they can make more educated decisions about the performance of their union and its officers. However, labor unions contend that they are already democratically run organizations and requiring functional reporting would create an undue financial hardship on small unions. Unions also argue that they are already required to meet extensive reporting requirements regarding their PACS and support for political candidates, and further reporting requirements would be unreasonable.

Finally, vigorously opposed by unions are proposals to abolish union security agreements, or to require unions to allow agency fee objectors to remain union members rather than, as now, to withdraw from the union when they choose to become an agency fee objector. Regarding membership requirements, one union witness testified that:

Unions, like every other voluntary association, operate on the principle that it is the right of the majority to decide the duties of membership, and that those who desire to enjoy the privileges of membership are required to become members of the organization and accept whatever responsibilities come with membership....to force a union to allow dissidents who withdraw from membership to retain the right to participate in membership

decisions would turn *Beck* — and the First Amendment — on their heads.<sup>25</sup>

Proponents of this provision argue that it is simply unfair to require individuals to contribute to the costs of union representation, but be denied the right to have a voice in the decision making of the organization. But, currently, that is the consequence of exercising *Beck* rights: in order to pay a reduced agency fee because he or she objects to the use of dues for political purposes, the individual must give up his/her union membership.

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<sup>25</sup>Testimony of James Coppess, Communication Workers of America, before the U.S. Congress. House. Committee on Education and the Workforce. Subcommittee on Employer-Employee Relations. Hearing on Union Dues. 105<sup>th</sup> Congress, 1<sup>st</sup> Sess. March 18, 1997. p. 7-8.