Worker Pay Protection: Implications for Labor’s Political Spending and Voice

MARICK F. MASTERS, RAYMOND GIBNEY, and THOMAS J. ZAGENCZYK*

Labor’s participation in politics requires money. Within legal restrictions, unions use compulsory dues to pay for much of their involvement. Such usage has continually raised controversy, leading to a host of U.S. Supreme Court decisions to give nonmember dues-payers the right to object to union political spending. We examine the current legal framework and are the first to report comprehensive data on union political spending financed from dues. We estimate the potential impact of a national “worker paycheck protection” law on labor’s political spending. With the potential to reduce money available to finance union involvement in politics, such a law may lessen the ability of labor to have its voice heard by lawmakers, especially in the face of shrinking density in the workforce. The importance of this is demonstrated by the large role unions played in the 2008 congressional and presidential elections. Despite Democratic victories in that historic year, “paycheck protection” is likely to loom large, fueled by efforts to enact the Employee Free Choice Act.

Unions engage in politics to extend their role as workplace representatives and to promote a variety of public-policy objectives, ranging from the enactment of labor rights to the provision of minimal standards of economic security (Bok and Dunlop 1970; Francia 2006; Goldfield 1986). Labor’s electoral and lobbying pursuits cost money, which is central to meaningful participation in the political process by any interest group (Heard 1960). Unions finance these activities from two principal sources: (1) dues collected from members and nonmembers who are represented in the workplace and (2) voluntary contributions from members collected outside of normal treasury funds. Financing union political activities raises a host of legal, political, and public-policy issues.

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Industrial Relations, Vol. 48, No. 4 (October 2009). © 2009 Regents of the University of California Published by Wiley Periodicals, Inc., 350 Main Street, Malden, MA 02148, USA, and 9600 Garsington Road, Oxford, OX4 2DQ, UK.
The use of compulsory union dues is particularly controversial. It has led to a string of legal challenges that have worked their way through the U.S. Supreme Court. A considerable body of judicial interpretation of constitutional and legal questions has emerged, limiting the extent to which unions can exact dues from nonmembers and use such payments for political purposes. Various campaign–finance-related statutes extend restrictions on the use of union dues, compulsory or not, to finance selected political activities, particularly in the electoral arena. On top of these legal challenges, which are substantially instigated and sustained by ideologically conservative groups, are concerted efforts to embed and expand Supreme Court restrictions on union political spending. These efforts fall under the general and value-laden rubric of “worker paycheck protection,” which unions vigorously oppose and derisively label “paycheck deception.”

Proponents of “worker paycheck protection” pursue a two-level strategy to reduce Labor’s capacity to raise money for political purposes. First, they seek the enactment of a national law which would minimally give nonunion members whose dues are taken via compulsory union-security arrangements the right to object to the use of any portion of such payments for political purposes, with the attendant right to receive a pro rata rebate or payment deferral. Some proponents at the national level seek to extend such an “opt-out” provision to union members whose dues are similarly compelled. A further extension is to impose an “opt-in” provision, which would require that nonmember dues-payers or union member dues-payers explicitly grant the union permission to use a portion of their dues for political purposes in advance of the exaction of payments.

The second-level strategy is to pursue similar types of “paycheck protection” at the state level, regardless of what Congress might do. Proponents lobby state legislatures through such groups as the American Legislative Exchange Council (ALEC) to enact “model” legislation in this area. Alternatively, they may seek statewide ballot initiatives, such as California’s well-known Proposition 226, which unions helped defeat at the polls in 1998. Nearly thirty states have considered “paycheck protection” in one form or another.

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1 The term “worker paycheck protection” is clearly value-laden and highly charged. Advocates assert that such laws “protect” union members’ paychecks from the expropriation of dues, a portion of which is used to finance objectionable political expenditures. Key proponents and instigators of these initiatives include the National Right-to-Work Committee, the Heritage Foundation, and the Christian Coalition. These groups, it should be noted, oppose Labor on a variety of public-policy issues, and seek to diminish Labor’s clout in politics. Unions charge that the term “worker paycheck protection” is a misnomer, with such initiatives being more aptly labeled “worker deception.” For more information, see Clark (1999).
The debate over “paycheck protection” splits along party and ideological lines. Democrats overwhelmingly oppose it, while Republicans more or less consistently line up for it. Given the Democratic successes in the 2008 congressional and presidential elections, one might expect “paycheck protection” to fall out of favor and recede into the background. We believe this is wishful thinking. Labor’s political successes invariably arouse stronger, not weaker, opposition. The prospect of the passage of the Employee Free Choice Act, which could substantially expand union recognition and attendant union-security arrangements to build Labor’s political coffers, will undoubtedly stimulate Labor’s political opponents, who will seek to deny unions the right to compel dues for politics. We can expect even more intense efforts to enact “paycheck protection” at the state level. Pursuit of such laws ensures that Labor will have to spend a large amount of its currency in opposition. What is spent to defeat “paycheck protection” cannot be spent on other policy objectives, such as limitations on new free trade agreements or proposals to extend healthcare coverage. If anything, the 2008 elections have awakened Labor’s opponents, including business, which enjoy an enormous financial advantage to support lobbying against unions. No restrictions exist on the amount of money corporations can tap from their treasuries to finance lobbying.

What impact would the enactment of a national “paycheck protection” law have on union political spending and hence Labor’s voice in politics? This is the central question we pose in this paper, which requires an understanding of the law regarding how unions can finance political activities and the current level of union political spending. The impact of such a national law would depend on the baseline of support for political spending among dues-payers and the construction of the statute. We present several scenarios to appreciate its potential impact. It is possible that a national “paycheck protection” law would have substantially hindered Labor’s ability to participate as extensively as it did in the recently completed 2008 congressional and presidential elections, where unions spent an estimated $400 million (Maher 2008).

To date, we know little about the amount of money unions spend on politics as a share of their dues-based revenues. Before 2005, no requirement existed for unions to disclose direct political expenditures as part of their regular operations. Thus, the potential impact of a national “worker paycheck protection” law on union political spending has remained unclear, left largely to conjecture or anecdotal evidence compiled from agency-fee objectors’ attempts to secure a pro rata rebate. Recent changes, however, in the financial disclosures unions must file under the 1959 Landrum-Griffin Act (i.e., Labor-Management Reporting and Disclosure Act) have mandated the reporting of how much of their regular income they spend on political activities. This line-item figure has provided an estimate on the total amount a union spends in a given year on
such activities (separate from contributions to political candidates and parties through voluntarily funded political action committees, PACs).

We examine the potential impact of a comprehensive national “worker paycheck protection” law on the scope of union political spending. We divide the paper into several parts: (1) a review of the competing perspectives on dues-financed political activities; (2) current limitations, based on federal statutes and U.S. Supreme Court decisions, on the use of union dues for political purposes; (3) union political spending as a portion of dues; (4) selected “worker paycheck protection” initiatives at the federal and state levels; (5) estimated effects of a national “worker paycheck protection” law on union political spending; and (6) a discussion of the implications of such a law on Labor’s political voice. Data were collected from the 2006 financial disclosure forms filed by labor organizations. We present aggregated and disaggregated figures on political spending.

Competing Perspectives on Compulsory Dues to Fund Union Political Action

Labor’s role in American politics continually stirs controversy. Bok and Dunlop (1970: 384) note that union “political efforts have provoked angry criticism and sharp differences of opinion from various segments of society.” The use of union dues to finance political activities, in particular, raises competing perspectives (see Table 1). Heard (1960: 196) observed that “the discussion of this phase of labor politics ordinarily proceeds in a thunderhead of emotion.” These issues bear on the legitimacy of union political action, the capacity of labor to finance involvement in politics, and the willingness of employees (union members and nonmembers) to support a political agenda. Opinions split largely on ideological grounds, with a variety of “conservative” organizations pushing for “paycheck protection” laws (Clark 1999).

Arguments “pro” and “con” with regard to “worker paycheck protection” center on both legal and philosophical grounds, at least on the surface. The “pro” side argues that compulsory dues, especially from nonmembers, used for political purposes violate First Amendment rights. Unions should be required to afford means of objecting to such expenditures, even if an employee is thereafter banned from participating in union activities.

Advocates of these restrictions on compulsory dues also argue that such power of taxation gives Labor an undue advantage in politics. No other groups, their argument goes, enjoy such a sweeping power to extract dues. The Railway Labor Act grants this power, as does the National Labor Relations Act, at least in the twenty-eight states without so-called “Right-to-Work”
laws. In addition, numerous states grant selected public employees that right to negotiate agency-shop arrangements compelling dues, though the federal government does not for its civilian workforce.

Related to this exceptional power is the potentially corrupting influence of unions, through money, on politics (Sousa 1999). Rightly or wrongly, many view the influx of private money into politics as inherently corrupting, making elected officials too subservient to special interests.

On the opposite side, unions argue that they have a First Amendment right to free speech, including political expression. Indeed, the U.S. Supreme Court, in *Buckley v. Valeo* 424 U.S. 436 (1976: 14–15), held that “Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution…. The First Amendment [also] protects political association as well as political expression.”

Unions and their ideological kin also argue that political action is vital to Labor’s position at the bargaining table, and hence it is germane to collective bargaining and contract administration. Congress and state legislatures enact laws providing the right of private-sector and public employees to form and join unions. They also set forth the various bargaining rights of these groups, from the scope of negotiability to the right to strike.

Relatedly, it may be argued that any effort to separate politics from economics, by, for example, limiting the use of compulsory union dues to collective bargaining, represents an unrealistic, patently artificial dichotomy. In reality,
politics and economics are so intertwined as to be virtually inseparable. From fiscal policy and trade laws to safety and health and fair labor standards, lawmakers regulate economic affairs with direct and indirect bearing on unions, their members, and the broader segment of the working class. As Rauh (1960–1961: 163) has stated:

From the first, there has been no line of demarcation between the bargaining, educational and political activities of unions. There is a tradition of over one hundred years of union political activity in this country. As the federal government has increasingly legislated in the field of union activity and on economic matters such as wages, hours and conditions of employment which are of the most immediate concern to laboring men as workers and as union members, the necessity for labor union political activity has correspondingly increased. Today the passage or defeat of any large numbers of bills affecting working men and their unions may be of as great importance to union members as the collective bargaining process itself.

Finally, there is the pluralistic argument of preserving “balance” in the political system, particularly between employees and employers (Sousa 1999). Corporations enjoy an enormous financial advantage vis-à-vis organized labor—the comparison is not even remotely close. Business may spend whatever amount of their profits and revenues they want on lobbying (though they, like unions, are limited in what they can do electorally). These are funds companies acquire through sales and other business transactions, none of which explicitly or implicitly condone the political activities that may be resultantly funded. Labor needs money to mobilize its membership base to offset or counteract the financially advantaged business sector. Without such capacity, the scale of politics might tip lopsidedly to corporate interests (Zeigler 1964).

These arguments, however well articulated, mask a deeper agenda among advocates of “paycheck protection.” The lineup of proponents includes an array of ideologically conservative groups and right-wing benefactors (Clark 1999; Sousa 1999). Among them are the Christian Coalition, Family Research Council, Heritage Foundation, National Right-to-Work Committee, Americans for Tax Reform, and the ALEC (a national group of conservative state legislators and advocates). These groups and ideological kin and kith routinely oppose Labor in legislative and electoral contests. Mitigating Labor’s source of political funding is as much if not more about weakening unions in politics as it is protecting employees. As Clark (1999: 340) asserts in his analysis of the California referendum on “paycheck protection” in 1998 (Proposition 226):

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2 According to the Center for Responsive Politics, business-related interests spent over $2.6 billion on lobbying in 2007, compared to Labor’s $44.5 million. See http://www.opensecrets.org/lobby.
The passage of Proposition 226, or any paycheck protection measure, would immediately weaken one of the core constituent groups of the Democratic party and potentially have a significant effect on the outcome of any elections that were to follow. Ultimately, this, rather than the rights of workers, appears to be the primary motivation behind the phenomenon of paycheck protection.

The battle over “paycheck protection” is a battle over political power. Whenever and wherever Labor demonstrates its political clout, such as in the 2006 congressional elections and 2008 presidential contest, proposals to enact “paycheck protection” will surface. If the prospects appear dim at the federal level, which they certainly do in the short term after Obama’s historic election and Democratic gains in the U.S. House and Senate, efforts will still emerge at the state and local levels, and within the courts. “Paycheck protection” will remain a never-ending struggle between Labor and its foes.

The Use of Union Dues for Political Purposes: Key Statutes and Supreme Court Decisions

Current federal law regulates the extent to which unions may spend dues or other regular income for political purposes in congressional and presidential elections (for a comprehensive review, see Corrado et al. 2005). These restrictions are embedded in campaign-finance statutes. Numerous U.S. Supreme Court decisions, beginning in the early 1960s, address the extent to which nonunion employees covered by union-security provisions may object to the use of their union fees for political (and other nonbargaining) purposes.

Table 2 highlights the principal statutes and selected court decisions. The Taft-Hartley Act of 1947 represented the first permanent statutory limit on union political spending at the federal level (its precursor Smith-Connelly Act of 1942 was a temporary war-time measure). Taft-Hartley banned direct union contributions to and expenditures for federal candidates in general and primary elections. The Federal Election Campaign Act (FECA) of 1971 (as amended) established more elaborate perimeters within which unions may spend money to influence electoral politics. It prohibited unions from using dues or other regular income for direct contributions or expenditures to influence congressional or presidential campaigns, carrying forward the Taft-Hartley ban, but permitted the use of these monies to communicate political information to members and enabled unions to sponsor get-out-the-vote drives, which may, according to subsequent interpretation by the Federal Election Commission, be partisan in nature (Federal Election Commission 2001). It also allowed unions to create “separate segregated funds” to raise money on a voluntary basis to...
finance PACs, which may contribute up to $5000 to a congressional or presidential candidate per election ($10,000 across primary and general elections). PAC money may be used for other political purposes as well, such as media advertising on behalf of a candidate or cause.

### TABLE 2

<table>
<thead>
<tr>
<th>Statute</th>
<th>Summary</th>
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<tbody>
<tr>
<td>Taft-Hartley (1947)</td>
<td>Prohibits unions from making direct contributions or expenditures in connection with federal elections</td>
</tr>
<tr>
<td>Federal Election Campaign Act (1971)</td>
<td>Enables unions to establish political action committees (PACs) to raise money from members voluntarily and to contribute, within specified limits, such funds to federal candidates</td>
</tr>
<tr>
<td>Bipartisan Campaign Reform Act (2002)</td>
<td>Forbids unions from contributing treasury funds to political parties and limits “electioneering communication”</td>
</tr>
<tr>
<td>Case</td>
<td></td>
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<tr>
<td><strong>Machinists v. Street</strong>, 367 U.S. 740 (1961)</td>
<td>Section 2, Eleventh [of the Railway Labor Act] denies the unions the power over an employee’s objection to use his exacted funds to support political causes which he opposes</td>
</tr>
<tr>
<td><strong>Abood v. District Board of Education</strong>, 431 U.S. 209 (1977)</td>
<td>The Constitution requires that a union’s expenditures for ideological causes not germane to its duties as a collective bargaining representative be financed from charges, dues, or assessments paid by employees who do not object to advancing such causes and who are not coerced into doing so against their will by the threat of loss of government employment</td>
</tr>
<tr>
<td><strong>Communications Workers v. Beck</strong>, 487 U.S. 735 (1988)</td>
<td>Section 8(a)(3) [of the National Labor Relations Act] does not permit a union, over the objections of dues-paying nonmember employees, to expend funds collected from them on activities unrelated to collective-bargaining activities</td>
</tr>
<tr>
<td><strong>United Food and Commercial Workers Union, Local 1036 v. National Labor Relations Board</strong>, 307 F.3d 760 (2002)</td>
<td>Under Section 8(a)(3) of the NLRA, a union serving as a bargaining unit’s exclusive bargaining representative is permitted to charge nonmembers the costs involved in organizing, at least when organizing employers within the same competitive market as the bargaining unit employer</td>
</tr>
<tr>
<td><strong>Davenport et al. v. Washington Education Association</strong>, 551 U.S. 177 (2007)</td>
<td>It does not violate the First Amendment for a state to require its public-sector unions to receive affirmative authorization from a nonmember before spending that nonmember’s agency fees for electioneering purposes</td>
</tr>
</tbody>
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Before the Bipartisan Campaign Reform Act (BCRA) of 2002, which further amended the FECA, unions and other groups had found ways to circumvent bans on the use of dues for political activities in connection with federal elections. Specifically, they had exploited the device of “soft money” to finance “issue ads” and “nonfederal” party-building activities. The Federal Election Commission had interpreted the law to allow unions (and corporations as well as individuals) to give money, in unlimited amounts, to national parties (e.g., the Democratic National Committee, Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee) to promote grassroots activities aimed at the state and local level. It had also allowed, consistent with the Supreme Court’s ruling in *Buckley v. Valeo* (1976), unions to use dues to pay for political ads that sought to inform voters on the issues and candidates’ positions on the issues, as long as the ads did not explicitly urge support for or against a specific candidate. Soft-money spending from unions and other groups exploded in the 1990s, provoking public outrage (Magleby and Quin Monson 2004). In response, Congress passed the BCRA (popularly known as McCain-Feingold, after its senatorial sponsors) in 2002. It banned soft money and prohibited “electioneering communications” by unions (and corporations). It defined such communications as identifying specific federal candidates in broadcast media within 30 days before a primary or 60 days before a general election. This ban attempted to pull the curtain down on issue ads that had become literally indistinguishable from so-called “express advocacy,” excepting the omission of so-called magical words such as “vote for” or “vote against.”

The U.S. Supreme Court, however, has ruled in *Federal Election Commission v. Wisconsin Right to Life, Inc.* (551 U.S. 449 2007), that ads related purely to issues do not violate the BCRA, even if they mention a federal candidate. To violate the law, these ads must be “functionally equivalent” to express advocacy ads. This ruling opened the door for union and corporate treasury-financed issue ads during the proscribed “electioneering communications” time frames in the recent 2008 presidential and congressional elections.

At the same time, the BCRA continued to allow unions to finance an unlimited amount of express ads, issue ads, and electioneering communications through voluntarily raised PAC money. Unions could also fund issue ads with

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3 In *Buckley v. Valeo*, 424 U.S. 1 (1976), the U.S. Supreme Court distinguished between issue advocacy and express advocacy. The latter urged support for or against a candidate, while the former did not, even though the candidate might be mentioned or featured in the ad.
dues outside the prohibited time frames. Further, just as the soft-money loop-
hole was closed, a new one (527 committees) opened. Unions had taken
advantage of an Internal Revenue Code (Section 527) provision that effectively
allowed political organizations to raise money for issue ads. Parenthetically,
no limits have been imposed on how much unions can spend, from dues or
other regular income, on lobbying lawmakers, so long as these expenditures
do not violate bans on bribery or gift-giving that apply to all interest groups
that employ lobbyists. (‘‘Workers paycheck protection’’ laws aim directly at
Labor’s capacity to exact dues for such political purposes.)

Federal labor laws, including the Railway Labor Act and the National Labor
Relations Act, allow unions to negotiate so-called ‘‘union-security’’ arrange-
ments which compel the payment of union dues or equivalent fees from non-
union employees in duly recognized bargaining units. Under these
arrangements, unions exact payments (i.e., agency fees) which are used to
finance a variety of representational activities, from collective bargaining and
contract administration to organizing and political action. It is the use of
agency fees for political purposes that raises special legal dispute, a matter put
before the U.S. Supreme Court on several occasions.

Specifically, the Court first addressed the issue of using nonmembers’ pay-
ments for political purposes in the context of the Railway Labor Act. In Inter-
national Association of Machinists v. Street (1961), the Supreme Court held
that unions may not make political expenditures against the objection of non-
members. Two years later, the Court, in Railway Clerks v. Allen, established a
mechanism by which nonmember agency-fee payers may object and receive a
pro rata rebate for objectionable political expenditures.

The Supreme Court extended similar objector rights to public-sector
employees in Abood v. District Board of Education in 1977. In Communica-
tions Workers of America v. Beck (1988), it interpreted the National Labor
Relations Act as offering the same protection as the Railway Labor Act.
Because of its comprehensive legal swath, Beck galvanized opposition to com-
pulsory union political spending, spurring the various efforts to enact ‘‘worker
paycheck protection’’ in Congress and among the states. It led specifically to
presidential executive orders to require federal contractors to notify their
employees of their so-called Beck rights. President George H.W. Bush issued
Executive Order 12800 in 1992, which President Clinton rescinded in 1993
(E.O. 12836). The forty-third president, George W. Bush, issued an order on

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4 527 committees fall under Section 527 of the Internal Revenue Code. The Center for Responsive
Politics defines them as ‘‘tax-exempt organizations that engage in political activities, often through unlimited
soft money contributions.’’ See ‘‘527 Committee Activity: Top Federally Focused Organizations’’ (http://
www.opensecrets.org/527s).
February 17, 2001, reinstating the Beck-notification requirement. In *Davenport v. Washington Education Association* (2007), the Court took these protections a step further, upholding a statutory requirement that public-sector nonmember fee-payers “opt-in” to political spending, or grant prior consent, as opposed to objecting after the fact.

In allowing nonmembers to object to political spending, the Court drew a distinction between union activities that (1) were nonobjectionable and (2) objectionable. In situations where nonunion employees (employees who do not join a union formally) are compelled by union-security agreements to pay dues, the Supreme Court has held that the Railway Labor Act, National Labor Relations Act, and state public-employee bargaining laws may not compel the extraction of dues, any portion of which goes to political actions against the objections of a nonunion employee. The touchstone is germanness to collective bargaining and contract administration. Political expenditures are not perceived as so germane. As the Court stated in *Beck*, the Court stated: “Section 8(a)(3) [of the National Labor Relations Act] does not permit a union, over the objections of dues paying nonmember employees, to expend funds collected from them on activities unrelated to collective-bargaining activities.” However, there is still debate about the extent to which other types of spending, such as expenditures on behalf of organizing new members, is germane to collective bargaining. In one appellate case, a federal court ruled that union organizing in the same industry is in fact germane and thus sustained.

A summary of existing statutory and case law reveals that unions may raise money from their members on a voluntary basis and spend such funds for virtually any purpose in politics, partisan or nonpartisan, including lobbying lawmakers. The principal limitation is the amount PACs can give to candidates and other political committees, which is capped by the FECA, as amended. However, unions may not use dues, from members and nonmembers alike, to finance such contributions nor may they expend such money on proscribed electioneering communications and other partisan-related activities. Dues may be used to finance internal communications and lobbying, plus supporting 527-type committees. The use of nonmembers’ dues, which are compelled via union-security arrangements, for political purposes, to which these employees object, is what the Supreme Court has consistently refused to sustain, either on constitutional or statutory grounds. Unions must grant nonmembers who so object a mechanism by which the political portion of their dues is rebated or deferred. “Paycheck protection” proposals at the national and state levels are intended to embed and/or extend this case law into statute.
Union Political Spending: Aggregated and Disaggregated Estimates

How much do unions spend on political activity relative to dues (and other employee-based receipts) collected from members and nonmembers who make payments, compulsory or not? Until recently, no requirement existed for unions to report publicly their political spending financed from regular income, though they have been required to report PAC contributions and expenditures under the FECA. The new U.S. Department of Labor financial-disclosure forms, which took effect in 2005, require unions to disclose their total political expenditures and itemized accounts of pertinent spending. Schedule 16 (“Political Activities and Lobbying”) of the revised LM-2 form requires each reporting union to disclose (U.S. Department of Labor 2004: 31):

- the labor organization’s direct and indirect disbursements to all entities and individuals during the reporting period associated with political disbursements or contributions in money. Also report the labor organization’s direct and indirect disbursements to all entities and individuals during the reporting period associated with dealing with the executive and legislative branches of the Federal, state, and local governments and with independent agencies and staffs to advance the passage or defeat of existing or potential laws or the promulgation or any other action with respect to rules or regulations (including litigation expenses).

The DoL (2004: 31) regulations define a political disbursement or contribution as:

one that is intended to influence the selection, nomination, election, or appointment of anyone to a Federal, state, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda…. Include disbursements for communications with members (or agency fee paying nonmembers) and their families for registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), disbursements to political organizations as defined by the IRS in 26 U.S.C. 527, and other political disbursements.

These disclosure regulations require a comprehensive reporting of union political expenditures at national, state, and local levels, excluding PAC contributions and expenditures which are financed separately on a voluntary basis.

Table 3 presents data on Labor’s (1) political spending as reported in available 2006 financial disclosure forms filed with the DoL and, for comparative purposes, (2) electoral contributions made to federal candidates in the 2005–2006 election cycle (i.e., PAC contributions and contributions made by individuals who are officers or employees of a labor organization). It shows
spending and contributions reported by all labor organizations (at local, regional, and international/national levels) filing LM-2 forms and by fifty-nine of the largest national unions in terms of membership. Finally, we report political spending, excluding electoral contributions, as a percentage of dues in 2006. We exclude the electoral contributions from the calculations because they are financed outside of the regular income stream of unions, as required under federal campaign-finance laws.

Labor organizations reported slightly more than $413 million in expenditures on political activities in 2006, from a dues income of almost $9.7 billion, spending nearly 4.3 percent of their income on political action. The fifty-nine major international/national unions spent approximately $186 million on politics, or about 6.4 percent of their dues income. In the 2005–2006 election cycle, all unions contributed $66.3 million to federal candidates. The fifty-nine major unions contributed $61 million.

These data reveal that unions spend a sizable amount of dues money, in absolute terms, on political action. They also give significantly through voluntarily raised contributions to federal candidates. As a share of dues, however, the spending seems relatively minor. Further, much of Labor’s overall spending in politics is made by and local and regional affiliates of large unions. The fifty-nine major international/national unions account for 45 percent of total political spending, even though they spent a relatively higher percentage of their dues-based income.

Nonmember dues-payers’ objections apply to specific unions, and these aggregated data may mask considerable interunion variation in political spending. Table 4 shows the total amount of political spending reported by the largest twenty national unions in 2006. Total spending varied from $758,531

5 The dues number includes information reported on two lines of the LM-2 form in “Cash Receipts”: line 36, “Dues and Agency Fees,” and Line 37, “Per Capita Tax.” It does not include cash receipts that labor organizations collected on behalf of affiliates for transmittal to them. Some local and regional organizations pay per capita taxes to higher-level affiliated units.
(Plumbers) to almost $34.2 million (AFSCME). Only five of these twenty unions spent more than 10 percent of their dues on political activities, with the highest being AFSCME at about 25 percent.

"Worker Paycheck Protection" Initiatives

U.S. Supreme Court decisions have failed to deter union political spending. Opponents of compulsory-funded union political expenditures argue that one reason why it is so is that most employees are unaware of their Beck-type rights to object to such spending (see “Use of Dues for Politics,” at the Center for Union Facts’ web site: http://www.unionfacts.com). In addition, they argue that unions make it difficult for employees to “opt out” by failing to provide accurate data on political spending, creating a cumbersome bureaucracy to comply with union-established objection procedures, and denying objectors the right to join a union (Wilson 1998a,b).
As a result, several states and the Congress have considered and adopted proposals to strengthen employees’ rights in the area. While classified under the general rubric of “worker paycheck protection,” these initiatives have differed in several key respects, which have important implications for their probable effects on union political spending.

Specifically, “paycheck protection” initiatives have differed along four dimensions (see Table 5). First, they have varied in the scope of industry covered, with some focusing only on public-sector unions. Second, initiatives have diverged in whether or not they cover nonmember dues-payers only or reach union members themselves. Third, policies have offered different definitions of political expenditures, with some focusing narrowly on contributions made to electoral campaigns. Finally, the potentially most significant policy variation has emerged over whether to codify an opt-out requirement, a la pre-Davenport court rulings, or to mandate an “opt-in” provision requiring prior consent. In its most extensive form, “worker paycheck protection” (1) covers public- and private-sector unions; (2) grants dissenting rights to union members as well as nonmember dues-payers; (3) defines political action to encompass lobbying as well as electoral contributions and expenditures; and (4) requires prior written consent before allowing any portion of dues to be spent for political purposes.

Six states have adopted a version of worker paycheck protection, though Ohio’s has been invalidated by court ruling and Idaho’s has been partially invalidated (i.e., with respect to local government employees) (see Table 6). Numerous other states have considered such laws, including California, whose voters have rejected two paycheck protection propositions in statewide referenda. (Colorado voters rejected a ballot initiative [#49] in November 2008 which might have limited unions’ ability to use dues for political purposes.) Congress has also considered several “paycheck protection” initiatives, particularly in the context of debating campaign-finance legislation. In 1997, for

### Table 5

**Policy Differences in “Worker Paycheck Protection”**

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<tr>
<th>Sector</th>
<th>Employee</th>
<th>Political activities</th>
<th>Mechanism</th>
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<tbody>
<tr>
<td>Private</td>
<td>Nonunion Employee</td>
<td>Electoral contributions</td>
<td>Objection (opt-out)</td>
</tr>
<tr>
<td>Public</td>
<td>Union employee</td>
<td>Electoral contributions and election-related expenditures</td>
<td>Prior consent (opt-in)</td>
</tr>
<tr>
<td>Private and public</td>
<td>Nonunion and union employee</td>
<td>Electoral contributions and expenditures, lobbying and other political spending</td>
<td></td>
</tr>
</tbody>
</table>
example, former Senator Nickles introduced S. 9, the “Paycheck Fairness Act,” and Representative Schaffer introduced the “Paycheck Protection Act” (HR.2608).

Three of the state laws (Michigan, Washington, and Wyoming) cover employees in both the private and public sectors. Idaho and Wyoming cover nonmember and union member dues-payers, though the latter covers only employees whose dues are automatically deducted. Four of the states (Idaho, Michigan, Washington, and Wyoming) define political activities mainly as electoral contributions. Three (Michigan, Washington, and Wyoming) have opt-in provisions.

### TABLE 6

<table>
<thead>
<tr>
<th>Initiatives</th>
<th>Sector</th>
<th>Employee</th>
<th>Political activities</th>
<th>Mechanism</th>
</tr>
</thead>
<tbody>
<tr>
<td>State laws</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>Public-employee unions</td>
<td>Nonunion employees and union members</td>
<td>Electoral contributions or expenditures (must be financed by separate segregated fund)</td>
<td>Opt-out</td>
</tr>
<tr>
<td>Michigan</td>
<td>Private- and public-employee unions</td>
<td>Nonunion employees</td>
<td>Electoral contributions</td>
<td>Opt-in</td>
</tr>
<tr>
<td>Ohio(^a)</td>
<td>Private- and public-employee unions</td>
<td>Nonunion employees</td>
<td>Electoral contributions</td>
<td>Opt-in</td>
</tr>
<tr>
<td>Utah</td>
<td>Public-employee unions</td>
<td>Nonunion employees</td>
<td>Electoral activities, and expenditures made to any political or legislative cause</td>
<td>Opt-out</td>
</tr>
<tr>
<td>Washington(^b)</td>
<td>Private- and public-employee unions</td>
<td>Nonunion employees</td>
<td>Electoral contributions</td>
<td>Opt-in</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Private- and public-employee unions</td>
<td>Nonunion employees and union members who make automatic contributions to a political fund</td>
<td>Electoral contributions</td>
<td>Opt-in</td>
</tr>
<tr>
<td>California referenda</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proposition 226</td>
<td>Private- and public-employee unions</td>
<td>Nonunion employees and union members</td>
<td>Electoral contributions and expenditures</td>
<td>Opt-in</td>
</tr>
<tr>
<td>Proposition 75</td>
<td>Public-employee unions</td>
<td>Nonunion employees and union members</td>
<td>Electoral contributions and expenditures</td>
<td>Opt-in</td>
</tr>
<tr>
<td>Federal</td>
<td>Private- and public-employee unions</td>
<td>Nonunion employees and union members</td>
<td>Electoral activities and lobbying</td>
<td>Opt-in</td>
</tr>
</tbody>
</table>

**Notes:**
- \(^a\)A court injunction has precluded implementation of Ohio’s law.
- \(^b\)Washington state amended its 1992 statute as regards “worker paycheck protection” in spring 2007. The amendment narrowed the definition of objectionable union political spending by stating that “A labor organization doesn’t use agency shop fees when it uses its general treasury funds to make such contributions or expenditures if it has sufficient revenues from sources other than agency shop fees in its general treasury to fund such contributions or expenditures.”
In California, voters rejected Proposition 226 in 1998 by a 53.5 percent majority. The defeated proposal covered private- and public-sector employees and nonunion and union employee dues-payers, defining political activities to include electoral contributions and expenditures, with an opt-in provision. Proposition 75, which was defeated in 2005 by a similar majority, had the same features, except for covering only the public sector.

The “Paycheck Fairness Act” (S.9), which was introduced on January 21, 1997, represented an expansive version of this type of law. It covered private- and public-employee unions and union members as well as nonmembers, with an opt-in provision. The proposed legislation would have made it unlawful “for any labor organization… to collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fee, or payment will be used for political activities” without prior, written, and voluntary consent. It defined political activities to include “communications or activities which involve carrying on propaganda, attempting to influence legislation, or participating or intervening in any political campaign or political party.”

Estimated Impacts of National “Worker Paycheck Protection”

What impact might a national “worker paycheck protection” law have on union political spending? This depends on (1) the existing baseline of dues-payers support for political spending; (2) how such a law is written; and (3) the amount Labor spends currently without such an encumbrance. The limited experience available with state-level “paycheck protection” laws suggests that these enactments could significantly reduce labor’s capacity to fund political action. Washington state’s “opt-in” provision, which is similar to what proposed national laws would provide, is instructive in this regard.

We have some evidence on the potential impact of worker paycheck laws on political spending. First, Sherk (2006) has estimated the impact of state laws on union electoral contributions in state-level races. (These contributions may be funded by dues in some states, unlike the case at the federal level.) He found that union contributions in states with these laws fell by about 50 percent. Second, in Washington state, the enactment of the paycheck initiative resulted in a drop in the Washington Education Association’s PAC enrollment rate (among employees represented by the union) from 82 percent in 1993–1994 to 15 percent in 1997–1998. Based on this limited evidence, we expect a paycheck protection initiative would decrease money for union political spending, if the law were of an “opt-in” type.
We present several scenarios on the potential impact of a national “opt-in” “paycheck protection” law which would cover not only nonmember dues-payers but also union member dues-payers. We acknowledge this is partially speculative, given uncertainty as to the level of “opting in” that would occur; the lower the level, the less money unions would have for political spending. To estimate these scenarios based on different rates of “opting in,” we use reported union political spending in 2006 in their LM-2 disclosure forms. Specifically, we estimate the drop off in spending of a 10 percent, 25 percent, 50 percent, and 75 percent refusal-to-opt-in rate (see Table 7). A 10 percent rate reduces spending among all unions from $413 million to just under $372 million, while a 75 percent rate cuts spending to $103.3 million (assuming, of course, unions have not realigned their expenditures to increase political spending). If 50 percent refuse to opt in, then spending shrinks to $206.6 million. Comparable numbers are shown for the fifty-nine major national unions.

### Table 7

**Estimated Reduction in Union Political Spending ($) Under Different Refusal-to-opt-in Rates**

<table>
<thead>
<tr>
<th>Sample</th>
<th>Total political spending</th>
<th>10%</th>
<th>25%</th>
<th>50%</th>
<th>75%</th>
</tr>
</thead>
<tbody>
<tr>
<td>59 Major unions</td>
<td>186,007,882</td>
<td>167,407,094</td>
<td>139,505,912</td>
<td>93,003,941</td>
<td>46,501,971</td>
</tr>
<tr>
<td>All labor organizations</td>
<td>413,149,006</td>
<td>371,834,105</td>
<td>309,861,755</td>
<td>206,574,503</td>
<td>103,287,252</td>
</tr>
</tbody>
</table>


Implications for Labor’s Political Voice

Enactment of a national “worker paycheck protection” law clearly has the potential to shrink Labor’s capacity to spend money on politics by large amounts. The next logical question is the extent to which reduced spending would diminish Labor’s political effectiveness and voice. While money does not guarantee influence, it is essential to modern-day communications and grassroots activism in politics. It is difficult for any individual or group to operate in politics on a sizable scale without money, and lots of it. The lack of money makes it nearly impossible to communicate via mass, or broadcast, media, though the Internet is enabling broader communications in a less expensive manner.

Obviously, reduced funding for political action lessens Labor’s capacity to hire lobbyists, produce and air political ads, manage get-out-the-vote drives,
raise money for PACs, and communicate with their members through campaign-related literature. In addition, it changes Labor’s position relative to other interest groups, including businesses and ideological organizations which compete for political influence. We offer some preliminary evidence on how a “paycheck protection” law would affect Labor’s political spending relative to other interest groups at the federal level.

Table 8 reports political spending by major industry sector in three categories: electoral contributions to federal candidates (2005–2006 election cycle); lobbying expenditures (2006 calendar year); and 527-committee expenditures (2005–2006 election cycle). (While neither unions nor corporations may use dues or regular treasury income for electoral contributions, they may use these sources to finance lobbying and 527 committees.) The data show that labor ranked sixth among industry sectors in electoral contributions, tenth in lobbying expenditures, and second in 527 expenditures. Overall, it ranked eighth among the sectors.

A “worker paycheck protection” law could reduce labor’s spending in all three categories, although it focuses on dues-financed political activities. It would directly reduce the money Labor has to raise PAC dollars. By requiring union members to consent to dues-financed political spending, this “opt-in” law might have a ripple effect on all forms of political support. Labor’s relative position would certainly recede even further than at present under a

<table>
<thead>
<tr>
<th>Sector</th>
<th>Electoral contributions ($)</th>
<th>Rank</th>
<th>Lobbying expenditures ($)</th>
<th>Rank</th>
<th>527-Committee ($)</th>
<th>Rank</th>
<th>Total spending ($)</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agribusiness</td>
<td>44,628</td>
<td>9</td>
<td>91,025</td>
<td>8</td>
<td>135,762</td>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communications/Electronics</td>
<td>68,731</td>
<td>5</td>
<td>329,937</td>
<td>3</td>
<td>398,987</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction</td>
<td>54,421</td>
<td>7</td>
<td>39,498</td>
<td>9</td>
<td>94,149</td>
<td>11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defense</td>
<td>16,448</td>
<td>11</td>
<td>110,479</td>
<td>7</td>
<td>110,429</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy/National resources</td>
<td>46,356</td>
<td>8</td>
<td>234,188</td>
<td>4</td>
<td>280,651</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finance/Insurance real estate</td>
<td>251,807</td>
<td>1</td>
<td>367,950</td>
<td>1</td>
<td>620,651</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Health</td>
<td>98,644</td>
<td>4</td>
<td>351,139</td>
<td>2</td>
<td>450,789</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyers/Lobbyists</td>
<td>146,147</td>
<td>3</td>
<td>27,741</td>
<td>11</td>
<td>173,889</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transportation</td>
<td>39,867</td>
<td>10</td>
<td>190,509</td>
<td>5</td>
<td>230,376</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Labor</td>
<td>66,302</td>
<td>6</td>
<td>30,624</td>
<td>10</td>
<td>147,489</td>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ideology/Single issue</td>
<td>182,924</td>
<td>2</td>
<td>123,784</td>
<td>6</td>
<td>320,246</td>
<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

“paycheck protection” law. A 50-percent reduction in spending would lower Labor’s rankings to next to last in electoral contributions and last place in lobbying expenditures, although it would remain the leader in the 527 area. It would reduce its ranking in overall political spending from eighth to last place among sectors.

The 2008 presidential and congressional elections offer some insight into what impact a “worker paycheck” law might have had. In these elections, Labor spent over $400 million to elect a Democratic president and expand the Democrats majorities in the House and Senate (Maher 2008). The AFL-CIO alone pledged to commit $53.4 million on grassroots activities in these elections, deploying more than 200,000 volunteers. An additional 3.5 million Democrats were registered to vote during presidential primaries.

With labor’s help, Democrats won the White House and increased their majorities in the House and Senate. Obama won a solid electoral majority, and Democrats gained twenty seats in the House and at least six in the Senate. While these victories cannot be ascribed solely to organized labor, no one doubts that the volunteerism, micro-vote-targeting technology, and massive communications unions provided was of considerable value. A “worker paycheck protection” law, particularly of an opt-in variety, would have limited Labor’s capacity to fund these efforts. Through the sheer weight of its political apparatus, Labor ensured that issues like the Employee Free Choice Act will receive attention early in an Obama administration. John Sweeney, AFL-CIO president, said immediately after the election results were known, “It [the Employee Free Choice Act] is the most important issue that we have” (Maher 2008).

REFERENCES


