Georgia Public Policy Foundation

ISSUE ANALYSIS

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Paycheck Protection: Union Dues, Political Spending, and Employee Freedom of Choice

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In 1988, the United States Supreme Court ruled in *Communication Workers of America v. Beck*[2] that workers required to pay union dues by the terms of a collective bargaining agreement were only required to pay those union dues necessary for the performance of the union's duties in collective bargaining, contract administration, and grievance adjustment. Workers cannot be forced to pay dues used for political, social, or charitable contributions made by their union. Workers are also entitled to a financial accounting of how their union spends its funds. Unfortunately, not only are most workers unaware of their rights under *Beck*,[3] but federal enforcement of *Beck* has been almost nonexistent.

One of President Bill Clinton's first acts[4] when he took office was to rescind an

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[2] 487 U.S. 735 (1988).

[3] When the Michigan Chamber of Commerce and another organization ran a radio ad offering to send workers who responded to the ad information packets about their *Beck* rights, over 3,000 packets were mailed out. In an April 1996 survey of 1,000 union members, 78% were unaware of their rights to a refund of dues used for political purposes. The Heritage Foundation, *How Unions Deny Workers' Rights*, Backgrounder Report No. 1087.

[4] Exec. Order 12836, 58 Fed. Reg. 7045 (1993).

executive order that had been issued by President George Bush[5] which had required posting by federal contractors of notices informing workers of their rights under the *Beck* decision. The National Labor Relations Board[6] (NLRB) and the U.S. Department of Labor have essentially ignored the *Beck* decision[7] and have refused to put in place any of the procedural safeguards outlined in another decision by the Supreme Court on public employees.[8] In fact, in 1997 NLRB Chairman William Gould claimed that union members have already given their permission to use dues for political purposes simply by being members of a union and urged Congress to reject a paycheck protection bill that had been proposed in the House of Representatives.[9] The NLRB did not even issue its first case explaining its policy on *Beck* rights until 1995, almost eight years after the Supreme Court's original decision.[10]

The underlying principle of *Beck* is that employees should not be forced to make political contributions to parties, candidates, or causes they do not personally support. The Court in *Beck* applied this principle to the unionized workplace where a collective bargaining agreement between the employer and the union requires that all employees in the category represented by the union (commonly referred to as the "bargaining unit") become members of the union. This type of agreement is allowed by the NLRA as an exception to the provision that prohibits employers from promoting or discouraging union membership in general. Long before *Beck*, the Court had held that membership in this context does not mean full-fledged participation as a member of the union; it merely

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[5] Exec. Order 12800, 57 Fed. Reg. 12,985 (1992), repealed, Exec. Order 12836, 58 Fed. Reg. 7045 (1993).

[6] The National Labor Relations Board (NLRB) is an independent agency created by the National Labor Relations Act (NLRA) of 1935, 29 U.S.C. § 151 *et seq*. Its members are appointed by the president. The NLRB is granted exclusive jurisdiction to determine certain federal labor relations issues and to adjudicate unfair labor practices, with nonexclusive jurisdiction over other areas in which the federal courts grant deference to its rulings. As such, it exercises great power in defining the rights of employees, workers, and union members.

[7] Soon after the *Beck* decision, in 1989, NLRB General Counsel Rosemary Collyer issued a memorandum of guidance to enforcement personnel regarding situations covered by *Beck*, but the NLRB failed to take any action toward implementation until President Bush's Executive Order. At its first public meeting in May 1992, the NLRB decided to pursue rulemaking and directed its staff to prepare a proposed interim rule for enforcement. An interim rule has never been issued, and the lack of further action is no doubt attributable to the changing political climate announced by President Clinton's rescission of President Bush's Executive Order "in order to eliminate Executive Orders that do not serve the public interest." Exec. Order 12836, 58 FR 7045 (1993). For further discussion of the lack of rulemaking activity, see Zebrak, *The Future of NLRB Rulemaking: Analyzing the Mixed Signals Sent by the Implementation of the Health Care Bargaining Unit Rule and by the Proposed Beck Union Dues Regulation*, 8 Admin. L.J. Am. U. 125, 151-154 (1994).

[8] *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

[9] William B. Gould, Campaign Finance Reform and the Union Dues Dispute under *Beck*, Address before the Iowa Chapter of the Industrial Relations Research Association, in 195 Daily Labor Report (October 8, 1997).

[10] *California Saw and Knife Works*, 320 NLRB 224 (December 20, 1995) (released January 26, 1996), *supplemented sub nom. In re. NLRB*, 936 F. Supp. 1091 (Jud. Pan. Mult. Lit. 1996), *supplemented*, 321 NLRB 731 (1996).

requires paying union dues so that the employee does not get a "free ride" on the union's efforts to represent him or her. The Court in *Beck* went one step further, holding that employees who pay dues without becoming full-fledged members are entitled to withhold the amount of dues that goes to other activities, such as political contributions, that are unrelated to the union's efforts for the bargaining unit.

The *Beck* opinion refers to these dues-paying nonmembers as "dues objectors," giving them the right to demand union disclosure of the amount spent for political contributions and to refrain from paying that portion of the dues. Full-fledged union members, on the other hand, are legally considered members by choice, and they "voluntarily" agree to pay full dues and follow union rules and bylaws. Because they are not forced by law to join the union but instead choose to join, they are therefore beyond the scope of the ruling in *Beck* and do not have the right to pay less than full dues or to demand disclosure of the amount of dues going to political or other purposes.

Consequently, a union member must actually withdraw from union membership — often enduring a waiting period before the withdrawal is effective — in order to make his request for disclosure of dues information. Only then, if he is refused or his rights violated, may he bring an enforcement action before the NLRB. In other words, he must become a "dues objector." The cases in which the NLRB has considered dues objectors' *Beck* rights illustrate the lengths to which unions will go to avoid informing workers of their rights and to avoid disclosing information on political contributions.[11] As Chairman Gould noted in his concurrence in one such case, many workers do not understand that membership is not required, and the union perpetuates this misunderstanding:

> [T]he Board has permitted unions and employers to mislead the employees it represents into believing that they must join the union or lose their jobs.

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[11] *See, e.g., I.A.T.S.E. [Hughes-Avicom International Inc.]*, 322 NLRB 1064 (1997) (union solicited membership applications from newly covered employees, sent several letters demanding payment, threatened to request termination of any employee who failed to pay, made no reference to *Beck* rights in any correspondence, misrepresented that no such rights existed in response to an employee question at a meeting, and told employees that the only way to get a pension was to join the union); *United Brotherhood of Carpenters and Joiners Local 943 [Oklahoma Fixture Co.]*, 322 NLRB 825 (1997) (union attempted to avoid the costs of determining the costs of compiling *Beck*-related financial information by offering worker a "reasonable accommodation" that he could pay the equivalent of his full dues to a mutually agreed-upon charity, arguing that the cost would have been prohibitive and deleterious to its representation of the entire bargaining unit); *United Paperworkers Int'l. Union*, 320 NRLB 349 (1995), *aff'd in part and rev'd in part on other grounds sub nom. Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997) (when employee tried to assert his *Beck* rights, union ignored him, continued to deduct full dues, and sent him a new union membership card), *cert. granted and judgment vacated and remanded for reconsideration sub nom. United Paperworkers Int'l. Union v. Buzenius*, 119 S.Ct. 442 (1998); *Bloom v. NLRB*, 153 F.3d 844 (8th Cir. 1998) (union deducted employee's dues without authorization, failed to inform him he was not required to become a full dues-paying member, and threatened him with termination of employment), *cert. granted and judgment vacated and remanded for reconsideration sub nom. Office and Professional Employees Int'l Union, Local 12 v. Bloom*, 119 S.Ct. 1023 (1999).

> Any such scheme to keep employees uninformed about their rights is at odds with traditional concepts of trade unionism, that is, the protection and defense of the worker from exploitation and unfair or arbitrary treatment. In this regard, unions and employers have been permitted to sow confusion to the disadvantage of those which unions have a duty to represent fairly, and the Board . . . continues to be their accomplice.[12]

Adding to this the necessity of openly defying the union that controls his employment terms and conditions, the worker who wants to find out where his dues are going and what his union is supporting politically bears a heavy burden.

Those workers who are actually aware of their *Beck* rights and ask for reimbursements from their unions of the portion of their dues used for purposes other than collective bargaining are subject to intimidation, harassment, and administrative delays imposed by unions trying to avoid having to repay these funds. One Georgian member of the Machinists' Union who was interviewed described a long history of such abuse and delay because he has been an objector who requested reimbursement.[13] How does the worker get help to enforce his rights? Court actions, in which workers charged that the union to whom they were paying dues had not fairly represented them because they were not informed of their *Beck* rights, have been successful in some cases.[14] However, the United States Supreme Court ruled recently that the federal courts could not exercise jurisdiction in such a case unless there were independent allegations describing arbitrary, discriminatory, or bad-faith union conduct.[15] This limits the dues-payer to seeking redress from the NLRB, a body increasingly unfriendly to such claims as the current administration appoints replacements for those rotating off the Board. Although the Supreme Court reiterated the principles of *Beck*[16] in its *Marquez* decision, it left

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[12] *Group Health Inc.*, 325 NLRB No. 49 (1998) (Gould, Chairman, concurring), *enforcement denied sub nom. Bloom v. NLRB*, 153 F.3d 844 (8th Cir. 1998), *cert. granted and judgment vacated and remanded for reconsideration sub nom. Office and Professional Employees Int'l. Union, Local 12 v. Bloom*, 119 S.Ct. 1023 (1999). It should be noted that Chairman Gould was disagreeing over the NLRB's failure to hold that use of the statutory language requiring "membership" without explanation was itself misleading, a view which the Supreme Court rejected in *Marquez v. Screen Actors Guild*, 119 S.Ct. 292 (1998). (See discussion *infra* at n. 16 and accompanying text.) Nevertheless, such strong sentiment about the unions' tendency to avoid enforcement of *Beck*, from a Board member generally considered to be pro-labor, is notable.

[13] Interview with anonymous Machinists' Union member (Feb. 1998).

[14] *See, e.g., Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), *cert. granted and judgment vacated and remanded for reconsideration sub nom. United Paperworkers Int'l. Union v. Buzenius*, 119 S.Ct. 442 (1998); *Bloom v. NLRB*, 30 F.3d 1001 (8th Cir. 1994), *remanded*, 323 NLRB 251 (1997), *supplemented by* 325 NLRB No. 49 (1998), *enforcement denied sub nom. Bloom v. NLRB*, 153 F.3d 844 (8th Cir. 1998), *cert. granted and judgment vacated and remanded for reconsideration sub nom. Office and Professional Employees Int'l. Union, Local 12 v. Bloom*, 119 S.Ct. 1023 (1999).

[15] *Marquez v. Screen Actors Guild*, 119 S.Ct. 292 (1998).

[16] The Court ruled on the narrow question of whether the union's inclusion of standard statutory language in a collective bargaining agreement constituted a violation of its duty of fair representation of all employees, where the language did not make clear the worker's rights under *Beck*. The Court held that this alone was

workers who do not wish to support the political causes of unions to the mercy of the NLRB.[17]

Ironically, states with right-to-work laws, which protect citizens from compulsory union membership, offer *less* protection to employees seeking to enforce their *Beck* rights before the NLRB. The NLRB recognizes the *Beck* principle only as it applies to "dues-objectors," those employees who are required to pay union dues under a collective bargaining agreement that contains a union security clause. In Georgia and other right-to-work states, such agreements requiring union membership or dues payments as a condition of employment are illegal as against public policy.[18] Without "dues objectors," there is no one to bring the case before the NLRB.

Federal legislation has been proposed to enforce *Beck* rights.[19] In general, these bills have gone beyond the strict rule applied to dues-objectors' rights, to grant a more general right of union members and dues objectors to be informed about political contributions and other non-contract-administration purposes to which their dues are put. Such bills would have amended not only the NLRA but also the Labor Management Relations Act and the Labor Management Reporting and Disclosure Act of 1959, and would have had a profound effect on labor relations policy in America.[20] Neither the 104th nor the 105th Congress passed these measures.

Due to the failure of the federal government to enforce the *Beck* decision, states have begun to pass laws enforcing paycheck protection for union members.[21] These laws are not intended to curb union political activity; they are simply intended to protect the rights of union members who want to participate in the stewardship of their union without

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not a breach of the duty, and that such claims should be brought as unfair labor practice charges before the NLRB rather than breach of duty claims in federal court. *Marquez*, 119 S.Ct. at 302-303. The majority made clear that *Beck* remains good law. In a concurring opinion, Justices Kennedy and Thomas noted that use of the statutory language in addition to deceptive practices of unions to mislead employees about their *Beck* rights would be an unfair labor practice. *Id.* at 303-304 (Kennedy, J., and Thomas, J., concurring). Though the decision upheld *Beck*, it was disappointing to many who expected the Court to restrict union security clauses or even declare them invalid.

[17] Curiously, the Supreme Court stated in its opinion that the NLRB is actively pursuing implementation of the *Beck* decision, citing two 1995 decisions as proof of its action, without noting the Board's abandonment of rulemaking activity or its lack of any recent action. *Marquez*, 119 S.Ct. at 299.

[18] *E.g.*, O.C.G.A. § 34-6-23.

[19] H.R. 3580, 104th Cong. (1996) (Worker Right to Know Act); H.R. 1625, 105th Cong. (1997) (Worker Paycheck Fairness Act).

[20] For a full discussion of these bills, including the argument that they were in some respects inconsistent with *Beck*, see *Creating a Beck Statute: Recent Congressional Attempts and a Proposal for the Future*, 15 Hofstra Lab. & Employment L.J. 247 (Fall 1997).

[21] Wyoming, Idaho, Washington, and Michigan have passed paycheck protection laws. Ohio has a statute that protects members of public employee unions. Former California Governor Pete Wilson issued an Executive Order requiring notification to public employees of their *Beck* rights. National Right-to-work Committee.

being forced to support political causes or candidates with which they disagree. These state statutes do not limit political contributions that can be made by unions. In general, they require that unions obtain the prior written consent of their members before collecting the portion of dues that will be used for political purposes.[22]

Unions are virulent in their opposition to these protections. The Georgia AFL-CIO Web site claims that these bills are "a blatant attempt to reduce union contributions to their endorsed candidates."[23] In March 1998, the AFL-CIO Executive Council voted unanimously to raise $13 million in funds to be used for member mobilization, issue fights, political activities and paycheck protection fights in states such as California. This was in addition to the $15 million already budgeted for political activities in the 1998 election cycle. Some of this money was raised from a 5 cent increase in the per capita tax paid by affiliate unions of the AFL-CIO.[24] In August 1998, delegates to the convention of the American Federation of State, County and Municipal Employees (AFSCME) approved an increase in the union's per-capita tax to support expanded organizing and grassroots political action. They were urged by AFSCME President McEntee to raise money to, among other goals, "fight privatization wherever it rears its ugly head, to fight extremist politicians who want nothing more than to kill our union." The union also pledged to double the money spent on political action.[25]

In 1997, AFL-CIO President John Sweeney accused Senator Trent Lott of trying to "shut workers out of the political process" by proposing legislation requiring unions to obtain written permission before spending dues for political purposes. Sweeney contended this was burdensome and unnecessary because union membership applications include language authorizing union leaders to act on their behalf. He assured that each of the 78 unions that were assessed by the AFL-CIO to finance its political activities in the 1996 election was required to obtain authorization for payment; however, he also admitted that some unions are able to obtain this authorization from the executive board without consulting their members.[26] The AFL-CIO recently voted to raise at least $26 million from its members for the 2000 elections.[27]

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[22] *See, e.g.*, Wash. Rev. Code § 42.17.680; Idaho Code § 67-6605; Wyo. Stat. § 22-25-101; Mich. Comp. Laws Ann. § 4.1703(55); Ohio Rev. Code Ann. § 3599.031.

[23] "Report on the 1998 Session of Ga. Legislature," http://www.gaaflcio.org/current.htm, November 24, 1998.

[24] *Democrats Will Raise Money to Help Unions Fight Dues Initiatives, Gephardt Says*, 55 Daily Lab. Rep. (BNA) at A-1 (March 23, 1998). The per capita tax on affiliates is an amount charged per bargaining unit member that the local union must pay to the national organization. This money of course comes from dues, and illustrates that international unions have to raise the local members' dues to support their political agenda.

[25] *AFCSME Delegates Okay Dues Increase To Support Organizing, Political Action*, 168 Daily Lab. Rep. (BNA) at C-1,2 (August 31, 1998).

[26] *Sweeney Blasts Lott Amendment, Calls It Attempt to 'Shut Workers Out'*, 191 Daily Lab. Rep. (BNA) at A-14 (October 2, 1997).

[27] *AFL-CIO to Raise at Least $26 Million to Support Democrats, GOP Moderates*, Wall Street Journal, February 18, 1999, at A24.

In opposition to California's Proposition 226, which was narrowly defeated in 1988, unions falsely claimed that such measures prohibit unions from participating in the political process. In fact, paycheck protection statutes have no such limitations. The real reason unions oppose these statutes is that many union members oppose the political stances taken by their union leadership. In 1994, union members split their vote 60-40 between the two major parties and yet 90% of union political contributions were made to Democrats.[28] The AFL-CIO Committee on Political Education/Political Contributions Committee spent $1,177,514 on contributions to 257 Democratic candidates in 1995-96 and only $9,000 on contributions to five Republican candidates.[29]

Unions oppose these statutes because they are well aware that large numbers of their members do not agree with their political spending and would not give permission to their union to continue collecting dues for such spending. The experience in states that have passed paycheck protection statutes bears this out. When the State of Washington passed its paycheck protection statute in 1992, the Washington Education Association saw political contributions to its PAC go from $576,000 per year to only $132,000 per year even though union membership grew by 7,000.[30] When Michigan passed a similar statute in 1994, the United AutoWorkers saw its collections go from $1.1 million to only $211,663 as of April 25, 1998.[31]

According to the 1990 Register of Reporting Labor Organizations published by the U.S. Department of Labor, there are at least 900 trade councils, affiliated locals, and unaffiliated unions in Georgia. In 1996, 242,000 individuals were members of unions in Georgia and 286,000 were represented by unions.[32] The amounts spent by these unions in Georgia on political expenditures at the expense of their members' dues can be significant. According to campaign disclosure reports filed with the Georgia Secretary of State under the Ethics in Government Act, just one union local alone, Ironworkers Local 709 of Wentworth, Georgia, reported total political expenditures by its PAC of $192,983.02 at the end of 1996 and $234,327.86 at the end of 1998. Teamsters Drivers

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[28] *The Story on Union Dues and Partisan Politics*, Wall Street Journal, March 9, 1998, at A18; Employment Policy Foundation, Volume II, No. 11, December 1996.

[29] Federal Election Commission Report, March 17, 1998. The AFL-CIO Committee gave $31,500 in contributions to Congressional candidates in Georgia during this period, all Democrats. Georgia Teamsters Local 728 endorsed 74 candidates for the November 3, 1998, election, all Democrats. *See* http://www.teamster728.org/politics.html, November 24, 1998.

[30] *The Story on Union Dues and Partisan Politics*, Wall Street Journal, March 9, 1998, at A18. Within months of the Washington statute being approved by voters, the number of teachers willing to give political contributions to their union fell from 45,000 to only 8,000. *Paycheck Protection*, Wall Street Journal, January 6, 1998, at A18.

[31] Michael Kamburowski, *Paycheck Protection: Giving Workers a Voice in Union Political Spending*, Allegheny Institute for Public Policy Report No. 98-05, June 1998, page 7. The Michigan AFL-CIO went from raising $756,080 in 1994 to raising only $45,785 in 1998; the Michigan Federation of Teachers' Committee on Political Education went from $179,215 to $15,987. *Id.*

[32] United States Department of Labor, Bureau of Labor Statistics.

Georgia Local 728 of Atlanta reported collecting $79,472.40 and $122,892.64 in dues from its members at the end of 1996 and 1998, respectively, to be used for state political expenditures. The disclosure report forms for the Georgia State UAW PAC Council of Smyrna, Georgia, state that all money used by the PAC "is derived from per capita dues of its members." The report for June 6, 1998, reflects the collection of $14,916.54 over a five-month period, indicating that this union's members are paying almost $3,000 per month to their PAC for political expenditures.

After the Supreme Court ruled in his favor, Harry Beck got to keep 79% of his dues,[33] an indication that a very large proportion of dues paid by union members are completely unrelated to collective bargaining efforts. Depending on the union, the estimates of union dues collected from individual union members each year that are not related to collective bargaining range from $200 to $1,000.[34] Lawsuits by union members against the Washington Education Association (WEA) resulted in dues reductions of up to 70%.[35]

The stakes are high on both sides. Union members and dues-payers are turning over substantial amounts of their earned income to support causes they may not support or even know about. On the other hand, the clout of unions in the political arena can be greatly diminished when, as happened with the WEA, union members become aware of the political costs and causes. And, as expected, unions are fighting paycheck protection with the war chests they have assembled. Unions played a significant part in the 1998 elections in stemming the conservative tide, and federal legislation appears unlikely in the current Congress. Unions have also fought initiatives in the courts: a Nevada state court, on various constitutional and federal preemption grounds related to Nevada's right-to-work statute, struck down a paycheck protection initiative.[36] And, after losing in the courts, they have fought in the court of public opinion: in Colorado, after the Colorado Supreme Court rejected a legal challenge to a proposed paycheck protection measure, the sponsoring legislators withdrew the ballot measure. They cited "unfounded concerns" raised by nonprofit organizations that their fund-raising efforts would be harmed by the regulation of automatic payroll deductions.[37] In each case, the tactic succeeded in

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[33] *Other People's Money*, Wall Street Journal, September 22, 1997, at A22.

[34] The Heritage Foundation, *How Unions Deny Workers' Rights*, Backgrounder Report No. 1087.

[35] *Why I'm Suing My Union*, Wall Street Journal, July 31, 1997.

[36] *Nevadans for Fairness v. Heller*, 1998 WL 357316 (Nev. Dist. Ct. 1998). The court found the initiative invalid based on federal preemption of the dues check-off, citing the landmark Georgia case of *SeaPak v. Industrial, Technical and Professional Employees, AFL-CIO*, 300 F.Supp. 1197, *aff'd per curiam*, 423 F. 2d 1229 (5th Cir. 1970), *aff'd without opinion*, 400 U.S. 985 (1971). The court also found that, because Nevada is a right-to-work state, prohibiting a union from denying membership to any worker who refused to make a political contribution would violate the union's First Amendment freedom of association rights. The decision poses some difficult questions for paycheck protection initiatives in a right-to-work state, but as the case depended on particular language in the Nevada initiative and was not appealed it is difficult to assess its threat.

[37] *Proponents in Colorado Withdraw Effort To Put "Paycheck Protection" on Ballot*, 143 Daily Lab. Rep.

stopping the initiative during the legislative session. Yet, paycheck protection refuses to go away. Most recently, a paycheck protection bill was introduced in Texas, another right-to-work state.[38]

Whether a worker resides in a state where a union security clause can require union dues or in a right-to-work state like Georgia, the only way an individual can have any influence over union leadership and collective bargaining activities is to be a member of the union. A worker cannot vote on whether to strike or not unless he or she belongs to the union. Workers who want to belong to a union in order to have a vote and a voice should not be required to give the union the right to take money from their paycheck and make political contributions with which they may not agree. Without the disclosure, notice, and assent to deductions required by *Beck*, most workers are only dimly aware that not all their dues money goes to the union's efforts to represent the workers.[39]

Paycheck protection is clearly necessary. As the Supreme Court held in *Beck*, it is important to safeguard the rights of dues objectors who do not want to be members of a union. Further, it is necessary to protect the rights of employees who want to participate in union membership and pay the costs of supporting the union's efforts to improve workplace conditions, but do not want to advance a political agenda antagonistic to the worker's beliefs or interests. Whether by amendment to federal labor laws, executive enforcement of the existing *Beck* decision, or by state initiatives, workers should have a voice in the union if they choose, without sacrificing their individual voice in the political process.

(BNA) at A-9 (July 27, 1998).

[38] H.B. No. 407 (Feb. 3, 1999) (introduced by Rep. Hilderbran).

[39] Unions are required to file forms with the U.S. Department of Labor disclosing the salaries of officers and other expenses, all paid out of dues, which is the primary source of income. Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 *et seq.* Without enforcement of *Beck*, there is no regulation requiring unions to make similar disclosures regarding political contributions or the percentage of dues going to political efforts.