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George P. Macdonald
University of Michigan Law School

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UNION POLITICAL INVOLVEMENT AND REFORM OF CAMPAIGN FINANCING REGULATION

*George P. Macdonald**

I. Introduction

Congress has long evidenced a concern to prevent candidates in federal elections from becoming dependent solely on large campaign contributors, such as corporations or labor unions.¹ The most recent congressional response to the problem of union and corporate contributions was enacted as section 304 of the Labor Management Relations Act of 1947² and is now codified as section 610 of the Federal Corrupt Practices Act.³ Section 610 prohibits both direct contributions and ex-

*Mr. Macdonald is a member of the staff of *Prospectus*.

¹The first concrete manifestation of this concern was a 1907 federal statute which prohibited any corporation or national bank from rendering "a money contribution in connection with any election to any political office." Act of 1907, ch. 420, 34 Stat. 864. This statute further prohibited any corporation from making a like contribution "in connection with any election at which presidential and vice-presidential electors or a Representative in Congress is to be voted for or any election by any state legislature of a United States Senator." The Act of 1907 was the genesis of present §610 of the Federal Corrupt Practices Act of 1925, ch. 368, tit. III, 43 Stat. 1070 (codified in scattered sections of 2, 18 U.S.C.).

The Supreme Court decision in *Newberry v. United States*, 256 U.S. 232 (1921), invalidating federal regulation of Senate primary elections, was followed by the Federal Corrupt Practices Act of 1925. Section 313 of this statute strengthened the Act of 1907 by altering the phrase "money contribution" to "contribution" and by penalizing the recipient as well as the contributor.

In 1943, Congress passed the Smith-Connally Act, 57 Stat. 163, which for the first time extended §313 to labor unions. This wartime legislation prohibited only contributions given directly to the federal candidates and failed to encompass expenditures made for the purpose of aiding such candidates though not directly handed over to them.

² 61 Stat. 159-160 (1947).

³ 18 U.S.C. §610 which reads as follows:

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

penditures by labor unions or corporations "in connection with" any federal election, nominating convention, primary or party caucus.⁴

The spiralling costs of political campaigns⁵ and the continuing significant role played by unions and corporations in the financing of those campaigns call for an examination of section 610's efficacy as a prohibitory statute. This article will focus on the use of *labor union* funds in the financial aspects of national politics. It will first discuss the loopholes in section 610: those loopholes created through narrow judicial interpretation of the statute and those resulting from its imprecise drafting. Particular emphasis will be placed upon an analysis of the sources of funds available to unions for political activities and the political uses for which those funds may be expended. Attention will also be given to the practical and constitutional difficulties inherent in section 610's attempt to circumscribe labor's participation in national politics. Various propos-

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 1 year or both; and if the violation was willful shall be fined not more than \$10,000 or imprisoned not more than two years or both.

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

Section 610 is a recodification of §313 of the 1925 Federal Corrupt Practices Act. Section 313 was the provision amended by §304 of the Labor Management Relations Act.

⁴ In addition, §610 prohibits any national bank or corporation organized by authority of any law of Congress to make any contribution or expenditure whatsoever in connection with any election, federal or state.

⁵ The President's Commission on Campaign Costs found that the Democratic and Republican Parties reported total expenditures in national campaigns of \$11.6 million in 1952, \$12.9 million in 1956 and almost \$20 million in 1960. The Congressional Quarterly cited the figure in 1964 as approximately \$42 million. The Commission estimated that expenditures on behalf of all candidates for all public offices in the United States probably reached \$165 to \$175 million in 1960 while Herbert Alexander, director of the Citizen's Research Foundation, estimated similar expenditures at \$250 million in 1968. PRESIDENT'S COMMISSION ON CAMPAIGN COSTS, FINANCING PRESIDENTIAL CAMPAIGNS, 9 (1962); THE CONGRESSIONAL QUARTERLY WEEKLY REPORT, Dec. 13, 1968, at 3282, and *Quarter Billion Dollar Campaign*, U.S. NEWS & WORLD REP., Nov. 11, 1968 at 52.

als for rectifying section 610's inadequacies will be presented and their viability will be evaluated. Finally the author will propose and attempt to justify what he deems to be a more realistic approach to the union's proper role in campaign financing.

II. Loopholes in Section 610

A. Voluntary Funds Loophole

Section 610 proscribes political contributions and expenditures only out of assessed union dues, that is, the general fund of the union. Congress did not intend to prohibit unions from soliciting "voluntary" contributions from their members or others. Its intent was reflected in the words of Senator Robert Taft, co-sponsor of the Labor Management Relations Act, spoken during the Senate's debate on the provision:

Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics . . . the prohibition is against labor unions using their members *dues* for political purposes . . . [Emphasis added]⁶.

Although the literal wording of the statute proscribes *all* contributions and expenditures, whether they involve voluntary funds or union dues, courts have paid heed to this congressional intention. A union, upon obtaining voluntary contributions, may directly hand these monies over to federal candidates and national political committees or may spend them itself in any partisan or nonpartisan political activity without violating the statute.⁷

The obstacles encountered by unions with respect to the contribution of voluntary funds therefore do not arise from legal restrictions, but rather from their difficulties in motivating union members to contribute money

⁶ *Labor-Management Relations Conference Report*, 93 CONG. REC. 6440 (1947).

⁷ The importance of this loophole to labor unions is demonstrated by the fact that \$442,000 of union expenditures in 1964 were financed out of voluntary funds. N.Y. Times, Aug. 31, 1968, §1 at 10, col. 5.

A contemporary example of the importance of this loophole to candidates was the case of John J. Gilligan, Democratic candidate for U.S. Senator from Ohio in the 1968 election. Mr. Gilligan was slated to receive \$250,000 in union voluntary funds contributions for his campaign efforts or nearly *one third* of his budgeted expenses. He incurred the wrath of The Committee on Political Education, the political arm of the AFL-CIO, for his hesitancy to support Hubert H. Humphrey and for his support of the Viet Nam peace plank at the Democratic Convention. As a result, the funds allotted to him were largely cut off. Although labor leaders denied that they intended to "starve" Mr. Gilligan's campaign, it was only after he announced his support of Mr. Humphrey that the funds began to flow back into his campaign, albeit at a significantly lower rate. See N.Y. Times, Sept. 27, 1968, §1 at 26, col. 4.

over and above their regular dues and in actively soliciting such funds without coercing or alienating the union rank and file.⁸ Joseph L. Rauh, Jr., counsel for the United Automobile Workers, has described rank and file beliefs:

Union members generally believe that they have already contributed for all union activities by the payment of their union dues, intended not only for collective bargaining but also for legislation, political and other community activity. Union members do not expect that they will have to pay twice to protect their interests and are not anxious to contribute a second time.⁹

In spite of this understandable attitude, unions have been moderately successful in soliciting voluntary contributions.¹⁰

Unions, in addition, possess two devices for circumventing section 610's prohibitions by greatly enlarging the category of funds viewed as "voluntary". The first device is the authorization card plan; a union member simply signs a card designating part of his dues as voluntarily given, thereby permitting a union to spend that amount in political activities as it sees fit. Since that portion of the dues is then construed as a voluntary contribution, it may be directly contributed to federal candidates and its use is not subject to any of section 610's prohibitions. The authorization card plan works well because regardless of whether the union member authorizes such use of his dues, that portion of his dues will not be refunded to him. Accordingly, he will see little value in refusing such authorization and thereby possibly incurring the displeasure of his union superiors or peers. In 1960 this device was expressly upheld by a federal district court in *United States v. Warehouse & Distributions Workers Local 688*.¹¹ The court viewed the authorization plan as not violative of section 610 so long as there was an accounting of such funds and the amounts expended did not exceed the voluntary funds so authorized.

The second judicially approved method of expanding the meaning of "voluntary" is a union-conducted election in which the majority of the union members assent to use of their dues in partisan political activities. In *United States v. Anchorage Central Labor Council*

⁸ A. HEARD, COSTS OF DEMOCRACY 194-95 (1960).

⁹ Rauh, *Legality of Union Political Expenditures*, 34 S. CAL. L. REV. 152, 153 (1961).

¹⁰ Alexander Heard estimated that one of eight members of the AFL-CIO unions, or approximately 1,400,000 people, made voluntary donations in 1956. In 1964, labor unions reported receipts of \$730,000 in voluntary funds. N.Y. Times, Aug. 31, 1968, §1 at 10, col. 5. Indeed, even in a non-election year such as 1967 COPE filed a report showing voluntary contributions of \$378,000. HEARD, *supra* note 8, at 190-94 and CONGRESSIONAL QUARTERLY WEEKLY REPORT, March 8, 1968, at 488.

¹¹ 47 L.R.R.M. 2005 (E.D. Mo. 1960). There apparently have been no subsequent judicial decisions concerning this plan.

(*AFL-CIO*),¹² an organization composed of twenty-six unions was indicted under section 610 for having expended funds from the organization's treasury to sponsor a series of commercial television broadcasts which included expressions of political advocacy aimed at the general public during a federal election. The funds used to finance the telecasts comprised union dues of the various member unions. The organization's activity appeared to constitute a clear violation of the expenditure prohibition and was certainly contrary to the intent of Senator Taft, who viewed section 610 as a vehicle to cut off use of union dues in partisan politics. Nevertheless, the district judge evaluated the permissibility of the expenditure in terms of whether the funds were "voluntary" in nature:

No union was called upon to pay for this program. Each union decided by a vote of its membership... first, whether they would contribute and second, how much. Surely, that is voluntary; and that, I think, is the crux of the situation here.¹³

This decision seems to hold that when a majority of union members votes to use union dues to finance partisan political activities, the use of those funds will not violate section 610 because voluntary approval by majority vote transforms these monies into "voluntary" funds. The actual expenditure in *Anchorage Labor Council* involved two steps: first, the funds were approved by a majority vote of the rank and file and second, the funds were transferred from the union to the dispersing organization. One might attempt to legitimate the court's decision by arguing that the transfer of monies to a nonunion entity, the organization, distinguishes this fact situation from one involving a direct dispersal of these funds by the union itself. However, the legal issue concerning section 610 is whether the dues can be construed as voluntary contributions, and the resolution of this issue centers upon whether a majority vote alters the character of dues so as to make them expendable as voluntary contributions. Thus, the transfer of funds seems extraneous to the real legal issue and provides no basis for justifying *Anchorage Labor Council*. Yet there are no more recent decisions which would invalidate the use of such a device to circumvent the prohibitions of section 610.

B. State Election Loophole

The literal wording of section 610 proscribes the use of union dues in "any election at which" federal officials are elected.¹⁴ Therefore, a

¹² 193 F. Supp. 504 (D. Alas. 1961).

¹³ *Id.* at 506.

¹⁴ It has been argued that §610's prohibitions are broad enough to restrict contributions to state officials. This argument is premised on a construction of the phrase, "in any

union may directly contribute both dues and voluntary funds to candidates for state elective offices without incurring any legal sanction.¹⁵ Such direct contributions to state candidates and political committees have three effects. First, substantial direct union contributions to such candidates may result in the election of these assumedly pro-labor people, thereby placing them in positions to implement pro-labor policies in the states. Second, such contributions unburden the national party from financing the state candidates or committees to the extent of those contributions, thereby allowing the party to funnel more money into the campaigns of pro-labor federal candidates. Third, union contributions to state candidates or committees have an uncanny way of ultimately financing federal candidates.¹⁶ This is accomplished by a rather circuitous route. The unions contribute substantial sums to political committees operating within only one state and thereby escape the limitations that section 608 of the Federal Corrupt Practices Act imposes upon contributions to those operating in more than one state (interstate committees).¹⁷ Such monies become commingled in state political funds and are then often transferred by the state committees to the treasuries of the interstate political committees, to whom the unions are forbidden

election at which" voting for federal officers occurs, to include state elections which occur coincident with a federal election.

This argument was raised but summarily dismissed by the California Supreme Court in *DeMille v. Federation of Radio Artists*, 31 Cal. 2d 139, 187 P.2d 769 (1947) cert. denied 333 U.S. 876 (1948), as beyond the legislative intent of Congress.

The inapplicability of §610's prohibitions to state elections seems to have been recognized tacitly by the government in as much as it appears that there have been no subsequent indictments concerning this issue. It is common practice for unions to expend large amounts of dues money in state elections. See A. HEARD, *supra* note 8, at 169-211.

¹⁵ Labor unions are subject to statutory prohibitions against political contributions in state elections in only four states. See Brown, *State Regulation of Union Political Action*, 6 LAB. L.J. 769 (1955).

¹⁶ See A. Heard, *supra* note 8, at 198-200.

¹⁷ Section 608 of title 18 reads in part as follows:

(a) Whoever, directly or indirectly, makes contributions in an aggregate amount of excess of \$5,000 during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office, including the offices of President of the United States and Presidential and Vice Presidential electors, or to or on behalf of any committee or other organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

This subsection shall not apply to contributions made to or by a State or local committee or other State or local organization or to similar committees or organizations in the District of Columbia or in any Territory or Possession of the United States. [Emphasis added].

A very recent example of such roundabout financing of federal candidates occurred in 1968 when the International Seafarer's Union contributed \$100,000 to the campaign coffers of Lyndon B. Johnson, prior to his decision not to run for reelection,

to contribute dues money under section 608. These interstate committees, such as the congressional campaign committees,¹⁸ partially finance federal candidates. In this manner, the prohibition in section 610 is circumvented and a union may, in effect, directly contribute to the campaigns of pro-labor federal candidates.

C. "Non-Expenditure" Loopholes

Another set of loopholes by which unions can evade section 610's strict expenditure prohibition stems from its inherent ambiguity. While the statute proscribes any union "expenditure in connection with" any federal election, caucus or nominating convention, the meaning of the word "expenditure" and the meaning of the phrase "in connection with" remain unclear. Since judicial attempts to clarify the meaning of such language have been rare, various political uses for union dues have become generally regarded as permissible.

1. Nonpartisan Expenditures

Although section 610 prohibits all expenditures of union dues in connection with federal elections, it is generally conceded that unions may expend general funds to finance nonpartisan political activities such as registration drives¹⁹ or "get-out-the vote" drives. Such nonpartisan activities might encompass the assignment of union employees as drivers to transport voters to the polls on election day or as distributors of political pamphlets. The value to the unions of such "nonpartisan" activities becomes apparent when one realizes that full registration and full voting by union members and their families will usually result in more votes for pro-labor candidates. Furthermore, nonunion people who vote only as a result of such drives tend to be in the lower urban socioeconomic levels and tend to vote Democratic, therefore usually pro-labor.²⁰

and to those of Hubert H. Humphrey. Of the \$50,000 donated to ten Johnson committees, \$40,000 did not have to be reported under federal law because eight were state political committees. For other aspects of a rather interesting chain of events see Wall St. J., July 19, 1968, p. 1, col. 6.

¹⁸ A. HEARD, *supra* note 8, at 194-95.

¹⁹ The Justice Department agreed that "general funds can legitimately be used under Section 610 . . . for the purpose of carrying on registration drives." This admission was contained in the brief for the United States at 50, *United States v. UAW*, 352 U.S. 567 (1957).

The UAW, for example, has a Citizenship Fund, financed by union dues, which exists to carry on registration and voting drives aimed at all citizens as well as carrying on "organizational and educational programs." During the years 1952-58 the size of this fund averaged \$775,000 a year while expenditures averaged \$790,000. A. HEARD, *supra* note 8, at 199-201.

²⁰ The political importance of these programs is so great that the AFL-CIO made plans to assess \$700,000 for their execution in 1968. CONGRESSIONAL QUARTERLY WEEKLY REP. March 8, 1968, at 488.

What other nonpartisan activities may be legally funded by union dues is unclear. Short of direct contributions to federal candidates or blatant advocacy of one candidate over another in the commercial media paid for by general funds, the unions are really left to make their own determinations as to what is "nonpartisan" and are then at the mercy of judicial interpretation of these activities.

2. Educational Expenditures

General funds may also be expended by the unions for "educational" purposes. Section 610 has been construed as prohibiting only "political" use of those funds in federal elections. The above mentioned registration and vote drives are deemed "educational" in purpose as are all union nonpartisan political activities. Union general funds may also be expended to finance research and general publication of findings on public issues, public question campaigns, and referendums which do not per se involve the political parties or federal candidates but which may involve the union's self-interests.²¹ In actuality the distinction between an "educational" or "nonpartisan" expenditure and a "political" expenditure may be a rather fine one. Union general funds in the end are expended for political purposes which are only nominally educational such as union-sponsored training classes and institutes which tend, of course, to convince their pupils to vote pro-labor and to participate in the campaigns of pro-labor candidates.

3. Printing of Voting Records

Legislative history indicates that section 610 permits the use of union general funds to publish the voting records of federal candidates and to distribute the records among the public at large as a part of the union's "educational" programs.²² This loophole is subject to the limitation that

²¹ Each side of a particular public issue campaign or referendum may be identifiable with either the Democratic or Republican philosophy, or either party's respective candidates. Union funds may still be expended in these areas, being deemed "educational", thereby forming or consolidating pro-labor attitudes among the voting populace which may spillover into a federal election. Union public relation campaigns financed by general funds may likewise produce a pro-labor viewpoint among members of the general populace which will have a similar spillover effect.

²² During debate on §304 of the Labor Management Relations Act (now §610 of the Federal Corrupt Practices Act), Senator Ball stated, "I do not think there is a single thing in the bill which prohibits any union . . . from printing any public official's voting record. That is not a campaign for or against a candidate. It is simply the printing of public information." Senator Taft ultimately agreed with Senator Ball:

If it was merely a bare statement of actual facts and simply direct quotations of what the man had said . . . and was not colored in any way, I would rather agree But . . . it would depend in each case, on the character of the publication. 93 CONG. REC. 6447 (1947).

such publications must present no more than a bare statement of the voting records without any comment prejudicing one candidate or another.²³

4. Salaries and Services

It is unclear whether section 610 allows a union to loan union personnel to federal candidates so that they might work for the candidates while the union continues to pay their wages or salaries. Section 591 of the Federal Corrupt Practices Act defines a "contribution" or "expenditure" under section 610 as including a "loan . . . of money, or anything of value", and it is arguable that free campaign workers are something of value. However, the only reported case held that such a loan did not violate section 610, the judge opining that its proscription was not within the intent of Congress.²⁴

A 1962 Justice Department memorandum, in reply to legal advice being circulated by the U.S. Chamber of Commerce, expressed the view that salaries and wages paid by a *corporation* to regular employees who work in the campaign of a federal candidate would be prohibited under the expenditure provision in section 610.²⁵ Quite possibly, the Justice Department holds the same view toward similar actions by a union.

²³ The Court of Appeals for the Ninth Circuit in *United States v. Lewis Food Co.*, 366 F.2d 710 (1966), set forth a test for whether a corporate-sponsored advertisement of a voting record was permissible. The test was whether the advertisement merely contained an objective listing of the candidates' voting records in contradistinction to an advertisement going beyond a bald statement of those records by being explicitly or implicitly slanted in favor of one candidate. This test appears equally suited to labor unions.

²⁴ *United States v. Construction & Gen. Laborers' Local 264*, 101 F. Supp. 869 (W.D. Mo. 1951). The indictment charged that union dues had been used in violation of §610's expenditure prohibition to pay salaries to three union employees who had spent union time working in the congressional campaign of the union's president. These activities included transporting voters to registration and to the polls, passing out pamphlets and driving a campaign wagon for the benefit of that candidate. The district judge ruled that some of the activities, such as driving voters to register and to vote, worked for the *general benefit of all candidates*, and thus were nonpartisan activities not violative of §610's "expenditure" prohibition. He viewed other activities, such as the driving of the campaign wagon, as activities exclusively devoted to the political interests of the union's president and therefore partisan. However, he still declined to adjudge these violative of §610 reasoning that the amount of union dues as salaries was too insignificant to warrant criminal prosecution under §610. He further observed:

It is difficult for me to believe that Congress, with its vast knowledge of the practical application of its acts, intended such a restriction as is sought to be placed upon labor unions as here. 101 F. Supp. at 876.

²⁵ Justice Department Memorandum, Jan. 26, 1962, as reported in Lambert, *Corporate Political Spending and Campaign Finance*, 40 N.Y.U.L. REV. 1033, 1053 (1965).

However, there have been no reported section 610 indictments or convictions for such activities since the Justice Department memorandum; perhaps the Department is as reluctant to prosecute these activities as the courts are to proscribe them.

If the salaries and wages of the union personnel are paid out of voluntary contributions garnered by the union, then a loan of these people to work in partisan political activities seems permissible under section 610. The question, however, is more difficult when unions loan personnel to aid federal candidates and do not continue to pay their wages or salaries but rather grant them a leave of absence without cutting off their seniority or retirement benefits.

5. *The Union Communication Exception*

The area where the law is least clear, and in some ways where it is most important that it be clear, is the extent to which section 610 prohibits unions from expending dues money for partisan political purposes in the *communication media*. The only Supreme Court cases concerning section 610 have dealt with this problem.

Less than one year after the passage of section 610, the Congress of Industrial Organizations set out to test the constitutionality of the new statute. The fact situation involved a public statement by the president of the CIO in the union-dues-funded *CIO News* endorsing a Democratic candidate for federal office. Both the CIO and its president were subsequently indicted and charged with violating the expenditure prohibition in section 610. The district court dismissed the indictment on the grounds that section 610 was an unconstitutional abridgement of first amendment freedoms.²⁶ On direct appeal to the Supreme Court,²⁷ the majority of the Court avoided the constitutional issue²⁸ and simply observed that if section 610's expenditure prohibition was interpreted to include conduct such as the indictment charged, the constitutionality of section 610 would be placed in "gravest doubt."²⁹ Instead the Court reached the conclusion that the expenditure prohibition did not apply to the publication and distribution of partisan political advocacies in a regular union periodical financed from general funds and distributed to "those accustomed to receive copies." Uncertainty as to whether the Court meant the phrase "those accustomed to receive copies" to include

²⁶ *United States v. CIO*, 77 F. Supp. 355, (D.D.C. 1948).

²⁷ *United States v. CIO*, 335 U.S. 106 (1948).

²⁸ Federal courts, as a general rule, will attempt to avoid deciding constitutional issues if other grounds can be discovered for the decision. *Ashwander v. TVA*, 297 U.S. 288, 346-48 (1936) (concurring opinion) contains a set of rules "under which the Supreme Court has avoided passing upon a large part of all the constitutional questions pressed upon it for decision."

²⁹ *United States v. CIO*, 335 U.S. at 121. The case really involved §313 of the Corrupt Practices Act of 1925, as amended by §304 of the Labor Management Relations Act, but that section is now codified as 18 U.S.C. §610.

only union members or union members plus an undefined segment of the general public has given rise to further uncertainty as to how much that decision has narrowed the applicability of the expenditure prohibition.³⁰ Quite clearly *CIO* can be construed to permit any expenditure of union dues for partisan political remarks when such remarks are aimed solely at union members and are published in a union periodical.³¹

An interesting facet of the *CIO* case is that the decision itself, part of the first litigation concerning section 610 after its passage one year before, expressly contravened the intent of the statute's co-sponsor. During the Senate's discussion of section 610, Senator Taft was asked whether a labor periodical would be permitted, under the pending bill, to endorse a candidate. The Senator answered:

If it were supported by union funds contributed by union members as union dues... [such endorsement] would be a violation of the law.³²

Such judicial insensitivity to Senator Taft's intent pointed up a wary Supreme Court attitude toward the political or constitutional propriety of section 610; in fact, all nine Justices of the Court viewed section 610 as unconstitutional or of most doubtful constitutionality.

In 1957 the Supreme Court implicitly affirmed its decision in the *CIO* case in *United States v. UAW*,³³ while also suggesting certain criteria to be applied by courts in determining whether the expenditure provision has been violated. As in *CIO*, the fact situation in *UAW* concerned the financing of partisan political messages in the communication media with union dues. However, the crucial difference between the cases was that in *UAW* the union was indicted under section 610 for using dues to sponsor such messages in the *nonunion* medium of television, whereas *CIO* concerned the legality of financing such messages in *union* media. The indictment in *UAW* charged that the broadcasts "included expressions of political advocacy, and were intended by defendant to

³⁰ The uncertainty of the breadth of the *CIO* decision has been heightened because the Court ignored the fact that the union printed one thousand extra copies of the periodical which were most probably distributed among some nonunion people. This overprinting was noted in the indictment which charged the *CIO* with sending the extra copies into a congressional district with the probable intent of distributing them to nonunion people.

³¹ The *CIO* case only upheld the communication of a political message via a union newspaper. However, no indictment was ever brought against George Meany for a closed circuit telecast to union members, financed by general funds, in which he urged union members to vote for candidates of the Democratic Party in the 1956 election. Rauh, *supra* note 9, at 158.

³² 93 CONG. REC. 6436 (1947).

³³ 352 U.S. 567 (1957).

influence the electorate generally” and “to affect the results” of those elections.³⁴ The district judge dismissed the indictment as not alleging a statutory offense in view of *United States v. CIO*. However, the Supreme Court reversed the dismissal, upheld the indictment on the grounds that Congress had drafted section 610 to prohibit expenditures such as those involved, and remanded the case to the district court. The majority of the Court again declined to rule on the statute’s constitutionality, although three Justices dissented, considering section 610 unconstitutional “as construed and applied” in that case.³⁵ The majority opinion, written by Mr. Justice Frankfurter, distinguished *CIO* by construing the union periodical in *CIO* as having been “neither directed nor delivered to the public at large.” The union had merely distributed “its house organ to its own people,” whereas in *UAW* the broadcasts were seemingly aimed at the general public. The standard apparently set forth by the Court for determining whether the expenditure of union dues violated section 610 was: were the dues spent to finance electioneering aimed at the general public or electioneering aimed at “those affiliated” with the union? The former was proscribed under section 610, while the latter was deemed permissible.³⁶ Furthermore, in remanding the case, the Supreme Court proposed four questions, which are as close to judicial guidelines for section 610 union political activity as have yet been proposed:

... [1] was 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? [2] Did the broadcast reach the public at large or *only* those *affiliated with* appellee? [3] Did it constitute *active electioneering* or simply state the record of particular candidates on economic issues? [4] Did the union sponsor the broadcast with the intent to affect the results of the election? [Numbers and emphasis added].³⁷

³⁴ Rauh, *supra* note 9, at 159.

³⁵ Mr. Justice Douglas, joined by Chief Justice Warren and Mr. Justice Black, dissented arguing that §610, “as construed and applied, is a broadside assault on the freedom of political expression guaranteed by the first amendment.” 352 U.S. at 598. These Justices viewed a denial to a union of the opportunity of financing partisan political messages over the commercial media with union dues as an unconstitutional abridgment of a union’s first amendment rights.

³⁶ The test set forth in the *UAW* decision comes close to overturning the decision of the Court of Appeals for the Second Circuit in *United States v. Painters’ Local 481*, 17 F.2d 854 (2d Cir. 1949). In that case the court held that §610 was not violated when a union placed partisan political advertising in a commercial newspaper and on radio. The court reasoned that since the union did not publish its own newspaper, this was the “natural” way for it to communicate with its members.

³⁷ *United States v. UAW*, 352 U.S. at 592.

The state of the law following *UAW* is more uncertain than ever. The "guidelines" proffered by the Supreme Court are phrased so generally that they are subject to considerable interpretation by all parties concerned. There is little if any predictability to the law in this area save that unions are assured, from the *CIO* and *UAW* cases, that dues can be expended to finance a partisan political message if the message reaches only union members. Beyond this, the courts have failed to delineate clearly which political activities constitute "active electioneering", what constitutes "voluntary" funds, who are included among "those affiliated"³⁸ with a union, or finally, what amounts to an "intent to affect" an election. Such uncertainty fosters evasions of the statute, for it suggests that the literal and complete prohibition of section 610 will not be strictly enforced.

D. Summary of Section 610's Present Status

The expenditure prohibition in section 610, while potentially a statutory mechanism for pervasive restriction of union and corporate financial political activity, never has served this function due to narrow judicial construction of its applicability. The literal language of section 610 and its legislative history combine to forbid the use of dues to publicize a union's partisan political advocacies in any medium whatsoever during a federal election. Yet, such a prohibition completely mutes a union's duty to protect the interests of its members through at least espousing the election of a pro-labor candidate over that of an unsympathetic candidate. Judicial hesitancy concerning the constitutional propriety of such a broad-sweeping prohibition has resulted in a narrow interpretation of the "expenditure" phrase which, in turn, has created loopholes in the statute. Voluntary contributions from any source are not subject to section 610 proscriptions. The *Anchorage Labor Council* and *Warehouse & Distribution Workers* cases have so enlarged the category of what constitutes voluntary funds that the direct contribution prohibition in section 610 may be rendered totally ineffectual if the devices utilized in these cases are not adjudged illegal. Furthermore, union dues may be spent without restriction in state as opposed to federal elections. The parameters of permissible section 610 activity in the *educational* and *nonpartisan* areas are so ill-defined that unions are left with great leeway. The point at which one could say that

³⁸ Upon remand, in *United States v. UAW*, Indict. No. 35004, (E.D. Mich.), the district judge declined to give the literal meaning to the distinction drawn by Mr. Justice Frankfurter between electioneering aimed at the general public and that aimed at "those affiliated" with the union. Rather, he instructed the jury that "the Supreme Court has not said that the law means that such political advocacy [telecasts financed by general funds] cannot reach non-members at all." The defendants were subsequently adjudged not guilty by the jury. Again, an action constituting a violation under the literal wording of §610 was deemed permissible partially as a result of narrow judicial construction of that statute.

educational, informational, or nonpartisan activities become partisan in tone is a rather arbitrary one. Every activity possesses some ultimate partisan political overtones when that activity occurs during an election year or when that activity is pursued by a special interest group such as labor unions. Thus courts are hesitant to prohibit such activities. The tension in this area becomes particularly acute when, as in the *CIO* and *UAW* cases, the problems of free speech and intra-union communication are interjected. It is in such a context that courts must make decisions concerning section 610.

III. Need for a New Approach

Section 610 has been of little, if any, value in policing the financial political activities of unions. It has led to prosecutions in only a small number of cases and those prosecutions have been unsuccessful; no conviction of a union official for violating section 610's prohibitions has ever been upheld.³⁹ If regulation of the amount of union political expenditures is still considered a desirable goal, then unquestionably some reform is necessary.

A. The Interests Involved

The dilemma which Congress would face if it evaluated section 610 is complex. The solution involves a consideration and balancing of competing interests: (1) the need to prevent political candidates from becoming inordinately answerable to the interests of large contributors rather than their constituencies; (2) the very real contemporary need for union financial participation in the political process; and (3) the right and need of unions to express their political beliefs in various manners. Before any balancing can take place, it is necessary to consider these three factors in more detail.

³⁹ Those unions and union officials convicted by lower courts have had their convictions reversed by appellate courts. Lambert, *Corporate Political Spending and Campaign Finance*, 40 N.Y.U.L. REV. 1033, 1041 (1965).

Year	Complaints Reviewed	Complaints Investigated (by Justice Dept.)	Cases Presented to the Grand Jury	Indictments Obtained	Cases Brought to Trial
1956	15	14	3	1	1
1957	5	4	0	0	0
1958	23	19	1	0	0
1959	17	12	3	3	3
1960	38	16	1	0	0
1961	23	12	0	0	0
	121	77	8	4	4

Two related considerations weigh against allowing the large contributor a free hand. The first is the fear of undue influence on or control of the political process which money might buy. The second is the cynicism which arises from the existence of large contributors. This latter consideration was described in the 1962 *Report of the President's Commission on Campaign Costs*:

Under present practices, the [political] parties encounter enormous difficulty in raising adequate funds at the proper time. Given the erratic flow of funds and the periodic crises in campaign finance, individuals and organizations providing substantial gifts at critical moments can threaten to place a candidate in moral hock. In consequence, a disturbing and fundamental failure of present practices is the widespread cynicism about the democratic system they produce.⁴⁰

On the other hand, rigorous enforcement of the Federal Corrupt Practices Act, including section 610, would cut off needed large contributions and significantly debilitate the national parties as effective political vehicles, thereby perhaps causing a further splintering of their already loosely-knit organizations. Such a splintering would make it more difficult for the parties to perform their task of ameliorating the polarities between the competing interests in American society. Rigorous enforcement without an alternative method for funding the parties would probably have more dire consequences upon the Democratic Party. Labor money is actually crucial to the Democratic party in the North and West if it is to compete with the Republican party. In 1952 and 1956, one-seventh of the direct expenses of national-level pro-Democratic committees were met with labor money.⁴¹ The *combined* reported campaign spending of Democratic and labor committees in election years often falls short of the expenditures of Republican committees alone.⁴² Preliminary campaign spending reports have revealed that Republican committees spent three times the amount spent by Democratic committees for the first ten months of the 1968 federal

⁴⁰ PRESIDENT'S COMMISSION ON CAMPAIGN COSTS, *supra* note 5, at 11.

⁴¹ A. HEARD, *supra* note 8, at 188.

⁴² CONGRESSIONAL QUARTERLY WEEKLY REPORT, *Special Report 1966 Political Campaign Contributions and Expenditures* Aug. 11, 1967 at 1384 and CONGRESSIONAL QUARTERLY WEEKLY REPORT, *Special Report, 1964 Political Campaign Contributions and Expenditures* Jan. 21, 1966 at 56.

campaign.⁴³ Undoubtedly the realization that special interest contributions are necessary for an efficacious functioning of a competitive two-party system is one reason why the courts and the government have been most reluctant to enforce section 610 stringently.

Over and above any need the political parties might have for union political involvement, the unions themselves have a definite need and right to participate in some political activism. Professor Lloyd Reynolds of Yale University has described the need:

	Committee Spending Reported Nationally			
	1952	1954	1956	1958
Republican Committee Expenditures	12,229,239	5,509,649	13,220,144	4,657,652
% of total spending	59.9%	53.5%	59.4%	53.7%
Democratic Committee Expenditures	5,621,698	2,224,211	6,492,634	1,702,605
% of total spending	25.1%	21.6%	29.2%	19.6%
Labor Committee Expenditures	2,070,350	2,057,613	1,805,482	1,828,778
% of total spending	10.1%	20.0%	8.1%	21.1%
	1960	1962	1964	1966
Republican Committee Expenditures	12,950,232	4,637,586	19,314,796	7,863,092
% of total spending	46.1%	39.4%	50.0%	41.5%
Democratic Committee Expenditures	11,800,979	3,569,357	13,348,791	4,282,007
% of total spending	42.0%	30.3%	34.6%	22.5%
Labor Committee Expenditures	2,450,944	2,305,331	3,816,242	4,289,055
% of total spending	8.7%	19.6%	9.9%	22.7%

⁴³ CONGRESSIONAL QUARTERLY WEEKLY REPORT, December 13, 1968 at 2382.

It is often debated whether unions should 'go into politics'; really, they have no choice in the matter. They are automatically in politics because they exist under a legal and political system which has been generally critical of union activities. The conspiracy suit and the injunction judge have been a problem for unions from earliest times. A minimum of political activity is essential in order that unions may be able to engage in collective bargaining on even terms.⁴⁴

A further element in the political system motivating union activism is the existence of many conservative, generally anti-union organizations which are quite active politically and which are not subject to the prohibitions of section 610.⁴⁵ These include such well-funded groups as the John Birch Society, the Medical Political Action Committee of the American Medical Association, the National Right to Work Committee of the National Association of Manufacturers and various employer and professional associations. In order for the unions to counteract the anti-labor political activities and propaganda of such groups, it is almost imperative for unions to reply in the same medium and manner.

The federal government has assumed so much power in the area of labor-management relations through the various labor and industrial legislation that a union's welfare is inextricably dependent on the election to federal office of candidates sympathetic to labor. Certain objectives in which labor has deep-seated interests cannot be achieved through collective bargaining, such as public education, adequate low-cost housing, social insurance and full employment conditions. These must be achieved through legislation. Also, certain union objectives which might be attained through collective bargaining can be achieved more quickly through legislation, such as minimum wage and maximum hour provisions.⁴⁶ Thus unions are literally compelled to participate in the elective process.

B. Inadequacy of Certain Suggested Reforms

The success of any reform must be measured by its ability to balance the competing considerations: the first amendment rights of unions, the

⁴⁴ L. REYNOLDS, *LABOR ECONOMICS AND LABOR RELATIONS*, 80-81 (1959).

⁴⁵ Harris, *The Riddle of the Labor Vote*, *HARPER'S MAGAZINE*, October 1964, at 43. This article mentions how anti-union groups funneled their resources into Barry Goldwater's 1964 campaign thus spurring even the generally conservative labor unions to join forces with the other unions in supporting Lyndon Johnson's campaign. Mr. Harris mentions that these groups oppose unions in every cause the unions hold dear.

⁴⁶ See Woll, *Unions in Politics: A Study In Law and the Workers Needs*, 34 S. CAL. L. REV. 130, 144-151 (1961) for a discussion of reasons why unions must be politically active. The article is basically an apologia for union political activism.

need for large contributions, and the countervailing need for regulation. By reference to this balancing test, the two most often recommended reforms are found wanting.

One frequent proposal recommends the elimination of the expenditure prohibition in section 610 and yet the retention and strict enforcement of the direct contribution prohibition. This action would be accompanied by a clear statutory or judicial articulation of what constitutes a forbidden contribution, strictly-enforced legislation that requires comprehensive disclosure of union or corporate political expenditures and adequate publicity to insure public censure of any violations, and severe civil or criminal sanctions which are applied frequently enough to induce voluntary compliance with the statute.

Such a plan recognizes the need for all large special interest groups to expend funds in elections to protect their often worthy but conflicting economic interests. Concurrently the plan avoids *some* of the hypocrisy coincident with the existing legislation. It also goes far toward erasing the constitutional difficulties in section 610 by removing some of the present statutory bans on partisan political activity.

However, this proposal has a fatal weakness which would probably render it ineffective. If an interest group such as a union or corporation is permitted to make expenditures during federal elections while being proscribed from making direct contributions, it might confer with those candidates sympathetic to its goals and philosophy. These meetings, which would necessarily have to be covert, would result in a candidate advising the union or corporation of the most effective ways in which to expend its funds for his benefit. The result might be that the union or corporation would expend the funds on the same activities as the candidate would have, had the funds been given to him directly. Although this proposal would eliminate some of the interpretive gyrations courts have been forced to make in order to legitimize, under section 610, union expenditures necessary to a functioning of the political system, it would still perpetuate much of the hypocrisy and resulting cynicism because it would entail continued partial reliance on an easily evaded statute.

The other urged reform is a variation of the above plan. Articulated by Joseph L. Rauh, Jr., this proposal⁴⁷ calls for the retention of section 610's contribution prohibition and the construction of the expenditure prohibition so as to permit a union if it acts *in its own name* to make expenditures of both voluntary and general funds in partisan political activities during federal elections. This system protects a union's constitutional right to free speech by allowing it to put its views before the public through any medium as long as it is made clear that the views expressed are those of the union. Rauh has also proposed the prohibition of indirect contributions by unions, arguing that this would prevent

⁴⁷ Rauh, *supra* note 9, at 161-62.

candidates from becoming politically answerable and financially obligated to a union.

Rauh's proposal has one advantage over the previously outlined plan. By requiring a union to reveal its involvement in political activities clearly to the public, the plan might reduce the candidates' utilization of union financial assistance and thus minimize the extent to which they will feel answerable to the union rather than their constituents. Labor endorsement of a candidate might alienate as many voters as it actually convinces to support him. To many segments of the voting populace a labor endorsement will place a candidate in an unfavorable light vis-a-vis his unendorsed opponent. Thus unions might abstain from political activity, especially when such activity might mean a loss of votes for pro-labor candidates in areas generally hostile to unions.

Strict enforcement of the Rauh proposal might provide a workable solution. However, there are difficulties inherent in its enforcement and at least one undesirable effect. Absent an alternative system of financing the parties and candidates, the Rauh proposal would considerably impoverish the Democratic Party and perhaps foreclose the possibility of many men who are talented but not wealthy from seeking political office. Strict enforcement necessitates the discovery of adequate devices for insuring that all partisan political espousals or activities by a union are *clearly* labelled as union-sponsored so that the public is aware of the source of the propaganda. Policing the innumerable union activities, such as door-to-door political solicitations, to see that they are not camouflaged as a candidate's efforts would be an impossible task. The prospects of fine print evasions and collusion between a union and a candidate for an apportionment of campaign activities are substantial. If they did exist, they would perpetuate the hypocrisy surrounding section 610 and would therefore reinforce voter cynicism and retard small contributions⁴⁸. Nevertheless, with an adequate program, such as a tax-credit system, implemented to find alternative sources of campaign funds, Rauh's proposal holds forth much promise since it does seem to solve the constitutional problem inherent in section 610.

C. A Coordinated and Realistic Solution

On balance, the most straightforward and potentially satisfactory course of action probably lies in the repeal of section 610, at least as

⁴⁸ Seventy-two per cent of the expenses of the Republican presidential campaign in 1964 were met out of individual contributions of \$500 or less. Alexander & Meyers, *The Switch in Campaign Giving*, FORTUNE, Nov. 1965 at 170. However, this does not undermine the argument that §610 retards small contributions by fostering voter cynicism. The 1964 pattern of financing was unusual for the Republican Party and is attributable to the fact that Senator Barry Goldwater was its candidate. The normal pattern was restored in 1968 when over fifty per cent of the funds came from large contributors. *GOP Takes the Lead in Fund-raising Race*, BUSINESS WEEK, Sept. 21, 1968, at 35.

pertains to labor organizations.⁴⁹ At a minimum, repeal will erase the hypocrisy surrounding the statute. It will likewise remove any doubts as to the constitutionality of section 610 by removing the statutory prohibition that restricts the free speech rights of a union to express its political views through any reasonable means. After repeal, unions will be allowed to make direct contributions or expend monies as they see fit thereby protecting their first amendment rights. Repeal will also place unions on an equal footing with those conservative, generally anti-union organizations mentioned earlier that are not subject to the prohibitions of the statute. Of course, absent rigorous enforcement of section 610, the unions are not presently disadvantaged vis-a-vis such associations due to the existing loopholes; however, if section 610 ever does become broadly applied and strictly policed, the unions will be placed in a very disadvantageous position in their attempt to counteract any anti-labor political activities by such groups.

Large amounts of money are currently funneled into the political process from unions and corporations because of the gaping holes in the statute. Upon repeal there will probably be an even greater influx of such monies since the restraints upon campaign subsidizations will have been removed. The result of this influx will be an increase in the possibility and/or incidence of federal candidates becoming unduly influenced by a union. Accordingly, an absolutely necessary precedent to the repeal of section 610 is federal legislation to implement programs which will provide substantial funds to the parties and candidates from sources other than large groups like unions. Ideas that have been proposed to achieve this objective include tax credits to encourage small contributions, federal government subsidies to political candidates, a nationwide poll tax, collection boxes in supermarkets, and restricting union contributions to private nonpartisan funds which would then be allocated to the parties. To date, none of these plans for financing political parties and candidates have been passed by Congress, although efforts have been made. A detailed discussion of each of these plans lies beyond the scope of this article.⁵⁰ It appears, however, that the most feasible plan for reducing the impact of contributions from large special interest groups would likely be a combination of certain of these proposals. Coupling a seriously implemented tax-credit program with federal campaign subsidies⁵¹ and shortening campaign periods so as to reduce

⁴⁹ Since the problems incident to §610's applicability to corporate political involvement have not been considered in this article, it would be improper to recommend any change in the law as it pertains to such corporate involvement.

⁵⁰ See PRESIDENT'S COMMISSION ON CAMPAIGN COSTS, *supra* note 5 and H. ALEXANDER, REGULATION OF POLITICAL FINANCE (1966) for discussions of various funding proposals.

⁵¹ Such a combination was contained within the Honest Election Law of 1967; the Bill was reported out of the Senate Finance Committee on November 1, 1967 as an

electioneering costs would inevitably result in a significant decrease in the proportion of large interest group contributions to total campaign expenditures. Such a system would stimulate small contributions and allow candidates to rely more upon small contributors to finance their campaigns or at least to turn to the government for an impartial allotment of funds. Such a system would help overcome the general attitude among voters that, as individuals, their vote, money or participation is

amendment to H.R. 4890 during the 1st Session of the 90th Congress, but has not been enacted into law. The pertinent provisions, as summarized by the CONGRESSIONAL QUARTERLY, included:

Title I—Income Tax Credit for Political Contributions

Individuals would be allowed an income tax credit of 50 percent of the value of political contributions up to \$50 in any year—in other words, a \$25 maximum credit. (The \$25 maximum credit figure would also apply to the returns of married persons filing joint returns.) The credit would be applicable to contributions to announced candidates for any local, state or national office, or political committees organized exclusively to support candidates for office, or national political parties and their state and local affiliates. The credit would apply only to contributions made in 1968 or thereafter.

Title II—Presidential & Senate Campaign Fund Provisions

To be eligible to receive Government funds, a candidate would have to agree not to accept any private campaign contributions for a period of 60 days preceding the election and 30 days afterwards. Candidates who refused to make this assurance would be ineligible to receive federal subsidy funds.

Presidential. A candidate of a major party, defined as a party whose Presidential candidate received 25 per cent or more of the popular vote in the preceding Presidential election, would receive a federal payment of 20 cents multiplied by the number of popular votes cast for all Presidential candidates in that previous election. In 1964, 70,644,510 votes were cast for President. Each major party would thus be entitled to a 1968 subsidy of up to \$14,128,902.

A Presidential candidate of a minor party, defined as a party which received from 5 to 25 per cent of the popular vote in the preceding election, would receive a federal payment of 40 cents for each popular vote cast for his party's Presidential candidate in that previous election. (No minor parties received 5 per cent or more in 1964.) If a minor party had not existed in the previous election, or had received less than 5 per cent of the vote in the previous election, it would receive—following the current election—a federal payment of 40 cents for each popular vote it receives, providing its over-all total is at least 5 per cent. (Presumably, a minor party candidate would be obliged to find a number of supporters willing to make conditional loans, to be repaid only if the party exceeded 5 per cent in the current election.) A minor party could not, however, receive more money than it would have received had it qualified as a major party.

politically impotent. It is reasonable to assume that many people would exercise the tax-credit opportunity, since most taxpayers would rather donate their money to an identifiable cause such as a political candidate rather than see the money disappear into the mass of federal tax funds.

The tax credit and subsidization programs, by augmenting the sources of funds available to political candidates, would reduce the possibility that large contributors would gain undue influence in the political process. In addition, this objective may be furthered, although to a lesser

Senatorial. A candidate of a major party, defined as a party which polled 25 per cent or more of the total vote in one of the two preceding Senate elections in the state, would be eligible to receive subsidies amounting to:

- (a) 50 cents multiplied by the total vote for all candidates in the base election, not to exceed 200,000;
- (b) 35 cents multiplied by the total vote for all candidates in the base election, between 200,000 and 400,000; and
- (c) 20 cents multiplied by the total vote for all candidates in the base election, to the extent that such votes exceed 400,000.

The minimum payment would be \$100,000 however.

A candidate of a minor party, defined as a party which received at least 5 per cent but less than 25 per cent in one of two previous Senate elections, would be eligible to receive:

- (a) \$1 multiplied by the number of votes received by his party's candidate in the base election, up to 100,000;
- (b) 70 cents multiplied by the number of votes received by his party's candidate in the base election, above 100,000 and up to 200,000; and
- (c) 40 cents multiplied by the number of votes received by his party's candidate in the base election, above 200,000.

This same scale of payments based on a current Senate election would apply also to a Senate candidate of a party which did not receive enough votes in the preceding elections to qualify as a minor party, but which does receive the requisite 5 per cent of the vote in the current Senate elections. The payments would be made following the current election and could not exceed payments for which major party Senate candidates would be eligible. Under no conditions could a minor party candidate receive private contributions which, together with the federal subsidies he has received, would boost his total receipts above the level allowed him in the above formulas.

CONGRESSIONAL QUARTERLY WEEKLY REP. Sept. 22, 1967 at 1855. For a general discussion of tax incentive programs, see H. ALEXANDER, *TAX INCENTIVES FOR POLITICAL CONTRIBUTIONS* (1961). For a discussion of various political campaign financing proposals, see *Hearings on Various Proposals for Financing Political Campaigns. Before the Senate Comm. on Finance, 90th Cong., 1st Sess., (1967); Senate Report No. 714, Report on the Honest Election Act of 1967, by the Senate Comm. on Finance, 90th Cong., 1st Sess., (1967).*

extent, by the adoption of the "contracting out" principle. This is a device, negative in tone, designed to limit somewhat the amount of funds accessible to labor unions. As the device is applied in Britain⁵², each union member is allowed the right to file an "exemption notice" with the union leadership which excuses the member from paying that part of his dues which would otherwise be spent upon political activities that the member opposes.⁵³ Utilization of this device would decrease the dollar amount available to unions, thereby reducing the proportion of union-contributed expenditures to total expenditures in political campaigns. Such a reduction would probably lessen the possible impact of union political expenditures upon political candidates.⁵⁴

⁵² Trade Union Act of 1913, 2 & 3 Geo. V. C. 30.

⁵³ This device differs from the authorization card plan, discussed in the text at 350 *supra*, which is employed by unions to expand the category of "voluntary" funds. Contracting out provides for a diminution of the dissenter's dues for that portion of his dues allotted to political activities; thus the union is precluded from spending that portion at all. However, under the authorization card plan, the dues will be expended regardless of the dissenter's views, the card simply allowing a union to spend the funds as voluntary contributions instead of being limited to the uses allowable for dues under §610.

⁵⁴ Adoption of the contracting out principle would also serve a second purpose: it would eliminate the first amendment question of whether a labor union may spend dues of a union member for political causes which the member disfavors.

The Supreme Court dealt with this issue in the cases of *IAM v. Street*, 367 U.S. 740 (1961) and *Brotherhood of Railway and Steamship Clerks v. Allen*, 373 U.S. 113 (1963). In essence these decisions forbade unions under the Railway Labor Act from using money exacted under a union shop agreement for political purposes which are not "germane to collective bargaining" and to which a member gave affirmative notice that he was opposed. The remedies proposed by the Court were: (1) a refund of the portion of exacted dues in the same proportion that union political expenditures bore to total union expenditures and (2) a reduction of future exactions from the member by the same proportion.

Although these cases arose under the Railway Labor Act, the principle enunciated would seem to be equally applicable to unions governed by the National Labor Relations Act. The likelihood of the extension of this principle suggests that repeal of §610 need not necessarily be accompanied by a federal contracting out statute to protect the rights of dissenting union members.

Under either judicial opinion or separate federal statute, there are two significant problems in applying a contracting out formula. First, it is very difficult to distinguish between those expenditures which are for political activities "germane to collective bargaining" and those which are not. Second, as a practical matter, union members may not invoke the contracting out principle. For one thing, a union member who seeks to exercise his right to contract out may be subjected to a certain amount of social pressure from his union leaders or peers aimed at dissuading him from that action. However, the Wallace phenomenon among labor unions in 1968 seems to demonstrate that if union members feel strongly enough about a particular candidate or issue, they will opt to support financially and vote for a candidate who will not receive distributions from the political coffers of the unions themselves. Still use of contracting out may be infrequent because union members may be ignorant of their rights under the formula. However, a program designed to educate the rank and file about the right to contract out would awaken the members to this opportunity and would motivate many of them to exercise the right.

IV. Conclusion

This article has urged a new approach to the problem of preventing labor unions from exercising undue influence in political campaigns. Rather than restrict the amount that can be contributed by labor unions, thus running the risk of practical as well as constitutional problems, the author has suggested the repeal of section 610, coupled with legislation to encourage contributions from sources other than large special interest groups, and utilization of the "contracting out" principle. There are drawbacks to any proposed solution in the area of campaign financing because such financing is enmeshed in the "art of the impossible", politics. However, the author feels that the above proposal offers the greatest opportunity for affording freedom of expression to all parties concerned, without allowing any one entity to gain a disproportionate position of influence within the financial aspects of the elective process. This proposal seems most fully to meet the criterion of balancing a protection of the constitutional rights of unions with a protection of political candidates against becoming pawns of such special interest groups. At the very least it alters the *emphasis* of campaign finance regulation from a negative prohibition on contributions to a positive encouragement and solicitation of broad-scale contributions.