

WORKER PAYCHECK FAIRNESS ACT OF 1999

OCTOBER 11, 2000.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GOODLING, from the Committee on Education and the
Workforce, submitted the following

R E P O R T

together with

MINORITY AND DISSENTING VIEWS

[To accompany H.R. 2434]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 2434) to require labor organizations to secure prior, voluntary, written authorization as a condition of using any portion of dues or fees for activities not necessary to performing duties relating to the representation of employees in dealing with the employer on labor-management issues, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 2434, the Worker Paycheck Fairness Act, is to ensure that all workers have sufficient information about their rights regarding the payment of dues or fees to labor organizations and the uses of their dues and fees by labor organizations, and to ensure that the right of all workers to make individual and informed choices about the political, social or charitable causes they support is protected to the greatest extent possible.

The legislation creates a new, federal right implementing the spirit of the Supreme Court's 1988 *Beck* decision. In *Beck*, the high court held that workers could not be required to pay for activities beyond those related to legitimate union functions. H.R. 2434 applies only in circumstances in which employees work under a

“union security agreement,” that is, when unions require workers to pay dues as a condition of keeping their jobs.

COMMITTEE ACTION

H.R. 2434, the Worker Paycheck Fairness Act, was introduced by Representative Bill Goodling (R-PA) on July 1, 1999. H.R. 2434 was marked up in Full Committee on November 3, 1999, and ordered favorably reported by roll call vote (yeas 25, nays 22, not voting 2). H.R. 2434 currently has 24 cosponsors.

The Worker Paycheck Fairness Act is similar to H.R. 1625, introduced during the 105th Congress by Representative Harris W. Fallwell on May 15, 1997. H.R. 1625 had more than one hundred cosponsors, including the entire Republican House leadership. By unanimous consent, the Subcommittee on Employer-Employee Relations was discharged from further consideration of H.R. 1625 on October 8, 1997. On that same date, the Committee on Education and the Workforce approved H.R. 1625, as amended, by a voice vote, and, also by a voice vote, ordered the bill favorably reported.

The Committee on Education and the Workforce has held six hearings during the past three Congresses on the issue of compulsory union dues. The hearings established that rank-and-file union members need more control over the portion of their dues money that is spent on activities having nothing to do with the functions of the union. Worker after worker testified about the incredible burdens they have faced trying to exercise their rights under current law and recover money that is theirs.

Throughout the Committee’s hearings, union members testified about the intimidation, stonewalling and deception they have experienced in their attempts to exercise their rights, under *Communications Workers of America v. Beck*,¹ to object to the use of their union dues or fees for purposes that were not necessary to collective bargaining. The Committee also heard from individuals from several organizations that had represented workers who had attempted to object to the non-collective bargaining use of their union dues or fees. These witnesses highlighted both the significant challenges under the current law and the depth of the frustration workers feel with regard to mandatory assessment of union dues and fees. Workers, as well as individuals experienced in the legal aspects of asserting Beck rights, testified in support of the Worker Paycheck Fairness Act, and indicated it would inject more fairness into the mandatory dues collection process.

The Subcommittee on Employer-Employee Relations held a hearing on the abuse of worker rights and the Worker Paycheck Fairness Act on January 21, 1998. Testimony was heard from Robert P. Hunter, Director of Labor Policy for the Mackinac Center for Public Policy, Midland, Michigan; John Masiello, Member, International Association of Machinists and Aerospace Workers, Mooresville, North Carolina; Frank Ury, Co-Author, California Campaign Reform Initiative, Mission Viejo, California; John Hiatt, General Counsel, AFL-CIO, Washington, DC; Morgan O. Reynolds, Professor, Department of Economics, Texas A&M University, College Station, Texas; John C. McCrae, Member, Carpenters for Democracy in Unions, Ridley Park, Pennsylvania; Cheri W. James, Presi-

¹ 487 U.S. 735 (1988).

dent, Virginia Education Association, Richmond, Virginia; and Mark Wilson, Policy Analyst, Heritage Foundation, Washington, DC.

On December 11, 1997, the Subcommittee on Employer-Employee Relations held a field hearing in San Diego, California. During the hearing, which addressed mandatory union dues and the abuse of worker rights, testimony was heard from James Righeimer, co-author, California Campaign Reform Initiative, Tustin, California; John Moses, Employee, National Steel and Shipbuilding Company, San Diego, California; Karan Koog, Member, International Association of Machinists and Aerospace Workers, Woodworkers Local Lodge W98, AFL-CIO, McKinleyville, California; Jane McGill, President, Sweetwater Education Association, San Diego, California; Nadia Q. Davies, Former Teacher, San Diego, California; Jackie Giles, Member, Service Employees Local 2028, San Diego, California; Brenda Reneau, Commissioner of Labor, State of Oklahoma, Oklahoma City, Oklahoma; and Bob Williams, President, Evergreen Freedom Foundation, Olympia, Washington.

The Committee on Education and the Workforce held a hearing on H.R. 1625 on July 9, 1997. Testimony was heard from Kevin Spence, Phoenix, Arizona; Charles E. Barth, Cornelius, North Carolina; Daniel A. Klosowski, Milwaukee, Wisconsin; Steven J. Nemirow, Attorney, Portland, Oregon; Roger Pilon, Director, Center for Constitutional Studies, CATO Institute, Washington, DC; Marshall J. Breger, Visiting Professor of Law, Columbus School of Law, the Catholic University of America, Washington, DC; Mitchell Kraus, General Counsel, Transportation Communications Union, Rockville, Maryland; and James B. Coppess, Associate General Counsel, Communications Workers of America.

The Subcommittee on Employer-Employee Relations held a hearing on mandatory union dues on March 18, 1997. Testimony was heard from the Honorable Esteban Edward Torres, Member of Congress; Jane Gansmann, West Chicago, Illinois; Kerry W. Gipe, Matthews, North Carolina; E. Grady Thurston, Suisun City, California; Robert A. St. George, St. Paul, Minnesota; Bob Williams, President, Evergreen Freedom Foundation, Olympia, Washington; Patrick J. Manshardt, Attorney, Individual Rights Foundation, Los Angeles, California; Morgan O. Reynolds, Professor, Department of Economics, Texas A&M University, College Station, Texas; Allison Beck, General Counsel, International Association of Machinists and Aerospace Workers, AFL-CIO; and James B. Coppess, Associate General Counsel, Communications Workers of America.

Hearings on mandatory union dues were also held by the Subcommittee on Employer-Employee Relations during the 104th Congress. On April 18, 1996, the subcommittee heard testimony from Gary Bloom, Southaven, Minnesota; James Cecil, Clarkston, Michigan; Len Cipressi, Los Angeles, California; Gary Dunham, Buffalo, New York; Charles R. Serio, Linthicum, Maryland; John Wilson, Neosho, Missouri; Marshall J. Breger, Visiting Professor of Law, Columbus School of Law, the Catholic University of America, Washington, DC; W. James Young, Staff Attorney, National Right to Work Legal Defense Foundation, Springfield, Virginia; Victoria Bor, Attorney, Sherman, Dunn, Cohen Leifer & Yellig, Washington DC (testifying on behalf of the International Brotherhood of Electrical Workers); and Mark Schneider, Associate General Counsel,

International Association of Machinists and Aerospace Workers, AFL-CIO, Washington, DC. On June 19, 1996, the subcommittee held a hearing on the Worker Right to Know Act, legislation similar to H.R. 2434, and to H.R. 1625 that was introduced in the 104th Congress. At this hearing, the subcommittee heard from Mary S. Burkholder, Chambersburg, Pennsylvania; William H. Hitchings, Chicago, Illinois; Charles W. Baird, Professor of Economics and Director, Smith Center for Private Enterprise Studies, California State University, Hayward, California; Raymond J. LaJeunesse, Staff Attorney, National Right to Work Legal Defense Foundation, Springfield, Virginia; Michael A. Taylor, Attorney, Powell, Goldstein, Frazer & Murphy, Washington, DC; Marshall J. Breger, Visiting Professor of Law, Columbus School of Law, the Catholic University of America, Washington, DC; James B. Coppess, Associate General Counsel, Communications Workers of America; and Helen Gibson, Agency Fee Administrator, Communications Workers of America.

COMMITTEE VIEWS

INTRODUCTION AND SUMMARY

Despite the U.S. Supreme Court establishing more than a decade ago that workers who are forced to pay union dues as a condition of employment may not be required to pay dues beyond those necessary for collective bargaining, *Beck*² rights have remained illusory. Employees must first be aware that they have a right to object to non-collective bargaining dues. The fact of the matter is that the actual text of the National Labor Relations Act, as currently written, still appears to permit unions and employers to agree to make union membership and payment of full union dues a condition of employment. The law also puts the burden on the employee to object to non-collective bargaining dues and, if no objection is made, the employee may be liable for full dues. Further, if an employee wants to object to the payment of non-collective bargaining dues, the union may require the employee to resign from the union and, in the process, the employee loses critical workplace rights such as the right to ratify a contract or vote to go on strike.

If an employee gets this far and decides to affirmatively object, the employee must often withstand threats and intimidation from co-workers and union officials, only to have to renew the objection each year. In sum, the right of an employee to object to the payment of any dues beyond those necessary for collective bargaining has remained more of a legal right than a practical one. The hurdles an employee must overcome are many, requiring extreme persistence, knowledge of the law, and a willingness to buck the system and give up participation in decisions affecting his or her work environment.

The Worker Paycheck Fairness Act addresses each of these shortcomings of current law. The legislation creates a new requirement in federal law directing any labor organization accepting payment of any dues or fees from an employee as a condition of employment pursuant to an agreement authorized by federal law to simply secure from each employee prior, voluntary, written author-

²Id.

ization for any portion of such dues or fees which will be used for non-collective bargaining activities. The Worker Paycheck Fairness Act includes effective remedial provisions modeled on the Family and Medical Leave Act providing that any labor organization which failed to secure the required authorization would be liable to the affected employee for damages equal to two times the amount of the dues or fees accepted in violation of the Act together with interest. The employee could also recover attorneys' fees and costs.

Unionized employers would be required to post a notice informing employees of their rights under the legislation. The Worker Paycheck Fairness Act also requires more detailed financial reporting by labor organizations, gives workers paying union dues or fees the same access to financial information as union members, and allows any interested party to make a written request for financial reports filed with the Department of Labor. Consistent with other workplace laws, the legislation would also protect workers against coercion or retaliation in the exercise of their rights under this Act. The Worker Paycheck Fairness Act injects needed fairness into the mandatory dues collection process and builds upon the reasoning of the Supreme Court in *Beck* to finally transform the promise of that decision into a reality.

CURRENT LAW FAILS TO PROTECT WORKERS' RIGHTS

In 1988, the Supreme Court established in *Communications Workers of America v. Beck*³ that workers cannot be forced under a union security clause to pay dues or fees to a union beyond those "necessary to performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." Unfortunately, *Beck* rights as currently constituted have proven elusive to the average working American. After receiving testimony from numerous workers from all across this nation and from a host of organizations that advocate on behalf of employees related to their union dues obligations, the Committee has concluded that the rights enunciated by the Supreme Court in *Beck* do not offer employees a meaningful right to object to union dues or fees not necessary to collective bargaining. The problems with *Beck* rights as currently available are manifold.

Lack of notice

The problems begin with the notice, or lack thereof, that employees have of their right under *Beck* to object to the use of compulsory dues for purposes not necessary to collective bargaining. As Marshall Breger, former Solicitor for the Department of Labor during the Bush administration and a law professor at Catholic University's Columbus School of Law, testified: "There has been considerable controversy as regards how non-union agency fee payers are expected to learn of their *Beck* rights. Unions have no specific interest in appraising workers of their 'refund rights' because the use of the refund option reduces their discretionary funds. Indeed even some employers believe that it is in their interest to reduce the transaction costs under union security agreements. Perhaps it is the case that *Beck* rights have passed into the common con-

³487 U.S. 735, at 762 (1988).

sciousness of industrial relations—I have seen no evidence to sustain that proposition, however.”⁴

Oklahoma’s Commissioner of Labor, Brenda Reneau, who introduced *Beck* rights language into that state’s minimum wage poster, testified that “the rank and file are kept in the dark, with little to no explanation of their rights.”⁵ Reneau cited a poll of 1,000 union members, which found that only 1 in 4 with at least 20 years of membership actually knew of their rights, or the right to request a refund of dues spent on political activities, and that of those with fewer than 5 years of membership, only 1 in 10 had knowledge of the rights granted under the *Beck* decision.⁶

The experiences of the workers who testified before the Committee reinforce the conclusions that Mr. Breger and Ms. Reneau articulated about the lack of notice. Bill Hitchings, a longtime member of the Carpenters’ Union, stated: “[T]he union makes no attempt whatsoever to make the membership aware that they have options under the *Beck* ruling * * * I’ve been deprived of information. I don’t know whether it’s on purpose or just an oversight, but when I made objection to [political spending] with my union, they certainly never mentioned *Beck* to me.”⁷ Similarly, Robert St. George, an airline industry worker from St. Paul, Minnesota, told the Committee: “When [the union representative] was asked at this meeting if there wasn’t some way we could just pay for representation, as I remember it, [he] made the incredible claim that we could not because Minnesota was not a Right to Work State and that can only be done in a Right to Work State. [He] would not even tell us about our *Beck* rights when asked.”⁸

Daniel Klosowski, a broadcast engineer from Milwaukee, Wisconsin, testified: “No one explained what my obligations for union dues were, nor was I given a copy of the contract to read. That should have been the time when my obligations were discussed regarding union dues, and whether I had the choice of even joining the union. This is still the current practice used by the stewards today; they do not tell new hires what their rights are * * *”⁹ John Moses, a foreman at a California shipbuilding company, testified before the Committee: “Over the years since I’ve gotten out of the union, through talking to people, I’ve learned of rights I never knew I had. I never knew about the *Beck* decision and the rights it gave me. When I was a member of the union I never knew about any of these options.”¹⁰ A poll conducted during the 105th Congress at the request of Americans for a Balanced Budget backs up the experiences of these workers. The survey found that only 19%

⁴Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 12 (April 18, 1996) (Serial No. 104–66).

⁵Field Hearing on Mandatory Union Dues and the Abuse of Worker Rights, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 2nd Sess., at 36 (December 11, 1997) (Serial No. 105–24).

⁶Id.

⁷Hearing on H.R. 3580, the Worker Right to Know Act, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 197, 363 (June 19, 1996) (Serial No. 104–66).

⁸Hearing on Mandatory Union Dues, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 1st Sess., at 24 (March 18, 1997) (Serial No. 105–9).

⁹Hearing on H.R. 1625, the Worker Paycheck Fairness Act, Before the Committee on Education and the Workforce, 105th Cong., 1st Sess., at 77 (July 9, 1997) (Serial No. 105–51).

¹⁰Field Hearing on Mandatory Union Dues and the Abuse of Worker Rights, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 2nd Sess., at 120 (December 11, 1997) (Serial No. 105–24).

of union members know that they could object to the use of union dues for non-collective bargaining purposes.

Neither the National Labor Relations Board (NLRB) nor the Department of Labor has taken any substantial steps to address this widespread lack of notice. In its first comprehensive ruling interpreting *Beck*, the NLRB concluded that it was sufficient for the union to print a notice of *Beck* rights only once a year in the inside of its monthly magazine.¹¹ Although, why non-union fee payers are expected to pick up and read the union magazine is less than clear. Further, both the Board and the current administration have steadfastly failed to require that *Beck* notices be posted in the workplace. One of President Clinton's initial acts upon taking office was to rescind an executive order issued by President Bush requiring federal contractors to post *Beck* notices.¹²

Union resignation required

Employees who are fortunate enough to clear the initial hurdle of not knowing their rights under *Beck* and want to object to the use of their union dues for political or social causes are often required to resign their membership in the union.¹³ This is not an easy thing for many employees to do for a number of reasons. First and foremost, as stated in testimony the Committee heard from James Young, an attorney with the National Right to Work Legal Foundation, unions often either wittingly or unwittingly (Mr. Young argues the former) mislead their employees on the effect resignation from the union will have on their employment, implying that resignation will lead to discharge.¹⁴ The text of the collective bargaining agreement itself exacerbates this deception, as union security clauses often require full membership in the union as a condition of employment even though the courts have made it clear that this cannot be demanded of employees.¹⁵

The experiences of several of the workers who testified before the Committee buttress the observations made by Mr. Young. Gary Bloom, a medical records clerk from Southaven, Minnesota, related his experience as follows: “[The union official] mentioned that as part of the union contract, I must become a member of Local 12, 31 days after being hired and if I chose not to become a member, she * * * would have no alternative but to request that Group Health terminate my employment there.”¹⁶ Similarly, Kerry Gipe, an airline mechanic from Matthews, North Carolina, testified, “I

¹¹ *California Saw & Knife Works*, 320 NLRB 224 (Dec. 20, 1995).

¹² Executive Order 12836 (February 1, 1993) rescinding Executive Order 12800 (April 13, 1992).

¹³ The *Beck* decision did not address whether or not an employee can be required to resign from the union in order to exercise *Beck* rights. In a later decision, the Fourth Circuit Court of Appeals did find that employees do *not* have a right to remain a member of a union yet only pay for the costs of union activities necessary to collective bargaining. *Kidwell v. Transportation Communications International Union*, 946 F.2d 283 (4th Cir. 1991). See also, *United Steelworkers*, 329 NLRB No. 18, at fn. 3 (Sept. 17, 1999) (noting NLRB general counsel's position, pursuant to General Counsel's Guidelines, that in order to qualify for *Beck* rights, employee must be non-member of union).

¹⁴ Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 112 (April 18, 1996) (Serial No. 104-66).

¹⁵ *National Labor Relations Board v. General Motors Corp.*, 373 U.S. 734 (1963). The Supreme Court, however, has contributed to workers' confusion by holding that union contracts can require compulsory membership without spelling out that workers do not have to become full union members. *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33 (1998) (holding as reasonable union contract's security clause tracking language of NLRA Section 8(a)(3)).

¹⁶ Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 26 (April 18, 1996) (Serial No. 104-66).

was told that joining the union was a mandatory part of working for the company.”¹⁷ Nadia Davies, a retired schoolteacher from San Diego, testified that when she asked her union to allow her to pay only those dues related to collective bargaining, she “* * * was told in no uncertain terms that [she] could not do that and that [she] was locked in for the duration of the contract.”¹⁸

Workers experience intimidation and coercion

Even for employees who find out the truth, many who object to the union’s “extracurricular” activities may believe that union representation brings them benefits in the workplace and thus may be reluctant to resign. Some employees may also fear the reaction that union resignation may bring from fellow employees. Robert Hunter, who heads the Mackinac Center for Public Policy, in Midland, Michigan, testified before the Committee: “We see peer pressure and bullying tactics from within union ranks, often discouraging members from exercising their *Beck* rights * * * [T]hey are pressured to avoid rocking the boat.”¹⁹ Several workers appearing before the Committee testified regarding the coercion and intimidation they experienced once they began to question the orthodoxy of full union membership and dues payment.

John Masiello, a mechanic at U.S. Airways and IAM member, testified that once he began asking about his *Beck* rights, “the local lodge president * * * immediately started a campaign to discredit me * * * He did this with slanderous lies, and character assassination. Letters were hung all over the workplace claiming [I] objected to paying any dues * * * Months had gone by and the harassment had not let up one bit, and to make matters worse, I was still paying what they had considered full dues. Not one penny of the overpayment was refunded to me * * * I was forced to take the local lodge president to small claims court.”²⁰

Kerry Gipe told the Committee: “* * * the union began an almost immediate smear campaign against us, led by our local president * * * portraying us as scabs, and freeloaders * * * We had our names posted immediately on both union property and company property accusing us of being scabs. We were thrown out of our local union hall, and threatened with physical violence * * * We were accosted at work, we were accosted on the street. We were harassed, intimidated, and threatened. We were told that our names were being circulated among all union officials in order to prevent us from ever being hired into any other union shop at any other location. The union membership was told that we were refusing to pay any dues whatsoever, which created a very hostile environment among our fellow workers.”²¹

¹⁷Hearing on Mandatory Union Dues, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 1st Sess., at 17 (March 18, 1997) (Serial No. 105-9).

¹⁸Field Hearing on Mandatory Union Dues and the Abuse of Worker Rights, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 2nd Sess., at 30 (December 11, 1997) (Serial No. 105-24).

¹⁹Hearing on Abuse of Worker Rights and H.R. 1625, the Worker Paycheck Fairness Act, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 2nd Sess., at 7 (January 21, 1998) (Serial No. 105-71).

²⁰Hearing on Abuse of Worker Rights and H.R. 1625, the Worker Paycheck Fairness Act, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 2nd Sess., at 101-102, (January 21, 1998) (Serial No. 105-71).

²¹Hearing on Mandatory Union Dues, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 1st Sess., at 15 (March 18, 1997) (Serial No. 105-9).

James Cecil of Clarkston, Michigan, testified that “the union agent wanted to know why I would not sign the check-off and join * * * [H]e became angry and asked me who the hell I thought I was? Did I think I was some kind of intellectual? Did I think I was better than the other workers out there? I told him no, but I know what my rights are and I intend to defend them * * * He promised me in no uncertain terms that he would bring the full force of his and the other unions down on me if I dared to do that * * * I was greatly concerned about retaining my job and for my physical well-being.”²²

Loss of workplace rights

Even if one withstands the intimidation and coercion, once an employee resigns from the union he or she loses the right to have a voice in the myriad decisions made between the exclusive bargaining representative and the employer about the terms and conditions affecting his or her employment. In most workplaces, employees who are part of a bargaining unit that is represented by a union, but who are not union members, have no right to participate in the internal affairs of the union (e.g. cannot vote in union elections), have no right to vote in decisions to strike an employer, and have no right to vote to ratify a contract offer of an employer. Under a union security agreement, a nonmember can be forced—as a condition of employment—to pay for the costs of union representation but can be denied participation in all decisionmaking with regard to what that representation entails.²³

Several workers appearing before the Committee expressed frustration at the Hobson’s choice they were facing. Leonard Cipressi from Los Angeles, California told the Committee: “When you exercise your *Beck* rights you don’t get to vote on contracts that affect you, your family, your peers. Not only that, you don’t get to exercise free speech because you’re not allowed to go to union meetings.”²⁴ Gary Dunham described the situation under current law as forcing him to “choose between First Amendment rights and workplace rights” and to forego his rights to participate in the union and to vote on his contract.²⁵

The words of the unions themselves speak volumes as to the detriment experienced by workers forced to resign from the union in order to assert *Beck* rights. The International Association of Machinists and Aerospace Workers (IAM) posted a notice in Kerry Gipe’s workplace making very clear that “these employees have lost their say in all union activities except the right to be represented in accordance with their grievance procedures and strike benefits if they choose not to become a scab and cross our picket line.”²⁶

²²Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 29 (April 18, 1996) (Serial No. 104–66).

²³See Testimony of W. James Young, Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 110–111 (April 18, 1996)(Serial No. 104–66).

²⁴Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 92 (April 18, 1996)(Serial No. 104–66).

²⁵Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 54 (April 18, 1996)(Serial No. 104–66).

²⁶Hearing on Mandatory Union Dues, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 1st Sess., at 22 (March 18, 1997)(Serial No. 105–9).

Procedural hurdles

If the employee is willing to accept these very real limitations on his or her role in the workplace, the meaningfulness of the employee's right to object to dues being used for non-collective bargaining purposes is further diluted by the practical obstacles to the exercise of that right. The workers who testified before the Committee highlighted some of the procedural hurdles, pointing out, for example, limited window periods for making objections, annual renewal requirements for objectors, very specific requirements regarding mailing objections, and the requirement that objections must be made to multiple parties. Kerry Gipe indicated that "the current system of resigning from the union and then re-applying annually * * * is a further heavy burden that the workers of this country should not be required to bear. This practice is clearly intended to make your objection to supporting these causes as difficult as possible."²⁷ Charles Serio of Linthicum, Maryland told the Committee: "No matter how scrupulously I followed the policy prescribed by CWA, my demands for an agency fee reduction were ignored * * * I subsequently received my first agency fee reduction * * * more than two years after my initial effort."²⁸

Karan Koog, a former IAM member from McKinleyville, California, told the Committee that when she asked a "normally helpful" shop steward how she would go about exercising her *Beck* rights, "* * * [the union officer] admitted he had heard something like that once, however, he really didn't know what is was about or how one would go about finding out how to prohibit dues from being used for political purposes. The barriers to information that I faced was enough to stop me from pursuing the matter further."²⁹

The Committee's hearings made clear that there are no any easy answers for employees, whether they are union members or not, who want to take issue with the activities of the union that go beyond what may be a yeoman's effort by that union in representing employees in the workplace. The Committee views these issues as ones of basic fairness. So long as unions and employers have the unique power under federal law to divert a portion of a worker's salary for collective bargaining expenses under the pain of the loss of the worker's job, the Committee has an obligation to ensure that workers are treated with respect and fairness. Workers have a right to know why money is taken out of their paycheck, how money legitimately taken is used, and a realistic and available right to stop money from being taken out of their paychecks that is not used for legitimate collective bargaining purposes. This is exactly what the Worker Paycheck Fairness Act is designed to provide.

²⁷ Hearing on Mandatory Union Dues, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 1st Sess., at 18 (March 18, 1997)(Serial No. 105-9).

²⁸ Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 36 (April 18, 1996) (Serial No. 104-66).

²⁹ Field Hearing on Mandatory Union Dues and the Abuse of Worker Rights, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 2nd Sess., at 25 (December 11, 1997)(Serial No. 105-24).

THE WORKER PAYCHECK FAIRNESS ACT

The Worker Paycheck Fairness Act merely says to unions who want to require workers to pay union dues as a condition of keeping their jobs, if you want to spend dues for reasons not germane to collective bargaining, (1) Get written consent of the workers first; and (2) provide better information concerning how the dues were spent. The legislation is designed to answer the lament of workers like Gary Dunham who told the Committee, “This four-year ordeal has opened my eyes to the abuse that is possible under current labor law. If I don’t pay dues or fees to my union, I will be fired. In practical terms, my money is being used for causes and ideas I oppose and my four-year effort shows me there is nothing I can do to change this. So I am turning to you, hoping that you will help me and the thousands of other workers who find themselves in a similar situation.”³⁰

The Worker Paycheck Fairness Act is about common sense and basic worker rights. It is not about trying to silence unions or interfere with the role they can and should play in the political process. The legislation allows unions to spend their money exactly as they currently do. The only difference is that individual workers, who provide the lion’s share of their union’s financial resources, must first give their written consent before being obligated to pay for those expenses that have nothing to do with collective bargaining.

Up-front consent

The most dramatic improvement contained in the Worker Paycheck Fairness Act is its requirement that workers be granted an opt-in, up-front consent procedure. This stands in contrast to the process under current law, which requires workers to affirmatively object, that is, to opt-out of paying non-collective bargaining dues, and to renew their objection each year. Under the bill, labor organizations that accept payment of any dues or fees from employees as a condition of employment pursuant to an agreement authorized by federal law must secure from each employee a prior, voluntary written authorization for any portion of dues or fees used for non-collective bargaining activities. Under current law, an agreement requiring the payment of dues or fees to a labor organization as a condition of employment—a so-called union security clause—is permissible both under the National Labor Relations Act³¹ and the Railway Labor Act.³²

H.R. 2434 sets forth several specific requirements for the terms of the written authorization—each designed to ensure that workers are well-apprised of their rights and obligations regarding the payment of dues or fees to a labor organization. The authorization must clearly state that the employee is not required to provide the authorization—and thus is not required to pay those dues or fees used for non-collective bargaining activities. It must also state that if the authorization is provided—and thus the employee agrees to pay non-collective bargaining dues or fees—the labor organization

³⁰ Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 54–55 (April 18, 1996) (Serial No. 104–66).

³¹ 29 U.S.C. Section 158(a)(3).

³² 45 U.S.C. Section 152, Eleventh.

may use those dues or fees for activities that may be political, social or charitable in nature.

The Worker Paycheck Fairness Act also provides that the authorization remains effective until revoked and may be revoked at any time upon giving 30 days written notice.

Much has been made of the fact that H.R. 2434 does not have any application to corporations or other membership organizations. The Committee believes that there are sound policy reasons for drawing a distinction between labor organizations utilizing a union security clause and other organizations. First of all, the Worker Paycheck Fairness Act does not apply to every union. It only applies to those unions that have voluntarily chosen to enter into a union security clause with an employer requiring employees to pay union dues or fees as a condition of employment. Herein lies the critical difference between unions and corporations or other membership organizations. Unions, by a grant of power from the federal government, can force employees to pay dues to the union as a condition of keeping their jobs; corporations cannot force individuals to invest in them, nor can other membership organizations force individuals to join and pay dues.

The Committee believes that it is entirely fair to balance this special "taxing" power given to unions with special obligations to ensure that employees paying mandatory dues are well-informed as to their rights and obligations regarding those payments. Here is how a long-time member of the Carpenters' Union, Bill Hitchings, drew the distinction between unions and corporations:

[A]s a stockholder of AT&T, wouldn't I have the option of divesting myself of that stock without endangering my ability to feed my family, clothe myself, house myself, provide medical care for myself? I mean, we're talking apples and oranges here. I'm talking about my job. I can take money from an investment in AT&T and turn it into another stock if I disagreed terribly with what AT&T is doing with my money. I have no option of joining another carpenters' union. There ain't one."³³

Collective bargaining dues / non-collective bargaining dues

H.R. 2434 requires that a written authorization be secured for any dues or fees that will be used for activities which are "not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues." This language is taken directly from the holding in the *Beck* decision where the Supreme Court stated: "We conclude that Section 8(a)(3) [of the National Labor Relations Act], like its statutory equivalent, Section 2, Eleventh of the Railway Labor Act, authorizes the exaction of only those dues and fees necessary to performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues."³⁴

The Committee relied on this language from *Beck* in drafting H.R. 2434 because the language most accurately reflects the services that a worker is required to pay for when he or she must pay

³³ Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 362 (April 18, 1996) (Serial No. 104-66).

³⁴ 487 U.S. 735, 762 (1988).

dues or fees to a labor organization under a union security clause. In short, under the terms of the legislation, a line is drawn—reinforcing the line that already exists under current law—between collective bargaining dues and non-collective bargaining dues. A worker subject to a union security clause may be required to pay only those dues or fees necessary for collective bargaining. A worker may be asked to pay additional dues or fees for non-collective bargaining activities, and such dues or fees may be accepted only if the union has secured a voluntary written authorization from the worker.

Under the formulation set forth in H.R. 2434, the types of activities that a worker could be forced to finance through dues or fees paid under a union security clause are only those necessary to support the union’s activities in representing the employees before their employer on labor-management issues. Thus, preparations for collective bargaining, negotiating with an employer, representing employees in grievances, and dealing with contract issues (e.g. determining who would be affected by a lay-off under a seniority system, resolving a dispute about the parameters of an employer-provided healthcare plan) would fall within the duties of the exclusive representative of the employees and could be financed with mandatory dues or fees without triggering a consent requirement.

The Committee finds that virtually all political or lobbying activity would fall outside the scope of collective bargaining expenses and thus would trigger the up-front consent requirement. This would include political activity related to elections for public office, as well as lobbying on matters of public policy. There is significant Supreme Court precedent that the former is not chargeable to objecting employees under the current *Beck* rubric.³⁵ And, with respect to the latter, both the Supreme Court³⁶ and lower courts have begun to review unions’ lobbying expenses for purposes of determining whether such expenses fall within the category of collective bargaining activities. The Court of Appeals for the District of Columbia has held that the Air Line Pilots Association could not charge objecting employees for lobbying on airline safety issues. The court concluded: “That the subject of safety is taken up in collective bargaining hardly renders the union’s government relations expenditures germane. Under that reasoning, union lobbying for increased minimum wage laws or heightened government regulation of pensions would also be germane. Indeed if the union’s argument were played out, virtually all of its political activities could be connected to collective bargaining; but the federal courts, including the

³⁵ See e.g. *International Association of Machinists v. Street*, 367 U.S. 740 (1960); *Communications Workers of America v. Beck*, 487 U.S. 735 (1988); *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991).

³⁶ The Supreme Court in *Lehnert* indicated that lobbying generally was not chargeable to objecting employees; it did intimate that there might be a narrow exception where lobbying expenses may be chargeable if the lobbying was related to legislative ratification or fiscal appropriation for a collective bargaining agreement. While finding that the labor legislation lobbying expenses at issue were not chargeable, the Special Master suggested in determinations reviewed by the Fourth Circuit in the *Beck* case that some types of lobbying may be chargeable. 776 F.2d 1187 (4th Cir. 1985), en banc, 800 F.2d 1280. Although the Appeals Court agreed with the Special Master’s disallowance of the lobbying expenses at issue, neither the Fourth Circuit nor the Supreme Court addressed the issue of legislative lobbying on workplace issues. Most other decisions speak in general terms about political or ideological activities being not chargeable. See e.g. *International Association of Machinists v. Street*, 367 U.S. 740 (1960); *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

Supreme Court, have been particularly chary of treating as germane union expenditures that touch the political world.”³⁷

Consistent with this decision, it is the Committee’s view that, while lobbying on matters of public policy (particularly with regard to workplace issues) may have some relevance to collective bargaining, it is clearly not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues. Thus, a labor organization would not be able to use any portion of an employee’s mandatory dues or fees for lobbying activities without securing prior consent.

Similarly, the Committee finds that organizing activity is not necessary to collective bargaining and thus triggers the requirement for a written authorization. This is consistent with the reasoning of the Supreme Court in *Ellis v. Brotherhood of Railway Clerks*,³⁸ which found that organizing is not chargeable to objecting employees because it has only the most attenuated benefit to collective bargaining on behalf of the fee payer. The Committee would note that it views with disfavor last year’s National Labor Relations Board ruling on this point that runs counter to the *Ellis* holding. See *United Food and Commercial Workers Locals 951, 7, and 1036 (Meijer, Inc.)*, 329 NLRB No. 69 (Sept. 30, 1999).³⁹

Other types of activities that fall outside the formulation of collective bargaining activities and thus trigger the up-front consent requirement include contributions to charitable organizations⁴⁰ or social causes and union-sponsored social or cultural events.⁴¹

Remedies

The Worker Paycheck Fairness Act includes a comprehensive remedial scheme modeled on that of the Family and Medical Leave Act. Where a labor organization fails to get the necessary authorization and spends dues or fees paid under a union security clause on non-collective bargaining activities, the legislation allows a worker to sue individually or as part of a class in any federal or state court. The labor organization would be liable for damages equal to double the amount of the dues or fees accepted in violation of the legislation plus interest calculated at the prevailing rate. In addition, a court could award attorneys’ fees and costs as well as such equitable relief as may be appropriate.

³⁷ *Miller v. Air Line Pilots Association*, 108 F.3d 1415, at 1422 (D.C.Cir. 1997).

³⁸ 466 U.S. 435 (1984)

³⁹ The Committee does not believe that organizing activities are a necessary incident of collective bargaining and contract administration. Rather, the Committee strongly agrees with Board Member Brame, who noted in his *Meijer* dissent that the reasoning of *Ellis* applies with equal force to union security and the NLRA. Brame further noted that the Supreme Court has found no basis in the legislative history for the notion that, in authorizing the union shop, Congress intended to enhance organizational efforts; that the Court recognized that organizing efforts are necessarily spent on employees outside the bargaining unit and therefore afford “only the most attenuated benefits to collective bargaining on behalf of the dues payer;” and that organizing was not the sort of benefit that Congress had in mind in authorizing union security agreements to prevent “free riders” from enjoying benefits obtained by the union for which they had not paid. 1999 WL 818607 at 21.

⁴⁰ This is consistent with *Lehnert v. Ferris Faculty Association*, 500 U.S. 507 (1991), where the Supreme Court found that a contribution from a local union to its parent that was not part of the local’s responsibilities was more in the nature of a charitable contribution and thus was not chargeable to objecting employees.

⁴¹ In this regard, the Committee would disagree with the Supreme Court’s conclusion in *Ellis v. Brotherhood of Railway Clerks*, 466 U.S. 435 (1984), that the expenses for various social activities were chargeable. Although the Court emphasized the *de minimus* nature of the expenses, the Committee believes that social events are not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues.

The remedial provisions of H.R. 2434 are central to its effectiveness. One of the problems with current law under *Beck* is that employees are either unable to pursue their claims in court because of a lack of resources or because they are enmeshed in the morass of the National Labor Relations Board. As Roger Pilon of the CATO Institute testified before the Committee: “The enforcement provisions of [the Worker Paycheck Fairness Act], especially the provisions for fees and costs, are a welcome improvement. Were the ‘fees and costs’ subsection to be stripped subsequently from the bill, however, I cannot imagine how the average worker, absent pro bono assistance, could vindicate his rights. It is imperative, therefore, that this provision be kept in the bill—not least because the bill arises in the first place from the practical problems that surround the enforcement of *Beck* rights.”⁴²

If a union’s determination as to which expenses were related to collective bargaining and which are not is challenged in court, the labor organization would bear the burden of persuasion in demonstrating that it properly spent the mandatory dues or fees solely on activities necessary for performing its duty as the employee’s representative before the employer.⁴³ In other words, the union would have to demonstrate that it secured consent for any dues spent for non-collective bargaining activities. And, where consent was not secured, the union would have to show that its expenses were limited to collective bargaining activities. The D.C. Circuit has concluded that *Beck* challenges under the National Labor Relations Act require an independent audit of the union’s calculations of reductions in agency fee payments, finding that such an audit was the “minimal guarantee of trustworthiness.”⁴⁴ The Committee feels that a similar requirement would be appropriate under the Worker Paycheck Fairness Act.

Notice

H.R. 2434 requires all unionized employers to post a notice in their workplaces informing employees that any labor organization accepting payment of any dues or fees from an employee as a condition of employment, pursuant to an agreement authorized by federal law, must secure from each employee prior, written authorization if any portion of such dues or fees will be used for activities not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues. Although labor organizations would be notifying employees of these rights as they attempt to secure consent from individual workers for non-collective bargaining dues, this posting requirement will serve the purpose of reiterating to employees what the respective obligations are of workers and unions under the Worker Paycheck Fairness Act. It is similar to the posting requirement demanded of federal contractors under an Executive

⁴²Hearing on H.R. 1625, the Worker Paycheck Fairness Act, Before the Committee on Education and the Workforce, 105th Cong., 1st Sess., at 158 (July 9, 1997) (Serial No. 105–51).

⁴³This is consistent with the case law that led to the *Beck* decision. See *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963) (holding that union, not individual employees, had burden of proving proportion of political to total union expenditures).

⁴⁴*Ferriso v. National Labor Relations Board*, 125 F.3d 865 (D.C. Cir. 1997). See also *Prescott v. County of El Dorado*, 177 F.3d 1102, 1107 (9th Cir. 1999) (mandating a “real” independent verification of financial data in question to make sure expenditures are being made the way union says they are).

Order issued by President Bush in 1992⁴⁵ and later rescinded by President Clinton.⁴⁶

Disclosure

The Committee's numerous hearings found the reporting and disclosure of union financial information under current law to be entirely inadequate. As stated by Marshall J. Breger, professor of law at Catholic University's Columbus School of Law, in testimony before the Committee, the information unions must currently provide to the Department of Labor is "not particularly useful in giving union members or anybody a full understanding of the purposes for which the union is spending its money."⁴⁷ Furthermore, Breger testified, "Individual union members have had great difficulty in getting information and in testing the accuracy of the information given them."⁴⁸ H.R. 2434 amends the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959⁴⁹ to require more detailed financial reporting by labor organizations, to provide workers paying union dues or fees the same access to financial information as union members, and to give any interested party the right to make a written request for financial reports filed under the LMRDA.

Section 6(a) amends Section 201(b) of the Labor-Management Reporting and Disclosure Act by adding at the end the following new sentence: "Every labor organization shall be required to attribute and report expenses in such detail as necessary to allow members to determine whether such expenses were necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues."

Title II of the LMRDA requires that unions file annual financial reports, known as LM reports, with the Department of Labor. The goal for the reporting of expenditures under the LMRDA should be complete transparency and full disclosure. Unfortunately, the current LM-2 form⁵⁰ only requires unions to file yearly their income and expenses according to what accountants call an "object classification"—which identifies expense categories, such as salary, rent, transportation, etc., and requires unions to indicate simply the amount of money spent in those categories. While this provides a flat dollar amount spent on certain items, it does not allow anyone looking at the form to determine the purpose for which the money was being used. Section 6 of H.R. 2434 recognizes that the more a dues payer knows about the purposes for which a union spends its money the better able he or she is to decide whether to elect to allow his or her money to be spent on non-collective bargaining activities.

⁴⁵ Executive Order 12800 (April 13, 1992).

⁴⁶ Executive Order 12836 (February 1, 1993).

⁴⁷ Hearing on Mandatory Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 7 (April 18, 1996) (Serial No. 104-66).

⁴⁸ Hearing on H.R. 3580, the Worker Right to Know Act, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 348 (June 19, 1996) (Serial No. 104-66).

⁴⁹ 29 U.S.C. 401, et seq.

⁵⁰ Unions having \$200,000 or more in gross annual receipts must file with the Department of Labor an "LM-2" form. Unions which have gross annual receipts totaling less than \$200,000 for its fiscal year may elect to file an "LM-3" form. If a union has gross annual receipts totaling less than \$10,000 for its fiscal year, it may elect to file an "LM-4" form. 29 CFR Part 403.4 The Department of Labor receives more than 35,000 forms each year.

The intent of this provision is to mandate that unions file such information by “functional classification”⁵¹—setting forth the purposes for which the money was being used—in a manner similar to rules proposed by the Bush administration. In April 1992, the Department of Labor issued a Notice of Proposed Rulemaking⁵² proposing to revise the various financial report forms unions must file with the DOL yearly to reflect various functional categories. These rules, after which the Committee intends the rules promulgated under Section 6 of H.R. 2434 to be modeled, designated the following eight functions: contract negotiation and administration; organizing; safety and health; strike activities; political activities; lobbying; promotional activities; and other.⁵³ In addition, the Committee would urge that a ninth category be created for charitable contributions to cover all contributions by the labor organization to tax-exempt and other charitable/social organizations. The testimony the Committee received from workers indicated that they often differed with their union’s choices regarding which charitable/social groups to support as much as they differed with the union’s political choices.

The Committee envisions that each expense item contained on the LM-2 would be further broken down into these nine functions. It is more helpful for dues payers to know not simply the amount of money being spent for travel, for example, but whether that travel was undertaken for organizing, contract administration, collective bargaining, strike activities, political activities or lobbying and promotional activities. This is the sort of detailed information workers require in order to determine how the money they pay to the union is actually being spent. For activities that clearly fall outside the “core” union activities of collective bargaining, contract administration and grievance adjustment—such as for politics, charitable contributions, social causes, think tanks, etc.—the more detailed disclosure requirements would serve not only to educate all dues payers, but would also readily alert dues payers laboring under a union security agreement that their prior consent is required for any such expenditures.

Following the Department of Labor’s issuance of final rules in October 1992,⁵⁴ the Clinton administration in December 1993 issued final rules rejecting the Bush administration’s proposed changes pertaining to filing—rescinding the functional reporting requirement and causing the current LM-forms to remain basically the same as when the program began in 1960.⁵⁵ As pointed out by Breger, in testimony before the Committee, the reporting rules promulgated after the LMRDA was passed nearly 40 years ago were “cut to the trim of technological feasibility.”⁵⁶ In contrast, today’s computer software, Breger testified, allows labor organizations to

⁵¹A need for functional reporting was recognized as far back as 1978, when the American Institute of Certified Public Accountants (AICPA) encouraged labor organizations to report on a functional basis. See 57 FR 14244 at 14245 (April 17, 1992).

⁵²Id. at 14244–14246.

⁵³In issuing its proposed rules, the Department of Labor found that a rule requiring “functional” reporting did not constitute a “major rule” in that it would not have an annual effect on the economy of \$100 million or more—thus, no regulatory impact analysis was prepared or was necessary. 57 FR at 14246.

⁵⁴57 FR 49282–49290 (October 30, 1992).

⁵⁵58 FR 67594–67604 (December 21, 1993).

⁵⁶Hearing on H.R. 3580, the Worker Right to Know Act, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 225 (June 19, 1996) (Serial No. 104–66).

more easily provide extensive and useful information to dues payers.⁵⁷

Section 6(b) amends LMRDA Section 201(c) to ensure that a labor organization's obligation to make available to all of its members the information contained in reports it must file with the Department of Labor pursuant to the LMRDA extends to "employees required to pay any dues or fees to such organization" as well as to "members." All dues payers, not just union members, are entitled to the LMRDA's guarantee of access to the information unions use to meet their reporting obligations. Section 6(b) ensures this entitlement. Section 6(b) also extends to "employees required to pay any dues or fees to such organization" the right granted to "members" under the LMRDA to sue any labor organization in any state court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such employee for just cause to examine any books, records, and accounts necessary to verify any report the labor organization must file pursuant to the LMRDA.

Section 6(c) amends LMRDA section 205(b) to make clear that any person may write the Department of Labor to receive a complete copy of any report or other document the labor organization must file pursuant to LMRDA section 201, which includes, among other information required by section 201(a)(1)–(a)(5), the labor organization's constitution and bylaws and annual financial report. As pointed out to the Committee in July 9, 1997 testimony from Marshall J. Breger, the tens of thousands of LM–2 disclosure statements are currently kept on file in Washington, DC at the Department of Labor's Office of Labor-Management Standards (OLMS). These reports, Breger testified, "are not retrievable by computer and are available only on the OLMS's receipt of a five-digit file number corresponding to the file."⁵⁸ The public, Breger noted, must attempt to find file numbers in a reference book last published in 1990. "Many of the file numbers are not updated," Breger said, "which makes finding some files practically impossible. In addition, there are significant restrictions on the number of files that can be examined or photocopied per day. Thus, the Department's existing disclosure leaves much to be desired."⁵⁹ The Committee notes that efforts have begun at the OLMS to make LM-forms accessible over the internet. It is the Committee's hope that these forthcoming technological advances, along with the important amendments included in this legislation, will greatly enhance the public's access to this critical information, and further strengthen union democracy.

Anti-retaliation / coercion

The Worker Paycheck Fairness Act makes it unlawful for any labor organization to coerce, intimidate, threaten, interfere with, or retaliate against any employee in the exercise of, or on account of having exercised, any right granted or protected by the legislation. This prohibition on retaliation would prevent a union from intimi-

⁵⁷ Id.

⁵⁸ Hearing on H.R. 1625, the Worker Paycheck Fairness Act, Before the Committee on Education and the Workforce, 105th Cong., 1st Sess., at 193 (July 9, 1997) (Serial No. 105–51).

⁵⁹ Id. at 193–94.

dating or taking any adverse action against an employee because he or she exercised rights of consent under the Act. It would also prevent unions from forcing workers to resign their union membership—and in the process, to give up critical workplace rights such as the right to vote on ratifying contracts or approving strikes—in order to exercise their rights under the bill.

The anti-retaliation provision responds to the earlier-cited testimony of many workers who spoke of the harassment and intimidation some unions use to pressure employees to not exercise their rights regarding the payment of union dues. Such a provision, which would send a signal that this type of conduct will no longer be tolerated, is a common feature in employment rights laws. The language of the anti-retaliation provision is modeled after that found in section 503 of the Americans with Disabilities Act and in section 704 of Title VII of the Civil Rights Act of 1964, and is consistent with the provisions of section 7 of the National Labor Relations Act and the protections of section 105 of the Family and Medical Leave Act. Any union guilty of coercing an employee in deciding whether to give consent to the use of dues for political, social, civic or other non-collective bargaining purposes, or of retaliating against an employee for declining to give consent, would be liable to the employee in accordance with the previously outlined remedial provisions.

In addition to the more typical types of harassment and coercion, the prohibition on retaliation would prevent a union from expelling a member who refused to give consent to the use of his dues for non-collective bargaining purposes. Thus, this provision is intended to overrule not only the decision of the Fourth Circuit in *Kidwell v. Transportation Communications International Union*,⁶⁰ but also any and all NLRB and court determinations relying upon *Kidwell* or other precedent in requiring a union member to resign as a prerequisite to exercising *Beck* rights. In *Kidwell*, the court confronted the issue of whether the union had to permit union members to exercise their *Beck* rights and thus allow them to pay reduced fees. While the court was sympathetic to *Kidwell*'s argument that she should not have to resign from the union because in doing so she would have to give up participation in certain union activities that have an impact on the conditions of her employment (for example, ratification of the collective bargaining agreement), the court held, interpreting *Beck* and other cases, that the union could require a union member to resign from the union if he or she wished to exercise *Beck* rights.

The Committee believes that the reasoning of the district court in the *Kidwell* case—the lower court decision was reversed by the Fourth Circuit—more fairly balances the rights of dissenting workers and the needs of the union as the exclusive bargaining representative. In finding that even a union member was entitled to a reduction in her union dues for all union expenses unrelated to collective bargaining, the district court concluded that “when the union strays from that charter given by the Railway Labor Act * * * and uses dues to support candidates, religious beliefs, or any other ideological cause, it is not an answer to say to one who is op-

⁶⁰946 F. 2d 283 (4th Cir. 1991).

posed to those views, 'leave the union'."⁶¹ Like the Committee, the district court was persuaded that it was not fair to ask union members to choose between their workplace rights and their free speech rights. The Worker Paycheck Fairness Act protects the basic rights of both members and nonmembers of the union by giving both an equal ability to exercise their rights under the legislation without fear of retribution.

CONCLUSION

So long as labor organizations and employers have the unique power under federal law to force workers to pay dues or fees to a union under the pain of the loss of the worker's job, the Committee believes that the law must ensure that workers have the fullest information possible as to their rights and responsibilities regarding those payments. Workers have a right to know why money is taken out of their paycheck, how money legitimately taken is used, and a realistic and available right to stop money from being taken out of their paychecks that is not used for legitimate collective bargaining purposes. These are exactly the rights the Worker Paycheck Fairness Act provides.

The Act merely says to unions who want to require workers to pay union dues as a condition of keeping their jobs, if you want to spend dues for reasons not germane to collective bargaining, (1) get written consent of the workers first; and (2) provide better information concerning how the dues were spent. This is not too much to ask.

SUMMARY

H.R. 2434, the Worker Paycheck Fairness Act, creates a free-standing statute which would require labor organizations that accept payment of any dues or fees from an employee as a condition of employment pursuant to federal law to secure from each employee prior, voluntary, written authorization for any portion of such dues or fees which will be used for activities not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues. The legislation provides that such an authorization is effective until revoked and may be revoked upon giving 30 days written notice. H.R. 2434 gives workers enforcement rights modeled on those granted by the Family and Medical Leave Act. Under the legislation, if a labor organization fails to get the employee's authorization but violates the law by using dues or fees for non-collective bargaining purposes, the employee may file an individual or class action lawsuit in federal or state court to recover double the amount of dues or fees illegally accepted, as well as attorneys' fees, costs of litigation, and any appropriate equitable relief.

The bill also requires unionized employers to post a notice telling employees of their right to be asked permission should the union want to spend any portion of their dues or fees on non-collective bargaining activities. Finally, H.R. 2434 amends the Labor-Management Reporting and Disclosure Act (LMRDA) to make it easier for workers to give their informed consent by requiring more detailed financial reporting by labor organizations, providing workers

⁶¹ 731 F.Supp 192, at 199 (D. Md. 1989).

paying union dues or fees the same access to financial information as union members, and giving any interested party the right to make a written request for financial reports filed under the LMRDA.

SECTION-BY-SECTION ANALYSIS

Section one

Provides that the short title of the bill is the “Worker Paycheck Fairness Act.”

Section two

Establishes the findings of the Committee related to the rights of workers paying dues or fees to a labor organization, the uses of dues or fees by labor organizations, and the rights of individuals regarding the political, social and charitable causes they support.

Section three

Provides that the purpose of the Act is to ensure that all workers have sufficient information about their rights regarding the payment of dues or fees to labor organizations and the uses of their dues and fees by labor organizations and to ensure that the right of all workers to make individual and informed choices about the political, social or charitable causes they support is protected to the greatest extent possible.

Section four

Provides that any labor organization accepting any payment of dues or fees from an employee as a condition of employment pursuant to federal law must secure from each employee prior, voluntary, written authorization for any portion of such dues or fees which will be used for activities not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues. Also provides that such an authorization shall remain in effect until revoked and may be revoked upon giving 30 days written notice. Also provides for a civil action by employees and specifies the liability of labor organizations that violate the terms of the Act.

Section five

Requires employers whose employees are represented by a collective bargaining representative to post a notice informing employees that any labor organization accepting any payment of dues or fees from an employee as a condition of employment pursuant to federal law must secure from each employee prior, voluntary, written authorization for any portion of such dues or fees which will be used for activities not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues.

Section six

Amends the Labor-Management Reporting and Disclosure Act (LMRDA) to require more detailed financial reporting by labor organizations, to provide workers paying union dues or fees the same access to financial information as union members, and to give any

interested party the right to make a written request for financial reports filed under the LMRDA.

Section seven

Provides that it is unlawful for a labor organization to coerce, intimidate, threaten, interfere with, or retaliate against any employee in the exercise of, or on account of having exercised, any right granted or protected by this Act.

Section eight

Authorizes the Secretary of Labor to prescribe regulations to implement sections five and six.

Section nine

Provides that the Act shall be effective immediately upon enactment, except that sections 4 and 5 shall take effect 90 days after enactment and section 6 shall take effect 150 days after enactment.

EXPLANATION OF AMENDMENTS

H.R. 2434 was ordered favorably reported without amendment.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. H.R. 2434 creates a right on behalf of all workers who pay dues or fees to a labor organization as a condition of employment pursuant to an agreement authorized by federal law. Thus, the bill would apply to legislative branch employees to the extent that they are subject to union security agreements authorized by federal law requiring the payment of union dues or fees. However, the labor relations of legislative branch employees are governed by the Federal Labor Relations Act, which currently does not permit the negotiation of a union security clause. While the rights created by H.R. 2434 do not inure to legislative branch employees at this time, they would be available should the Federal Labor Relations Act be amended, or a separate law enacted, allowing the negotiation of a union security clause.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget & Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104-4) requires a statement of whether the provisions of the reported bill include unfunded mandates. The Committee received a letter regarding unfunded mandates from the Director of the Congressional Budget Office. See *infra*.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee Report to include for each record vote on a motion to report the measure or matter and on any amendment offered to the measure or matter the total number of votes cast for and against and the names of the Members voting for and against.

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 BILL H.R. 2434 DATE November 3, 1999
 PASSED 25 - 22

SPONSOR/AMENDMENT Mr. Ballenger / report the bill to the House with the recommendation that the bill do pass

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman	X			
Mr. PETRI, Vice Chairman	X			
Mrs. ROUKEMA	X			
Mr. BALLENGER	X			
Mr. BARRETT	X			
Mr. BOEHNER	X			
Mr. HOEKSTRA	X			
Mr. McKEON	X			
Mr. CASTLE	X			
Mr. JOHNSON	X			
Mr. TALENT	X			
Mr. GREENWOOD	X			
Mr. GRAHAM	X			
Mr. SOUDER	X			
Mr. McINTOSH	X			
Mr. NORWOOD	X			
Mr. PAUL		X		
Mr. SCHAFFER	X			
Mr. UPTON	X			
Mr. DEAL				X
Mr. HILLEARY	X			
Mr. EHLERS	X			
Mr. SALMON	X			
Mr. TANCREDO	X			
Mr. FLETCHER	X			
Mr. DEMINT	X			
Mr. ISAKSON	X			
Mr. CLAY		X		
Mr. MILLER				X
Mr. KILDEE		X		
Mr. MARTINEZ		X		
Mr. OWENS		X		
Mr. PAYNE		X		
Mrs. MINK		X		
Mr. ANDREWS		X		
Mr. ROEMER		X		
Mr. SCOTT		X		
Ms. WOOLSEY		X		
Mr. ROMERO-BARCELO		X		
Mr. FATTAH		X		
Mr. HINOJOSA		X		
Mrs. McARTHY		X		
Mr. TIERNEY		X		
Mr. KIND		X		
Ms. SANCHEZ		X		
Mr. FORD		X		
Mr. KUCINICH		X		
Mr. WU		X		
Mr. HOLT		X		
TOTALS	25	22		2

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2434 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 3, 1999.

Hon. WILLIAM F. GOODLING,
*Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2434, the Worker Paycheck Fairness Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Christina Hawley Sadoti.
Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 2434—Worker Paycheck Fairness Act

Summary: H.R. 2434 would place new requirements on unions and employers relating to the payment of union dues and fees by workers. The bill would require labor organizations with union security agreements to obtain prior written authorization from workers for any portion of their dues or fees that are used for non-representational activities. (A union security agreement between an employer and a labor organization requires union and nonunion members to pay dues or fees to the union as a condition of employment.) In addition, the legislation would require labor organizations to report separately their expenses for representational and nonrepresentational activities on financial disclosure forms filed with the Department of Labor (DoL). The bill would also require all employers with workers who are represented by unions to post notices regarding their union's duty to obtain authorization before accepting required dues or fees that are partially used to fund non-representational activities.

CBO estimates that implementing H.R. 2434 would cost the Department of Labor about \$2 million per year beginning in fiscal year 2000 and about \$9 million over the 2000–2004 period, assuming appropriation of the necessary funds. Because the bill would

not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 2434 contains both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost to state, local, or tribal governments to comply with the mandates would not exceed the threshold established in that act (\$50 million in 1996, adjusted annually for inflation). CBO is uncertain whether the direct costs of complying with the private-sector mandates would exceed the threshold specified in UMRA (\$100 million in 1996, adjusted annually for inflation) in the first year the bill would be effective. We estimate that the direct cost of those mandates would not exceed the threshold in subsequent years.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2434 is shown in the following table. The costs of this legislation fall without budget function 500 (education, training, employment, and social services).

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
WITH ADJUSTMENTS FOR INFLATION					
Authorizations of Appropriations Under Current Law ¹ :					
Estimated Authorization	337	351	363	375	387
Estimated Outlays	339	350	362	374	386
Proposed Changes:					
Estimated Authorization	2	2	2	2	2
Estimated Outlays	1	2	2	2	2
Authorizations of Appropriations Under H.R. 2434:					
Estimated Authorization	339	353	365	377	389
Estimated Outlays	340	352	364	376	388
WITHOUT ADJUSTMENTS FOR INFLATION					
Authorizations of Appropriations Under Current Law:					
Estimated Authorization	337	337	337	337	337
Estimated Outlays	339	337	337	337	337
Proposed Changes:					
Estimated Authorization	2	2	2	2	2
Estimated Outlays	1	2	2	2	2
Authorizations of Appropriations Under H.R. 2434:					
Estimated Authorization	339	339	339	339	339
Estimated Outlays	340	339	339	339	339

¹Salaries and expenses of the Employment Standards Administration. The figures for fiscal year 2000 reflect the appropriation for that year.

H.R. 2434 would require labor organizations to provide more information in financial disclosure forms that they file with DoL. In 1999, about 31,500 labor organizations filed such forms. H.R. 2434 would require DoL to develop new forms for these organizations to use. In addition, DoL would need to provide compliance assistance and training on these new forms and would incur additional costs for processing them. In 1992, the Administration sought to make changes similar to those provided for in H.R. 2434 through administrative action. At that time, DoL estimated the additional costs of developing new forms, providing necessary compliance assistance, and processing cases at \$1.35 million per year. Adjusted for inflation these costs would be about \$1.7 million in fiscal year 2000 and slightly larger amounts each year thereafter.

H.R. 2434 also would require employers of workers who are covered by collective bargaining agreements to post notices regarding their union's responsibility to obtain authorization in order to

spend a portion of their dues or fees on nonrepresentational activities. Currently, employers are required to post notices regarding minimum wage and maximum hour requirements, equal opportunity and anti-discrimination provisions, and other information regarding workplace safety. The federal costs of enforcing the requirement to post additional information would not be significant.

Pay-as-you-go considerations: None

Estimated impact on state, local and tribal governments: H.R. 2434 contains two intergovernmental mandates as defined in UMRA. The bill would require employers (including state, local, and tribal governments) that allow collective bargaining to post notices informing employees of their new rights under the bill. The bill also would require state courts to impose certain remedies for violations of employees' rights under the bill. CBO estimates that even if all state, local, and tribal governments in states that allow collective bargaining were required to post notices, compliance costs would not be significant. The new requirements for state courts would not result in any additional costs because they just specify certain elements of judgments to be awarded by the courts.

Estimated impact on the private sector: H.R. 2434 would impose two new private-sector mandates—one on labor organizations and one on employers—and expand an existing one on labor organizations. CBO cannot determine whether the aggregate direct cost of the three mandates in H.R. 2434 would exceed the statutory threshold specified in UMRA (\$100 million in 1996, adjusted annually for inflation) during the first year the mandates would be effective. The cost of each mandate would decline substantially after the first year, however. CBO estimates that the aggregate direct cost of the mandates in the second through fifth years would not exceed the statutory threshold.

First, the bill would require labor organizations with union security agreements to obtain prior written authorization from workers for any portion of their dues or fees that are used for activities other than employee representation. In 1988, the Supreme Court decided in *Communication Workers of America v. Beck* that non-union workers who are required to pay dues or fees to a union need only pay for the share of union expenses used for representational activities. To exercise this right, however, the workers must formally object to the payment of the higher fee.

The cost of this mandate would be greatest in the first year because affected labor organizations would have to request authorizations from all of their current workers. Subsequently, unions could add an authorization form to the normal hiring process, thereby covering any new employees. The cost to unions in the first year would depend on the number of workers from whom authorizations would be requested and the average cost of making such a request. Little information is available on either of these quantities. Currently, 29 states allow union security agreements. A total of 13.2 million union members, and an additional 1.1 million workers represented by unions, were employed in these states in 1998. The proportion of these workers employed under union security agreements is unknown. Furthermore, only unions that spend a significant portion of their funds on nonrepresentational activities would have a real incentive to obtain authorizations. Because the prevalence and magnitude of spending on nonrepresentational activities

is not known, CBO cannot estimate how many labor organizations with union security agreements would actually request authorizations.

Second, the bill would increase financial reporting requirements for labor organizations. Unions would have to report separately their expenses for representational and nonrepresentational activities. Under current law, labor organizations must file financial disclosure forms with the Department of Labor. The financial disclosure forms, however, do not report the purposes of these expenditures.

All labor organizations that currently file financial disclosure forms with the Department of Labor would have to comply with the bill's reporting requirements. In 1999, there were about 31,500 such labor organizations, and the cost of reporting requirements would vary significantly. CBO cannot estimate an average cost per organization because comprehensive data on the type, size, and activities of labor organizations do not exist. The cost would be greatest in the first year the requirement would be in effect because many labor organizations would have to set up new reporting and accounting systems. In the following years, the cost would decline significantly. For some organizations with union security agreements, even the initial cost might be small because, under current law, they must disclose their nonrepresentational expenses and calculate reduced fees for nonmembers who formally object to paying for such expenses.

Finally, H.R. 2434 would require all employers with workers who are represented by a union to post notices informing their workers of the union's duty to obtain their authorization if some of their required dues or fees are used for nonrepresentational purposes. These requirements would impose a largely one-time cost on employers with union workers. To comply with these requirements, employers would have to post notices in at least one area in each of their establishments. Currently, all employers are required to post notices regarding fair labor standards and workplace safety requirements. This new posting mandate, however, would apply only to employers of workers covered by collective bargaining agreements. Of the approximately 3 million establishments with paid employees, the share with union workers is not known. In any case, the cost per notice could be quite small. Therefore, CBO estimates that the overall cost of this mandate to employers would be less than \$10 million in the first year the mandate is effective and negligible in later years.

Estimate prepared by: Federal Cost: Christina Hawley Sadoti. Impact on State, Local, and Tribal Governments: Susan Sieg. Impact on the Private Sector: Karuna Patel.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

STATEMENT OF OVERSIGHT FINDINGS OF THE COMMITTEE ON GOVERNMENT REFORM

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on the subject of H.R. 2434.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 2434. H.R. 2434, the Worker Paycheck Fairness Act, provides rights to workers subject to union security agreements negotiated under the National Labor Relations Act (NLRA) and the Railway Labor Act (RLA). Both the RLA⁶² and the NLRA⁶³ have been determined, by the Supreme Court, to be within Congress' Constitutional authority. Because the Worker Paycheck Fairness Act places additional restrictions on the use of dues or fees paid to labor organizations pursuant to union security clauses under the NLRA and RLA, the legislation is similarly within the scope of Congressional powers under Article 1, Section 8, Clause 3 of the Constitution of the United States.

COMMITTEE ESTIMATE

Clauses 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2434. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**LABOR-MANAGEMENT REPORTING AND DISCLOSURE
ACT OF 1959**

* * * * *

TITLE II—REPORTING BY LABOR ORGANIZATIONS, OFFICERS AND EMPLOYEES OF LABOR ORGANIZATIONS, AND EMPLOYERS

REPORT OF LABOR ORGANIZATIONS

SEC. 201. (a) * * *

(b) Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year—

⁶²*Texas & New Orleans Railroad v. Brotherhood of Railway & Steamship Clerks*, 281 U.S. 548 (1930).

⁶³*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

(1) * * *

* * * * *

Every labor organization shall be required to attribute and report expenses in such detail as necessary to allow members to determine whether such expenses were necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues.

(c) Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all its members *and employees required to pay any dues or fees to such organization*, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member *or employee required to pay any dues or fees to such organization* of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member *or employee required to pay any dues or fees to such organization* for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and cost of the action.

* * * * *

REPORTS MADE PUBLIC INFORMATION

SEC. 205. (a) * * *

(b) The Secretary shall by regulation make reasonable provision for the inspection and examination, on the request of any person, of the information and data contained in any report or other document filed with him pursuant to sections 201, 202, 203, or 211. *Upon written request, the Secretary shall make available complete copies of any report or other document filed pursuant to section 201.*

* * * * *

DISSENTING VIEW OF RON PAUL

I. INTRODUCTION

The use of union dues, which, in the 29 non-Right to Work states workers must pay as a condition of employment, for political causes opposed by the worker is, in the words of Thomas Jefferson “both sinful and tyrannical.” However, this congressionally-created wrong does not justify the expansion of federal power over the relationship between unions, workers, and employees contained in the Worker Paycheck Fairness Act (H.R. 2434). The Worker Paycheck Fairness Act not only continues congressional unconstitutional interference in America’s labor markets, it also fails to deal with the root cause of the problem. Furthermore, it is doubtful that the new regulations and mandates in this bill will achieve the goal of stopping union officials from using force dues for politics.

The problem of using of compulsory union dues for politics is rooted in those federal laws that equally sanction compulsory unionism. Federal laws authorizing compulsory dues for any reason violate the principle of individual liberty upon which this country was founded. Therefore, the constitutional solution to the problem of the use of forced dues for politics (or any other reason) is to repeal those sections of federal law giving union officials the power to force workers to pay union dues as a condition of employment.

II. H.R. 2434 CREATES NEW BURDENS ON EMPLOYERS, UNIONS AND EMPLOYEES

The Worker Paycheck Fairness Act sets up a new federal regulatory system, complete with mandates on union officials, employers and workers, to control union political spending. Under this bill unions wishing to spend dues receipts on politics must obtain a signed statement from every dues-paying worker authorizing the use of their dues for political purposes. The bill also requires unions to produce more detailed expense reports so workers can determine how much of their expenses were spent on items other than collective bargaining.

These requirements will impose tremendous costs on labor unions, costs which Congress has no authority to impose. Supporters of this bill may attempt to justify imposing this burden on labor union as necessary to ensure union officials do not abuse their federally-granted privilege of collecting compulsory dues. However, Congress’ original abuse of its authority to empower union officials in no way justifies federal interference in a union’s internal operations. Unions are constitutionally entitled to the same freedom from federal mandates as every other private institution in America. The power to force employees to pay dues that are used for political purposes, which unions have as a result of federal

protections, is a justification for repealing those laws, not for placing new mandates on unions, employees, and employers.

This bill also places a new, unfunded mandate on businesses by requiring every employer to post a notice in their workplace informing workers of their rights under this statute. Mandating that employers place a notice on their property constitutes a taking of private property, however minor, without just compensation.

The Worker Paycheck Fairness Act will also place new burdens on the very people who the act is designed to aid: the American worker. For example, millions of American workers will likely be faced with an increase in union dues in order to cover the additional costs incurred in complying with this mandate.

Furthermore, requiring workers to sign a card stating whether or not they wish to contribute to union politics burdens the free speech rights of both those workers who would wish to support union political activity and those who do not wish to underwrite union politics. Workers should not be required to fill out paperwork, that may later become part of a public record if the union's expenditures are challenged in court, in order to exercise their first amendment rights to participate (or not participate) in politics. Rather than having to comply with government mandates to ensure their forced union dues are spent properly, workers should simply be returned the freedom to choose whether or not they will pay union dues for any purpose.

A further infringement on the rights of union members is the provision providing that a worker who objects to having part of his dues used for union officials is still entitled to all the rights and privileges of union membership. This is an infringement on the freedom of association rights of those who chose to pay for union politics freedom of association. A union should have the ability to determine its own rules for membership, Congress should not force those who pay for union politics to associate with those who choose not to pay for political activities.

Ironically, this infringement of the union members' freedom of association is rooted in the special privileges granted union officials by federal law. Under the National Labor Relations Act, union officials have the power to represent all employees at a worksite, whether or not they are members of the union or even whether or not they desire union representation. Furthermore, employers at a unionized workplace are forbidden by federal law from bargaining over working conditions with any individual employee, a violation of the employee and the employers' right to freely contract. Therefore, a union dues payer who objects to the use of union dues and gives up his membership in the union, is, in essence, giving up his right to have a say in his wages, hours, and benefits. The fate of the unions under this bill is yet another example of how those who seek to enrich themselves by seeking special privileges from the federal government eventually lose their own liberties to the leviathan state they helped construct.

III. H.R. 2434 WILL NOT CURTAIL THE USE OF FORCED DUES FOR POLITICS

It is highly questionable as to whether placing these mandates on unions and employees will effectively curtail the use of forced-

union dues for politics. Several times since the passage of the National Labor Relations Act, Congress has amended the law to provide for greater federal control of labor unions, yet union corruption remains a serious problem, as evidenced by the voiding of recent government supervised and financed Teamster elections. Given this history it appears likely that when dishonest union officials battle federal regulators over political spending, the union officials will successfully disguise their spending on politics as funds spend of purposes related to “exclusive representation.”

One of the goals of the act is to end the harassment of workers who assert their right not to pay for politics. This is certainly a laudable goal. One of the most shameful aspects of the modern labor movement is the all-too-frequent use of threats and even actual violence against workers who object to the policies of union officials. However, it is unlikely that this bill will stop corrupt unions from harassing independent-minded workers. If this bill becomes law, corrupt unions will harass workers who refuse to authorize the use of their dues for politics, or who challenge union officials in occur for a refund of those dues allegedly spend for politics.

The persecution of workers by unscrupulous union officials will continue until Congress repeals the federal laws that give unions the power to coerce workers to pay union dues and accept union representation, since corrupt union officials’ ability to tyrannize workers flows from the unconstitutional powers granted them by Congress.

IV. H.R. 2434 IMPLICITLY LEGITIMIZES COMPULSORY UNIONISM

The primary reason Congress should reject this bill is its faulty premise. By stating, in the very first finding, that “Workers who pay [union] dues may not * * * be required to pay to that organization any dues or fees supporting activities that are not necessary to performing the duties of the exclusive representation of the employee * * *” the drafters of this bill implicitly accept the legitimacy of compulsory unionism, as long as the dues collected by compulsion are not spent for political purposes. However, union political spending per se should not be the concern of Congress. Even if union political spending as 10 times as much as it is now it would not be a proper subject of Congressional regulation—as long as it was from voluntary dues. Conversely, even if union officials never spend another dime on politics. Congress would still be morally obligated to repeal those laws empowering union officials to force workers to pay dues for any purposes. It is the collection of forced dues that damages our system—not any particular use to which those dues are put!

The problems with H.R. 2434 were eloquently stated by Harry Beck, the lead plaintiff in the Supreme Court case which established the right of forced-dues payers to a refund of that portion of their dues spend on politics, “you don’t solve the forced dues in politics problems by letting the union bosses keep the force while trying to micro-managed their ‘politics.’ The government lawyers, accountants and bureaucrats love that approach [i.e. the approach contained in H.R. 2434] because it would give them job security. The legislative solution to coercion isn’t to keep it under a GOP-approved system of regulation—but to end it!”

V. CONCLUSION

The Workers Paycheck Fairness Act (H.R. 2434) attempts to address the very serious problem of the use of forced union dues for political purposes through the establishment of a new system of coercion. This bill places new mandates on workers, employers, as well as on unions. The system established in H.R. 2434 not only compounds the constitutional violations of the federal laws that give unions the power to force workers to pay union dues, it also will fail to address the problem it is designed to solve. If this bill becomes law, corrupt union officials will simply use “creative accounting” to distinguish their political spending and/or use force and intimidation to ensure workers “consent” to having their forced dues spent on politics.

In its attempt to solve a congressional-created problem with new restrictions on American liberties, H.R. 2434 parallels proposals to “reform” campaign finance by limiting freedom of speech as both expand government power rather than attack the root cause of the problem—too much “congressional activism” in which constitutionally are non-government affairs!

Instead of passing an unconstitutional, ineffective law, Congress should follow the advice of Harry Beck—stop trying to regulate union officials’ use of the fruits of their coercion and repeal the unconstitutional laws that authorize the collection of forced dues. Only by revoking union officials’ legislatively-ordained coercive privileges can Congress end the scourge of forced dues for politics and restore true freedom to America’s labor markets.

RON PAUL.

MINORITY VIEWS

H.R. 2434 is coldly calculated to cripple the ability unions and the workers they represent to effectively participate in the political affairs of the nation. In effect, this legislation seeks to effectively disenfranchise American workers.

In the name of enforcing the right of a minority to dissent from engaging in political activity, this legislation deliberately and intentionally tramples on the right of the majority to do so. The legislation infringes on the right of workers to establish their own rules regarding union membership. The legislation infringes on the right of workers to determine for themselves the activities of their own organizations. The legislation imposes costly, crippling paperwork requirements upon unions, thereby effectively imposing a punitive tax on all those represented by unions. While imposing unreasonable and unfair infringements on the rights of workers to engage in political activity through their unions, the legislation places no restrictions at all on the political activities of employers or employer associations. To justify this blatant, one-sided attempt to distort the democratic process, the majority has dismissed, ignored, or distorted the substantial protections afforded by existing law to all those represented by unions.

H.R. 2434 is a deliberate, calculated effort to place unions and the workers they represent at a unique and substantial disadvantage with regard to their ability to participate in politics as compared to any other group. This legislation is not about protecting free and open political debate, it is about the ability of one group of Americans—workers—to participate in that debate. What this legislation ultimately seeks to accomplish is to distort the democratic processes of this country. At the least, it was the hope of the Republican leadership to use this legislation, or similar legislation, to blame Democrats for their failure to enact campaign finance reform legislation. At the most, Republicans hope to silence their perceived political enemies, those who advocate for and on behalf of workers. To state that either goal is ignoble is to understate the fact.

In fact, the legislation is too obviously unfair to accomplish any goal. In the 105th Congress, a similar proposal to attempt to gag workers, H.R. 2608, was considered on the floor and defeated by vote of 166 to 246. Fifty-two Republicans joined with Democrats to defeat that effort. In addition, during consideration of H.R. 2183, the bipartisan Campaign Reform Act of 1988, the House rejected an amendment by Mr. Paxon, House Amendment 744, that would have imposed reporting requirements on union political activities by a vote of 150–248, and adopted an amendment by Mr. Shays, House Amendment 690, that, among other provisions, codified the *Beck* decision by a vote of 237–186. In this Congress, Mr. Goodling again offered an amendment that was the substance of H.R. 2434

to H.R. 417, the Bipartisan Campaign Reform Act of 1999. That amendment was withdrawn without a vote because it was clear that the amendment would not pass.

Current law protects the rights of union objectors

Republican assertions that current labor laws run roughshod over dissenting union members are not simply false, but gross distortions. Republicans contend falsely, that unions may force workers to pay for union political activity. In fact, no employee may be required to join a union as a condition of employment. Membership in a union is purely voluntary. Nor is any employee required, as a condition of employment to underwrite union political activity.

Unions, by law, are democratic organizations whose officers and policies are required to be determined by the majority will of their members. In fact, the democratic principles embodied in our labor laws are borrowed from the democratic procedures we use and honor all across the country when we choose our city councils, our mayors, our school boards, and Members of Congress.

Unions are required by law to inform all employees who are subject to a collective bargaining agreement, including an agency fee or union security provision, that they are not required to pay any part of the union dues that are used for purposes that are not germane to collective bargaining, contract administration, or grievance adjustment. Unions must inform such employees of the percentages of their union dues that are used for purposes that are not germane to collective bargaining, contract administration, or grievance adjustment. Moreover, unions must establish procedures to ensure that those employees who choose not to support the union's political activity, do not pay any part of the union dues that are used for purposes that are not germane to collective bargaining, contract administration, or grievance adjustment.

Those who believe their right to refrain from paying for any union activity unrelated to collective bargaining, contract administration, or grievance adjustment have not just one, but two different forums by which they may seek remedy. They may file a complaint with the National Labor Relations Board, in which case the Government, rather than the employee, will undertake the cost of investigation and, if merited, the prosecution of the allegation. Alternatively, the employee may sue the union directly for violating its duty of fair representation.

In fact, those who are represented by unions have extensive rights under current law. By law, unions are democratic organizations whose officers and policies are required to be determined by the majority will of their members. By law, as discussed in more detail below, unions are already under more extensive reporting and disclosure requirements than virtually all other institutions in the country, and are required to report all of their income and expenditures to members, to the Government, and to the public. Under the National Labor Relations Act, bargaining unit members have a statutory right to either nullify the agency fee provision of a contract or decertify the union if the majority feels that either the agency fee provision or the union is no longer in their best interest. Union members have a statutory right to inspect their union's books and to vote on the amount of dues the union will

charge its members. The National Labor Relations Act prohibits unions from charging those who are subject to an agency fee provision excessive or discriminatory fees. In short, the alleged evil this legislation seeks to correct is one that has already been rendered nonexistent by law.

If the polls cited by the majority for the proposition that union members support “up-front” consent are accurate, it is fully within the ability of those union members to implement such a requirement. In fact, however, public opinion polls show that members like their unions speaking out on their behalf. A poll by Peter Hart Associates taken after the 1996 election found that 85 percent of members supported their union’s fight to increase the minimum wage and protect Medicare. They also strongly supported voter guides, voter encouragement efforts, and efforts to lobby Members of Congress on issues affecting working families. These are the very kinds of activities Republicans want to squelch with its shut down of union democracy.

Beyond providing that union dues and initiation fees, as well as union constitutions and bylaws, must be established pursuant to majority will, section 8(b)(5) of the NLRA¹ makes it an unfair labor practice subject to regulation by the National Labor Relations Board (NLRB) for a union to impose excessive or discriminatory fees on employees who are subject to a union security or agency fee provision.

Unions are already under more extensive reporting and disclosure requirements than virtually all other institutions in the country

H.R. 2434 imposes onerous reporting burdens on unions, yet unions are already subject to extensive reporting and disclosure requirements. Subchapter III of the LMRDA requires unions to file full reports regarding the procedures by which the union operates² and annual reports detailing the financial condition of the union including all receipts and expenditures by the union.³ In addition, the LMRDA specifically provides:

Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court or competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report.⁴

As James B. Coppess stated in testimony before the Subcommittee on Employer-Employee Relations on March 18, 1997:

Given this legal structure, there is no room to doubt that the decisions unions make to support or oppose particular

¹29 U.S.C 158(b)(5).

²29 U.S.C 431(a).

³29 U.S.C 431(b).

⁴29 U.S.C 431(c).

pieces of legislation or particular candidates for public office, and the decisions unions make to expend money in support of such views, reflect the views of the majority of union members. Indeed, one reason workers form unions in the first instance is precisely to be able to band together to participate in legislative and political affairs.

Unions have a long and proud tradition of participating in the political process, and union members are well aware of and supportive of this tradition

The fact that unions engage in political activity is, of course, neither new nor news. As Justice Felix Frankfurter has pointed out, “It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for industry or finance. Neither is it true for labor.”⁵ Labor unions have recognized this since their inception. As Justice Frankfurter stated:

To write the history of the [Railroad] Brotherhoods, the United Mine Workers, the Steel Workers, the Amalgamated Clothing Workers, the International Ladies Garment Workers, the United Auto Workers, and leave out their so-called political activities would be sheer mutilation. Suffice it to recall a few illustrative manifestations. The AFL, surely the conservative labor group, sponsored as early as 1893 an extensive program of political demands calling for compulsory education, an eight-hour day, employer tort liability, and other social reforms. The fiercely contested Adamson Act of 1916 was a direct result of railway union pressure exerted upon both the Congress and the President. More specifically, the weekly publication “Labor”—an expenditure under attack in this case—has since 1919 been the organ of the railroad brotherhoods which finance it. Its files through the years show its preoccupation with legislative measures that touch the vitals of labor’s interests and with men and parties who effectuate them. This aspect—call it the political side—is as organic, as inured a part of the philosophy and practice of railway unions as their immediate bread-and-butter concerns.⁶

Nor, contrary to the impression the majority has sought to foster, have unions ever made a secret of their political activity. Indeed, to do so in a democratic society such as ours is obviously and inherently counterproductive. As Mr. Coppers has testified:

Over the years, the labor movement has led the crusade for enactment of the minimum wage and the forty-hour workweek, for laws protecting occupational safety and health, assuring the security of pensions, and prohibiting invidious discrimination in employment. We have done so because union members, acting through the democratic processes of the unions, decided that it was right and proper to do so—for the sake not just of union members but of

⁵ *Machinists v. Street*, 367 U.S. 740, 814–815 (1916) (dissenting opinion).

⁶ *Id.* at 800.

all working Americans. And, today we continue to advance the interests of working families by leading the effort to preserve and strengthen the employee-protective laws, and to protect the system of social insurance on which workers and older Americans depend.⁷

[W]orkers know that unions attempt to advance the interests of those they represent through political action. Workers know that when they vote for union representation. Workers know that when they vote to approve collective bargaining agreements containing union security clauses requiring everyone to pay their fair share for representation. And workers know that when they vote on the level of dues they are willing to pay and on the leaders who will set their union's agenda.

Workers make these decisions with their eyes wide open about union political activity—as to both the fact of such activity and its cost. Indeed, unions are required to disclose more about their finances than any other organization of which I am aware. And if the membership want more information, it is free to elect leaders promising such or to amend their organization's constitution and bylaws to so provide.

Anyone who claims that unions could pursue the political course they have consistently followed without substantial majority support is willfully misunderstanding the relationship between elected leaders and representatives and their constituency.⁸

Claims by anyone that they did not know that unions engaged in political activity are, at best, disingenuous.

The resolution of whether employees may be required to underwrite activities of a union that are not germane to collective bargaining, contract administration, or grievance adjustment has been more recently decided. Since 1947, the NLRA has provided that in States that have not enacted so called "right-to-work" laws, a union may seek to negotiate a provision in its collective bargaining agreement providing that all workers represented by the union may be required to share equally in the cost of that representation as a condition of employment. These provisions are generally known as agency fee or union security provisions. In the 21 States that have enacted "right-to-work laws," though a union remains liable for providing fair representation to all workers it represents, no worker may be required under the NLRA to pay anything to a union for the costs of providing that representation.

As originally enacted in 1935, the NLRA permitted unions and employers to negotiate so called "closed shop" agreements, agreements whereby an employer refused to hire anyone who was not already a member of the union. Section 8(a)(3) of the NLRA makes it unlawful for an employer to "discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

⁷Prepared statement of James B. Coppess, Hearing on Mandatory Union Dues, Before the Subcommittee on Employer-Employee Relations, 105th Cong., 1st Sess. (March 18, 1997).

⁸Hearing on H.R. 3580, the Worker Right to Know Act, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess., at 320 (June 19, 1996)(Serial No. 104-66).

This provision, standing alone, would preclude the payment of any dues or fees to a union as a condition of employment. However, as originally enacted, the language was qualified by a proviso stating that “nothing in [the NLRA] or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein * * * if such labor organization is the representative of the employees. * * *”

A Republican Congress, as part of the Taft-Hartley Amendments of 1947, specifically amended section 8(a)(3) of the NLRA, until then section 8(3), to limit the provisions of the first proviso by adding the following:

[N]o employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

In addition, the Taft-Hartley amendments added section 8(b)(2), which makes it unlawful for a union “to cause or attempt to cause an employer to discriminate against an employee in violation of subsection 8(a)(3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than this failure to tender the periodic dues and the initiation fees required as a condition of acquiring or retaining membership.”

The effect of the 1947 amendment was to preclude contractual provisions requiring an employee to join a union as a condition of employment. “If an employee in a union shop unit refuses to respect any union-imposed obligations other than the duty to pay dues and fees, and membership in the union is therefore denied or terminated, the condition of ‘membership’ for 8(a)(3) purposes is nevertheless satisfied and the employee may not be discharged for nonmembership even though he is not a formal member.”⁹

The fact that an employee cannot be required to join a union as a condition of employment has clearly and unambiguously been a matter of settled law for decades. Sections 8(a)(3) and 8(b)(2), when read in conjunction, provide that an employee who pays full union dues and fees has a statutory right to be a member of a union, but also has a statutory right to refrain from formally doing so.

In 1988, the Supreme Court made it clear in Communication Workers v. Beck, that no worker can be compelled to support union political activity

Until *Communication Workers v. Beck* was decided 1988, the Supreme Court had “never before delineated the precise limits 8(a)(3)

⁹*Labor Board v. General Motors*, 373 U.S. 734, 743 (1963).

places on the negotiation of and enforcement of union-security agreements. * * *¹⁰ However:

Over a quarter century ago we held that 2, Eleventh of the RLA does not permit a union, over the objections of nonmembers, to expend compelled agency fees on political causes. Because the NLRA and RLA differ in certain crucial respects, we have frequently warned that decisions construing the latter often provide on the roughest of guidance when interpreting the former. Our decision in [*Ma-chinists v. Street*, 367 U.S. 740 (1961)], however, is far more than merely instructive here: we believe it is controlling, for 8(a)(3) and 2, Eleventh are in all material respects identical. * * * Thus, in amending the RLA in 1951, Congress expressly modeled 2, Eleventh on 8(a)(3), which it had added to the NLRA only four years earlier, and repeatedly emphasized that it was extending “to railroad labor the same rights and privileges of the union shop that are contained in the Taft-Hartley Act.” In these circumstances, we think it clear that Congress intended the same language to have the same meaning in both statutes.¹¹

The clearness with which the Court majority saw the issue was not as apparent to all observers as the dissent of Justice Blackmun, in which Justices O'Connor and Scalia joined,¹² illustrates.

The Court's conclusion that 8(a)(3) prohibits petitioners from requiring respondents to pay fees for purposes other than those “germane” to collective bargaining, contract administration, and grievance adjustment simply cannot be derived from the plain language of the statute. In effect, the Court accepts respondents' contention that the words “dues” and “fees,” as used in 8(a)(3), refer not to the periodic amount a union charges its members but to the portion of that amount that the union expends on statutory collective bargaining. Not only is this reading implausible as a matter of simple English usage, but it is also contradicted by the decisions of this Court and of the NLRB interpreting the section. Section 8(a)(3) does not speak of “dues” and “fees” that employees covered by a union-security agreement may be required to tender to their union representative; rather, the section speaks only of “the periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership.” Thus, the section, by its terms, defines “periodic dues” and “initiation fees” as those dues and fees “uniformly required” of all members, not a portion of full dues. As recognized by this Court, “dues collected from members may be used of a variety of purposes, in addition to meeting the union's costs of collective bargaining. Unions rather typically use their

¹⁰ *Communication Workers v. Beck*, 487 U.S. 735, 745 (1988).

¹¹ *Id.*, at 745–747 (citations omitted).

¹² Justice Brennan delivered the opinion of the Court, in which Chief Justice Rehnquist, and Justices White, Marshall, and Stevens joined. Justices Blackmun, O'Connor, and Scalia concurred in part and dissented in part. Justice Kennedy took no part in the consideration or decision of the case.

membership dues to do those things which the members authorize the union to do in their interest and on their behalf.” By virtue of 8(a)(3), such dues may be required from any employee under a union-security agreement. Nothing in 8(a)(3) limits, or even addresses, the purposes to which a union may devote the moneys collected pursuant to such an agreement.

The Court’s attempt to squeeze support from the legislative history for its reading of congressional intent contrary to the plain language of 8(a)(3) is unavailing. As its own discussion of the relevant legislative materials reveals, ante, at 747–750, there is no indication that the 1947 Congress intended to limit the union’s authority to collect from nonmembers the same periodic dues and initiation fees it collects from members. Indeed, on balance, the legislative history reinforces what the statutory language suggests: the provisos neither limit the uses to which agency fees may be put nor require nonmembers to be charged less than the “uniform” dues and initiation fees.¹³

Notwithstanding the dissent, however, the *Beck* decision has settled the issue of whether 8(a)(3) “includes the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.”¹⁴ In the words of the Court, “We think it does not.”¹⁵ Since 1988, it has been unlawful to require any employee, as a condition of employment, to financially support through the payment of dues or fees union activities that are not germane to collective bargaining, contract administration, or grievance adjustment.

Beck Rights are aggressively enforced

The majority contends that, despite the *Beck* decision, “*Beck* rights remain illusory.” The contention does not stand up when compared to the facts. Proponents of H.R. 2434 assert that the National Labor Relations Board has not protected *Beck* rights. As Mr. Coppess has testified:

In *California Saw & Knife Works*,¹⁶ the NLRB—largely following rules announced by the NLRB General Counsel at the time *Beck* was decided in 1988—imposed an exacting set of requirements on labor unions which seek to collect agency fees. The Board first held that before a union may require a nonmember to pay such a fee, the union must inform the nonmember of his right to object to paying for activities “not germane to the union’s duties as bargaining agent” and his right to “obtain a reduction in fees for such activities.” The NLRB further held that a nonmember who exercises such right by submitting an objection, must be charged a reduced fee, reflecting the union’s calculation of the percentage of its overall expenditures devoted to activities germane to collective bargaining. Fi-

¹³ *Id.*, at 768–770 (citations omitted).

¹⁴ *Id.*, at 745.

¹⁵ *Id.*

¹⁶ 320 NLRB No. 11 (1995).

nally, the Board held that the objecting nonmember must be “apprised of the * * * basis for the calculation,” and must be notified of his right to challenge the union’s calculations.

California Saw thus provided dissident workers, who do not agree with the majority’s decisions to pursue certain legislative or political ends, with a fully-developed set of rules to protect the dissident’s rights. Those rules are far more elaborate than anything that exists to protect, for example, dissident stockholders. And over the past six months, the Board has made clear that it stands ready to vigorously enforce those rules through a series of decisions holding unions guilty of violating the law where unions had either failed to give a *Beck* notice to all nonmembers, to establish procedures through which nonmembers could object to paying for activities unrelated to collective bargaining, or to provide nonmembers who submitted objections with the required breakdown of union expenditures.¹⁷

Nor was the Board inactive during the period between the *Beck* decision and *California Saw*. Within months of the *Beck* decision, the General Counsel issued a comprehensive statement of what she believed necessary for a union to comply with *Beck*.¹⁸ NLRB regional offices actively prosecuted unfair labor practice charges alleging *Beck* violations on the basis of noncompliance with the General Counsel’s interpretive guidelines. Those prosecutions were continued by General Counsels appointed under both the Bush and Clinton administrations.

As has been previously stated, an employee alleging a violation of *Beck* rights may bring a charge before the NLRB, whose decisions may be appealed to the Federal circuit courts, or may sue a union directly in Federal district court. The contention that a judiciary made up of large numbers of Republican appointees has been hesitant to enforce or has somehow diminished *Beck* rights is neither plausible nor accurate. The majority, themselves, cite evidence to the contrary, pointing out that the D.C. Circuit, in *Ferriso v. National Labor Relations Board*.¹⁹ has concluded that a union’s calculations of the percentage of dues and fees that are used for collective bargaining, contract administration, and grievance adjustment must be confirmed by an independent audit.

The efforts to enforce *Beck* rights in a meaningful manner is not simply reflected in the law and the efforts of the Board and the courts to enforce the law, but is regularly reflected in the actions of unions. During hearings, several unions explained the practices and procedures they have undertaken to comply with *Beck*. While different unions have adopted different procedures, the practices of the International Association of Machinists are illustrative of union

¹⁷ Board cases enforcing *California Saw* cited by Mr. Coppess include *IUE Local 444 (Paramax Systems)*, 322 NLRB No. 1 (Aug. 27, 1996); *Production Workers Local 707 (Mayo Leasing)*, 322 NLRB No. 9, (Aug. 27, 1996); *Laborers Local 265 (Fred A. Newman Co.)*, 322 NLRB No. 47 (Sept. 30, 1996); *Carpenters Local 943 (Oklahoma Fixture Co.)*, 322 NLRB No. 142 (Jan. 10, 1997); *Theatrical Stage Employees Local 219 (Hughes-Avicom International, Inc.)*, 322 NLRB No. 195 (Feb. 14, 1997); and *UFCW Locals 951, 1036, and 7*, 16-CB-3850 (Jan. 31, 1997) (ALJ opinion).

¹⁸ NLRB General Counsel Memorandum, GC-88-14 (Nov. 15, 1988).

¹⁹ CA DC, No. 96-1321 (September 23, 1997).

efforts. According to Mark Schneider, Association General Counsel of the Machinists:

Each year we notify all of our represented employees through a notice in our newspaper at the end of each year that if they wished to become dues objectors the following year, they should make that request in writing to our General Secretary Treasurer in Washington, D.C. Because we require that objection requests be submitted to a particular union officer during a particular one-month "window period," we felt that fairness required that we provide notice to all of our represented employees on an annual basis describing these requirements.

We also advise our represented employees of the size of the reduction they should expect, and of the kinds of expenditures in sufficient detail for them to understand what activities they are funding, and what activities they are no longer funding, pursuant to the union's calculation. Finally, we advise them that if, after reviewing this material, they wish to challenge the union's allocation, the union will provide them with the complete audit that supports its calculation, and so armed give them the opportunity to make that challenge before a neutral arbitrator selected by the American Arbitration Association. At that arbitration the union bears the burden of justifying its expense allocation, and agrees in advance to be bound by the arbitrator's decision.

In order to fairly allocate union expenditures, every union staff member keeps contemporaneous records of his or her time, on forms specially prepared for *Beck* purposes. On these records, employee time is broken down into various categories, such as, for example, "attending union meetings," "legislative activities," "grievances and arbitration" and so on. From these time sheets, accountants determine how much of the time of each of the union's departments is properly chargeable to objectors, and how much is not. Accountants then take the C.P.A. audited expenditure figures from the union's general ledger, and allocate expenditures in accordance with the percentages derived from the time records. A summary of this material then is provided to every dues objector, and the complete audit is provided to any objector who requests a copy and wishes to challenge the union's conclusion in the neutral arbitration.

Each year, during the objector cycle, the union escrows a sufficient sum of money to assure that, should it be determined by an arbitrator that it has not provided a sufficient reduction, any difference will be covered by the escrow account. In that way, objectors are assured that not a penny of their money will even inadvertently be spent on matters not germane to the collective bargaining process.

In sum, under the regime established by the Board, and in place at our union, employees are fully aware of their *Beck* rights and have every opportunity to exercise them in a meaningful manner. The union's *Beck* compliance pro-

gram—for the most part required by law—has imposed substantial burdens on the union. And we most emphatically believe that if any modification of the existing rules is in order, it would be in the direction of less regulation, and not more.²⁰

H.R. 2434 ignores substantive flaws in labor law and proposes fundamental changes to the law based on dubious anecdotes

To buttress a nonexistent case for the need to protect *Beck* rights, the majority has produced anecdotal evidence of the hardships faced by workers. However, the Republicans have produced no systemic evidence beyond partisan polling information for the contention that *Beck* rights are routinely violated or difficult to enforce. In fact, there is no evidence for those kinds of systemic abuses. There is substantial evidence, however, for the systemic abuse of other provisions of the National Labor Relations Act. The major thrust of section 8(a)(3) has nothing to do with agency fees, but provides that it is “an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *” Notwithstanding 8(a)(3), it is estimated that 10,000 workers are unlawfully fired every year for seeking to exercise their right to organize. In one out of every four organizing campaigns, workers are unlawfully fired for seeking to exercise statutorily protected rights. According to a recent survey, 44% of all workers who are not represented by a union would vote to join a union tomorrow, but for the fact that doing so may cost them their jobs.

But the Majority is not just indifferent, they are hostile to addressing these kinds of systemic abuses of the law. H.R. 2434, was intentionally crafted in a manner that precludes our ability to even attempt to redress the systemic problems in the law. Rather than seeking to amend the National Labor Relations Act and the Railway Labor Act, the statutes that authorize agency fees in the first instance, H.R. 2434 was deliberately crafted as a free standing statute in part in order to preclude amendments that may deal with more substantive problems in the law.

The Majority’s animosity for the rights of workers is also reflected in the absurd remedies provided under H.R. 2434. Workers have a right to form and join unions. Where workers exercise that right, they also are protected from being required as a condition of employment from having to finance union activities that are not germane to collective bargaining, contract administration, or grievance adjustment. The right to pay less than full union dues, however, is meaningless unless workers exercise the right to organize. There is no general obligation under the NLRA requiring employers to inform employees of their right to form and join unions. Nor does H.R. 2434 provide such a requirement. However, where employees do act to form or join unions, H.R. 2434 requires employers to post notices informing employees of their rights to pay less than full union dues. It is not simply inconsistent to require that em-

²⁰ Prepared statement of Mark Schneider, Hearing on the Assessment of Union Dues, Before the Subcommittee on Employee-Employee Relations, 104th Cong., 2nd Sess. (April 18, 1996).

employers post notices informing workers of their right not to pay less than full union dues, while refusing to require employers to inform workers of their right to join a union in the first instance. It is illustrative of a general hostility toward the right of workers to form and join their own organizations.

The hostility is even more obvious with respect to another aspect of the remedies provided under H.R. 2434. Damages are not available to employees under section 8(a)(3) where an employer unlawfully fires a worker for seeking to form or join a union. However, H.R. 2434 provides double damages in circumstances where a union effects a violation of 8(a)(3) by requiring an objector to pay full union dues. As has been previously pointed out, under the LMRDA union members have the right to determine how much their union dues will be, and under the NLRA union dues may not be excessive or discriminatory. As Mark Schneider pointed out in testimony before the subcommittee:

The discussion over the appropriate procedural rules to implement *Beck* is a discussion that in practical terms is a discussion over extremely small amounts of money. Union dues in the Machinists Union is something like \$25-\$30 each month. The reduction owed a dues objector is routinely something in the nature of 20% of that amount—only a small portion of which, I hasten to add—relates to expenditures for political activity. A disagreement over the appropriate safeguards that should be in place to assure the accuracy of the union's reduction calculation—whether it is properly 19% or 20%, or how to structure an arbitration system that fairly gives an objector opportunity to claim that the reduction is properly a higher percentage than claimed—is literally a dispute over pennies. Without disparaging in any way the importance of the ongoing discussion about the implementation of *Beck* or the merits of one or the other holdings of the NLRB in *California Saw*, I would respectfully suggest that there are matters within the jurisdiction of the NLRB of far more critical importance to the workers we represent, and, for that matter, to the employer community, that are not getting the attention that *Beck* compliance has achieved, and I look forward to the day when these other critical issues are given the attention they deserve.²¹

H.R. 2434 provides damages for financially meaningless, though philosophically important, improper act of union of claiming more dues money from an employee than it is entitled to, or of spending such funds in a manner unrelated to collective bargaining and inconsistent with the employee's views. Being unlawfully fired, however, is a financial, as well as a philosophical, catastrophe for a worker.

The NLRA generally provides "make whole" remedies for employer unfair labor practices. Where an employee has been unlawfully discharged, an employee is generally entitled to reinstatement and back wages for the period the employee was unemployed,

²¹ Prepared statement of Mark Schneider, Hearing on the Assessment of Union Dues, Before the Subcommittee on Employer-Employee Relations, 104th Cong., 2nd Sess. (April 18, 1996).

minus any wages the employee could have earned during that period. As evidenced by the number of workers who are annually discharged in violation of 8(a)(3), existing remedies do little to deter employer violations. Employers often contest the unfair labor practice and thereby prolong the period for which the employee is unlawfully without a job or an income. The employee is entitled to neither punitive nor compensatory damages as a result of the harm he or she suffers as a result of the employer's unlawful action. If an employee defaults on a car loan or a mortgage payment as a result of the employer's unlawful discharge, the employee does not receive additional compensation for that loss. Typically, employees end up settling such charges without being reinstated and without even receiving the full compensation to which they are entitled. Even where employees are reinstated, they are commonly gone within one year of reinstatement. To content that a worker should be entitled to damages where a union has misused minimal amounts of a worker's money, but should not be entitled to damages where an employer has unlawfully abridged the ability of that worker to earn a livelihood demonstrates a staggering animosity for the rights and welfare of working Americans. Yet, the is exactly the circumstance the majority would seek to create by enacting H.R. 2434.

The blatant unfairness of H.R. 2434 is evident in other ways as well. While 8(b)(2) provides it is an unfair labor practice for a union to cause an employer to violate 8(a)(3), 8(a)(3), itself, provides that it is an unfair labor practice for an employer to discriminate against an employee for nonmembership in a labor organization where that employee has otherwise tendered the dues and fees required pursuant the dues and fees required pursuant to an agency fee agreement. By contrast, H.R. 2434 provides that it unlawful for a labor organization to accept dues and fees pursuant to an agency fee agreement without prior approval of the employee. Putting aside the significant issue of prior approval, under current law an employer who unlawfully administers an agency fee provision is as equally liable as a union that unlawfully administers an agency fee provision. Under H.R. 2434, however, where an employer unlawfully administers an agency fee provision and the union does no more than unwittingly accept the money the employer has unlawfully deducted from the worker, it is the union and only the union that is liable for damages, while the employer is only liable for the "make whole" remedies of current law.

H.R. 2434 imposes prohibitively high costs of compliance on unions

If the Worker Paycheck Fairness act is enacted, unions would be required to collect 16.3 million signatures from workers. In order to obtain the 16.3 million individual authorizations, the cost will be approximately \$1 per person, for a response and retrieval rate of significantly less than 100 percent. Add to that 2.7 million hours of effort, and the value of that time calculated at \$15.05, the average wage of a union employee, then the cost of collecting signatures is \$40.6 million plus the estimated \$16.3 million, to prepare authorization forms and explanatory materials, distribute them, and follow-up on signatures.

This bill does not define reporting requirements, but presumably unions would have to delineate for their members what activities and expenses were involved in political expenditures. This book-keeping would impose new administrative burdens to most of the 33,800 or more labor bodies. Keep in mind that many locals are very small and the majority have no paid staff and no computerized records or accounts, developing new and sophisticated reporting systems is neither easy nor inexpensive. A leading accountant with significant experience working with trade unions estimates that setting up such a system would cost a minimum of \$2,000 in professional accounting time, not to speak of the time necessary for union officials to work with the systems. Many locals do not have the funds to pay these accounting costs. Estimated start-up costs to comply with this provision of the proposed legislation would be approximately \$3.4 million, conservatively. If the 33,800 labor bodies needed to develop new accounting systems, then start-up costs could run as high as \$6.8 million, meaning that between \$13.2 million and \$26.5 million would be spent each year maintaining the systems and generating reports.

An undertaking of this magnitude is mammoth, especially where a local has members in multiple locations. Monumental effort is required at each stage of the process—notice, distribution, solicitation, response, and follow-up. The new administrative burdens and requirements would cost nearly as much as \$90 million initially and \$27 million every year thereafter.

The requirement for national banks and corporations to gain similar authorizing signatures is not significant, given that “stockholders or employees” rarely pay dues, initiation fees, or other payment as a condition of employment.” The requirement for labor unions clearly is significant, since dues are the way in which these organizations fund their existence.

H.R. 2434 is an invitation for further litigation

As interpreted by the Supreme Court, the federal labor law “does not permit a union, over the objections of nonmembers, to expend compelled agency fees on political causes.” *Communication Workers v. Beck*, 487 U.S. 735, 745 (1988), citing *Machinist v. Street*, 367 U.S. 740 (1961). Recognizing that the “the majority * * * has an interest in stating its views without being silenced by the dissenter,” the Court has taken care to articulate a rule that attain[s] the appropriate reconciliation between majority and dissenting interests in the area of political expression” and “protect[s] both interests to the maximum extent possible without undue impingement of one on the other.”²²

The proponents of H.R. 2434 have expressed their dissatisfaction with the “reconciliation between majority and dissenting interests” struck by the Supreme Court. Consistent with this position, the bill would overturn each component of the rule articulated by the Court to the obvious end of inflicting “undue impingement” upon the majority’s right of free association and expression.

Where the Supreme Court has stated that “dissent is not to be presumed—it must be affirmatively made known to the union by

²² *Machinists v. Street*, 367 U.S. at 773.

the dissenting employee,” *Street*, 367 U.S. at 774, the union they have chosen to represent them before that union can accept normal dues. There the Supreme Court expressly limits the right of dissent to “nonmembers”, *Beck*, 487 U.S. at 745, H.R. 2434 bars unions from accepting normal dues payments from even voluntary members without having first received from them statements of agreement with the union’s political positions. And where the Supreme Court states that the dissenters’ “grievance stems from the spending of their funds for purposes not authorized by the Act in the face of their objection not from * * * the mere collection of funds,” *Street*, 367 U.S. at 771, H.R. 2434 bars unions from collecting normal membership dues from employees who have not signed special forms stating their agreement with the union’s political positions.

The rights of employees with respect to the use of their contractually required payments to unions have been forged over years of litigation. In one stroke, H.R. 2434 would completely unsettle this area of the law, leaving unions, employers, and most especially employees completely unsure of where they stand. As a general rule, caution should be exercised in making a drastic change in settled legal principles, if for no other reason, than to avoid the flood of litigation that inevitably follows such changes. But in the labor relations context, where uncertainty not only leads to litigation but it undermines industrial stability and employment security, legislative action upsetting established rights and arrangements is seldom in order.

The problems that H.R. 2434 claims to address are fictitious. The remedies imposed by H.R. 2434 are as unreasonable, unwarranted, and unfair. The protections afforded those represented by unions with regard to the political activities of the union far exceed those afforded to the members of any other organization. The assertion that employees may be required to underwrite union political activity or that current law condones or in any way coddles union efforts to coerce employees into underwriting union political activity is a gross canard. Neither 8(a)(3) nor 2, Eleventh serves as any justification for imposing different rules upon the political participation of unions than those generally applicable to all other organizations.²³

The Majority states that “Unions, by a grant of power from the federal government, can force employees to pay dues to the union as a condition of keeping their jobs; corporations cannot force individuals to invest in the nor can other membership organizations force individuals to join and pay dues.” To the extent that the majority is implying that a union may force any employee to underwrite any activity that is not related to collective bargaining, contract administration, or grievance adjustment, they are being disingenuous. However, the contention that other organizations cannot or do not effectively coerce members to underwrite their political activities is equally inaccurate. Both union and nonunion em-

²³The rights and protections afforded under section 2, Eleventh of the Railway Labor Act are not administered by an agency but are directly enforced by the courts. It has been unlawful since 1961 for a union subject to the RLA to require an employee as a condition of employment to underwrite any union costs that are not associated with the costs of negotiating and administering collective agreements and adjusting and settling disputes. (see *Machinists v. Street*, 376 U.S. 740 (1961). Further, until controversy concerning 8(a)(3) arose in the last Congress, no serious need has ever been felt to codify the *Street* decision.

employees own substantial amounts of corporate stock through employee pension plans, profit sharing plans, 401(k) plans, and other forms of retirement savings plans. Most employees have no voice in how their money is invested and no knowledge of what stocks are owned by their retirement plans. Nevertheless, corporations regularly and routinely expend millions of dollars more than unions on political activities every year, at the expense of the return workers might otherwise receive for the pension investments, frequently for purposes that are antithetical to the interests of workers, without seeking the prior approval of anyone.

The money that employers and employer organizations are spending, for example, to dissuade the Congress from regulating health maintenance organizations, to diminish protections under the Occupational Safety and Health Act, or to prevent the minimum wage from being increased is money that was directly earned by the efforts of workers. It is money that otherwise may have been used to increase the wages and benefits of workers. It is money that is instead being spent for the explicit purpose of preventing wages and benefits from being increased. It is money that does not belong to corporate managers. And it is money that is spent without any input from the workers. To contend that such workers have right to find another job is not a realistic alternative for most workers, does not ensure that the worker will not run into the same problem at the next job, and is an alternative, unrealistic as it may be, that is equally applicable to an employee who is subject to an agency fee provision.

H.R. 2434 imposes onerous obligations on the political participation of unions that are required of no other institution

The truth of the matter is that union members have far more voice in determining the political activities of their union, both legally and practically, than shareholders have of determining how their money is spent for political purposes by corporate managers. Workers have voluntarily joined the union, in part, for the express purpose of engaging collectively in political activity. A shareholder typically buys stock solely for the purpose of the return the investment will produce. Yet, virtually every corporation regularly and routinely spends shareholder money to finance the expression of political views with which the shareholder may or may not agree. A small businessman may join the Chamber of Commerce for a variety of benefits, none of which has anything to do with the Chamber's political activities. However, that does not prevent the Chamber from spending a portion of the dues collected from that small business person for political purposes with which the business person does not agree.

Further, the money spent by corporations on political activity vastly exceeds anything spent by unions. According to information compiled by the Federal Election Commission and the Independent Center for Responsive Politics, in 1998, corporations made \$166.5 million in hard money contributions to federal candidates and political parties, compared to \$50.2 million from labor organizations. Business outspent labor by a ratio of 3.1 to 1. The ratio for soft money contributions was even more one-sided, 16.3 to 1, corporations having contributed \$167.2 million compared to \$10.3 million

from labor. Businesses accounted for 87% of all soft money contributions to Democrats and 96% of all soft money contributions to Republicans over the period of 1995 and 1996. Over the same period, labor accounted for 11% of Democratic soft money contributions and 1% of Republican soft money contributions. In total money, businesses spent \$203.5 million in soft money contributions in 1996, compared to the slightly less than \$9.5 million spent by labor, a ratio of 21.4 to 1. And this is but the tip of the iceberg. Including trade association fees, so called public interest advertising, independent expenditures, and direct lobbying expenses, corporations spend hundreds of millions, perhaps billions, of other people's dollars for the purpose of engaging in political activity. So much for the Republican concern that "all men and women should have a right to make individual and informed choices about the political, social, or charitable causes they support."²⁴

Notwithstanding the limited financial interests that individual workers have in H.R. 2434, the harm that H.R. 2434 would visit upon unions and upon the rights of workers, as compared to any other segment of society, are substantial.

Unions operate on the principal that it is the right of the majority to decide the duties of membership, and that those who want the privileges of membership must accept the responsibilities that come with it. Political parties, churches, business associations, girls scout troops and all other voluntary associations operate on the same principle. For example, it is typical for those who wish to select a Republican candidate for political office to be required to be members of the Republican Party.

The Supreme Court has long recognized that an organization has the right to "determin[e] * * * the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution."²⁵ And "any interference with the freedom of [the organization] is simultaneously an interference with the freedom of its adherents."²⁶

Beck incorporates these fundamental principles of freedom of association while safeguarding the right of dissidents to withdraw from the group without suffering adverse employment consequences and without any obligation to pay for a union's political or ideological activities. However, 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.

If freedom of association is to have any meaning, the members of the association must have the right to decide how best to pursue their common interest and common mission. To prevent union members from deciding that their union will engage in political activity, and that those who choose to join the union will support that activity through a portion of their dues, is to strike at the heart of union members' rights of association. What the Supreme Court has said in the political party context is equally apt here: "these proposals would 'limit [unions'] associational opportunities at the critical juncture at which the appeal to common principles may be

²⁴ H.R. 2434, Section 2, paragraph (3).

²⁵ *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 224 (1986).

²⁶ *Democratic Party of the United States v. Wisconsin* 450 U.S. 107, 122 (1981).

translated into concerted action and hence to political power in the community.”²⁷

Indeed, that is precisely the point. To prohibit unions from using dues money to press for the enactment of legislation or the election of candidates sympathetic to working families—or to require each member every year to sign a written agreement authorizing such activities would effectively silence the only voice working families have in our society.

For all the talk bout union expenditures in the last election, the fact of the matter is that corporate interests significantly outspent union interests. We need a more level playing field for working people in politics, not one that is more skewed in favor of corporate interests. And, we will do everything we can to resist these blatant attempts to punish the labor movement for having had the temerity to stand up for the men and women they represent, and to protect the right of their members to participate on a full and equal basis in the political decision making process in this country.

WILLIAM L. CLAY.
DALE E. KILDEE.
DONALD M. PAYNE.
ROBERT E. ANDREWS.
ROBERT C. SCOTT.
CARLOS ROMERO-BARCELO
JOHN F. TIERNEY.
LORETTA SANCHEZ.
DENNIS J. KUCINICH.
RUSH HOLT.
GEORGE MILLER.
MAJOR R. OWENS.
TIM ROEMER.
LYNN WOOLSEY.
CHAKA FATTAH.
CAROLYN MCCARTHY.
RON KIND.
HAROLD E. FORD, JR.
DAVID WU.

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²⁷ *Tashjian*, supra, 479 U.S. at 216.