Labor Political Action and the Taft-Hartley Act

Don M. Chang

Hawaiian Federation of Labor, A.F.L.

Follow this and additional works at: https://digitalcommons.unl.edu/nlr

Recommended Citation

Available at: https://digitalcommons.unl.edu/nlr/vol33/iss4/5
LABOR POLITICAL ACTION AND THE TAFT-HARTLEY ACT
Don Mark Chang*

It is often debated whether unions should “go into politics;” really they have no choice in the matter. They are automatically in politics because they exist in a legal and political system which has been generally critical of union activities.—Reynolds, Labor Economics and Labor Relations 111 (1949).

With organized labor’s growth in numerical strength and ascendancy in economic power came increased participation and effectiveness in political action. Efforts to advance the welfare of its members have been coordinated with vast political programs designed to effect broad national policy. For successful implementation of labor’s economic programs depends on the fashioning of a legal climate favorable to the collective bargaining process.

However, while there has been development of striking proportions over the past century in this area, certain factors have presented and continue to present serious difficulties in effectuating planned political action. Primary among these are socio-economic factors—for example, lack of political solidarity among union members, their political apathy, and their ignorance stemming largely from inadequate union education programs. Also, there are factors relative to the American electoral system which have served to impede political action. A third obstacle has been recently introduced: the sweeping ban imposed by section 304 of the Taft-Hartley Act on contributions or expenditures in connection

* Counsel and Director of Research and Education, Hawaiian Federation of Labor, A.F.L.

1 Daugherty and Parrish, The Labor Problem of American Society 243, 244 (1952); Millis and Brown, From the Wagner Act to Taft-Hartley 77 (1950); Whitney, Government and Collective Bargaining 247-254, 266-268 (1951); Peterson, American Labor Unions 27-34, 62, Table I (1952).

2 Labor’s range of concern with government has developed as a matter of practical necessity, in view of government’s increasingly important role in the economic and social affairs of the nation. See Section I of this article.

3 The elections of 1950, particularly the Ohio Senatorial race, showed that unless unionists are adequately educated in these respects, they will repudiate exhortation, reject a nondescript labor-endorsed candidate, and act independently at the polls. See Daugherty and Parrish, op. cit. supra note 1, at 419-421; N.Y. Times, Jan. 15, 1953, p. 19, cols. 1, 2, and 3. Also see Moore, Industrial Relations and Social Order 578-88 (1951); Reynolds, Labor Economics and Labor Relations 132 (1949); Mills, The Men of Power 172, 180 (1948); Peterson, op. cit. supra note 1, at 39, 40; Daugherty and Parrish, op. cit. supra note 1, at 239-49; Gaer, The First Round 61 (1944); Rosenfarb, Labor’s Role in the Election, 8 Pub. Op. Q. 376, 384-385 (1944).

4 “Even if workers cast ballots in proportionately equal numbers to the population at large, industrial wage earners would be politically disadvantaged because of our prevailing electoral systems which favor rural, nonindustrial areas, with the result that legislation sponsored by labor is frequently defeated by legislators who have little need to concern themselves about labor’s reaction.” Peterson, op. cit. supra note 1, at 38.
LABOR POLITICAL ACTION AND THE TAFT-HARTLEY ACT  

with federal elections.\(^5\) In addition to questions as to scope and constitutionality, this provision has presented broader questions of policy which should be reanalyzed. What effect has it had on labor political action? Should unions be limited in their political role?

I. Unions In Politics

Contrary to popular belief, organized workers have engaged in various kinds of political activity for well over a century.\(^6\) Two patterns of political behavior have been developed. One is directed at the establishment of independent electoral parties on a local, state, or national scale.\(^7\) Another is that of nonpartisan political action.\(^8\) Perhaps the distinctive feature of the American labor movement has been the dominance of this nonpartisan pattern. But this is not to say that the possible organization of a labor-based third party has been rejected. On the contrary, there exists considerable sentiment favoring independent political action.\(^9\)

Ever since their formation, both the CIO and the AFL have followed a policy of nonpartisanship.\(^10\) They have done so for a number


\(^6\) David, One Hundred Years of Labor in Politics, The House of Labor 90 (Hardma and Neufield ed. 1951); Daugherty and Parrish, op. cit. supra note 1, at 231-239; Sumner, Political Programs of Labor—1830, Unions, Management and the Public 222-223 (Bakke and Kerr ed. 1948).

\(^7\) Independent electoral labor party movements in this country have been traditionally associated with the "radicals," "progressives," socialists and communists. For excellent accounts of these movements up to the 1930's, see Reynolds, op. cit. supra note 3, at 99-104, tables at 110-111; Millis and Montgomery, Organized Labor 123-128, 147-149 (1945). For an account of labor parties since 1930, see David, op. cit. supra note 6, at 104-110; Fred E. Haynes, Third Party Movements Since the Civil War (1916); Millis and Montgomery, op. cit. supra note 7, at 238-242.

\(^8\) There are three assumptions on which nonpartisanship is based: (1) that participation in party politics would be a divisive and distractive activity and would thereby lessen interest in trade union matters; (2) that neutrality would be the more effective political tactic, since candidates must bid for labor's support by supporting its program, and since no automatic endorsement would be forthcoming; and (3) that neutrality is in any case far less risky in that the defeat of any party would not result in loss of political influence. Peterson, op. cit. supra note 1, at 36; David, op. cit. supra note 6, at 94, 95.

\(^9\) "Within the CIO, there has always existed a body of lively sentiment favoring independent political action. Some of its leaders, notably Walter P. Reuther, have made it quite clear that they look forward to the ultimate creation of a labor-based third party." David, op. cit. supra note 6, at 107. See also The Boss of the Teamsters Rides High, Life, Apr. 19, 1954, p. 123; Peterson, op. cit. supra note 1, p. 36n.

\(^10\) Ever since its founding in 1886, the AFL has criticized political participation by labor as "extravagant expenditures" of organized labor's limited resources. Moreover, its Constitution bars every kind of party politics from its annual convention. But in a precedent-breaking move in the past Presidential campaign, the Convention endorsed Governor Adlai E. Stevenson, Democratic nominee, while delegations from five AFL locals silently protested this partisan action. N.Y. Times, Sept. 24, 1952, p. 14, cols. 1, 6.
of reasons. Our traditional two-party system, coupled with an absence of class consciousness among the workers, have foredoomed third parties.\textsuperscript{11} This has probably been the most persuasive deterrent of all; for the experience of the Knights of Labor and many of its predecessors in their internal dissension and failure to do battle in all forty-eight states has led to their ultimate self-destruction. Additionally, the strength of party loyalties, constituting deeply-rooted social mores, operate against creation of a permanent labor party.\textsuperscript{12} In another aspect this factor presents a third reason, the heterogeneity of the members economically, socially, ethically, and hence the existence of a wide variety of interests and membership in other social groups.\textsuperscript{13} A fourth reason why workers prefer to keep old party ties is to be found in the American primary system of nominating candidates; insofar as organized labor is afforded a means of seizing control of the major parties, at least in theory, bipartisanship is encouraged.\textsuperscript{14} Moreover, these parties have been generally responsive to opportunistic rather than ideological considerations, so that they may serve labor's demands to insure victory.\textsuperscript{15}

Thus, nonpartisan policy may be implemented in three areas of the national political process: in the electoral area, either when legislative programs, party platforms are drawn up and candidates are nominated, or where elections are in progress; in the legislative process; and in the administrative process.\textsuperscript{16} Labor's methods of operations, then, may be viewed in three stages. The first of these involves the development of a legislative program to be supported by labor; such a program is

While the CIO, which has risen to power as a part of the New Deal since its formation in 1936, has been more prone to take a position and agitate for legislation further removed from the problems of trade unionism, it has likewise adopted non-partisan patterns in its political activities. But with the remedial and reform measures of the New Deal, organized labor acquired a new stake in politics, as a result of which the CIO has since consistently supported not only candidates and issues, but also the politics of the New Deal in its entirety, and hence widened the scope of its political action. See, e.g., CIO News 2, 3 (Aug. 18, 1952); Id. at 5-8 (Sept. 24, 1952); Id. at 2 (July 28, 1952).

See, generally, Barbash, Labor Unions in Action 146-148 (1948); Daugherty and Parrish, op. cit. supra note 1, at 240-242; David, op. cit. supra note 6, at 91-94, 104-107; Millis and Montgomery, op. cit. supra note 7, at 232-238.

\textsuperscript{11} Daugherty and Parrish, op. cit. supra note 1, at 408, 409.

\textsuperscript{12} Daugherty and Parrish, op. cit. supra note 1, at 408, 409, liken these emotional responses to religious faith. See note 3 supra.

\textsuperscript{13} Peterson, op. cit. supra note 1, at 38; Daugherty and Parrish, op. cit. supra note 1, at 409; Moore, op. cit. supra note 3, at 578-588; Millis and Montgomery, op. cit. supra note 7, at 13-18.

\textsuperscript{14} Daugherty and Parrish, op. cit. supra note 1, at 409, 410.

\textsuperscript{15} Id. at 411. Also see David, op. cit. supra note 6, at 98, 99; Rosenfarb, op. cit. supra note 3, p. 384.

\textsuperscript{16} See Barbash, op. cit. supra note 10, at 148-155; David, op. cit. supra note 6, at 95; Reynolds, op. cit. supra note 3, at 122; CIO News 5 (Jan. 12, 1953).
worked out in the councils of high union officers and in union national conventions. Correlative to this is the selection and endorsement of a candidate who either shows a record supportive to labor or makes a satisfactory pledge endorsing labor's platform.

Getting out the vote and campaigning for endorsed candidates are the next steps. Unions have probably utilized the widest variety of techniques in these electoral activities and more recently have done so on a scale unprecedented in American labor political action. These activities have centered around independent organizations established by national labor unions and financed by voluntary contributions. Chief among these are those of the CIO and the AFL. When widespread expressions in the daily press and in Congress revealed a trend to curb New Deal labor gains and union participation in politics, the 1943 Convention of the CIO organized the Political Action Committee to carry on political activity on a more direct and vigorous scale.

---

17 See, e.g., CIO News 5-8 (Sept. 22, 1952), presenting a digest of the proposals which the CIO presented to the Democratic and Republican National Conventions, comparing them to the comparable planks in the party platforms. Also see 59 American Federationist No. 8, 5-7 (Aug., 1952); 175 Nation 44-48 (July 19, 1952).

18 Organized labor almost unanimously threw the weight of their support behind the 1952 Democratic nominee, Governor Adlai Stevenson. See, e.g., CIO News 3 (Sept. 1, 1952); 59 American Federationist No. 10, 4; N. Y. Times, Aug. 24, 1952, p. 1; Rosenfarb, op. cit. supra note 3, p. 382.

19 Barbash, op. cit. supra note 10, at 150. Rose, Union Solidarity (1952), conducted a study of the attitudes of rank-and-file union members on selected issues among the unions in St. Louis, Missouri. One set of questions purported to determine their attitudes relative to union participation in politics. Perhaps the most significant indications of the workers' attitudes were reflected in the answers to the question, "Should the union engage in politics in any one of the following ways?"

<table>
<thead>
<tr>
<th>Activity</th>
<th>Yes</th>
<th>No</th>
<th>Un-decided</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;tell members which candidates are friendly to labor&quot;</td>
<td>77.3</td>
<td>20.4</td>
<td>2.3</td>
</tr>
<tr>
<td>&quot;advise members how to vote&quot;</td>
<td>35.0</td>
<td>62.2</td>
<td>2.8</td>
</tr>
<tr>
<td>&quot;help to start a labor party sometime in the future&quot;</td>
<td>44.9</td>
<td>44.4</td>
<td>10.7</td>
</tr>
<tr>
<td>&quot;get union members to run for political office&quot;</td>
<td>69.1</td>
<td>25.3</td>
<td>5.6</td>
</tr>
<tr>
<td>&quot;encourage union members to go to the polls&quot;</td>
<td>92.1</td>
<td>5.1</td>
<td>2.8</td>
</tr>
<tr>
<td>&quot;collect a dollar from each member to help friendly candidates&quot;</td>
<td>55.7</td>
<td>40.6</td>
<td>5.7</td>
</tr>
<tr>
<td>&quot;spend union funds to get laws friendly to labor&quot;</td>
<td>71.7</td>
<td>23.5</td>
<td>4.3</td>
</tr>
</tbody>
</table>

20 Kroll, The CIO-PAC and How It Works, The House of Labor 121-122 (Hardman and Neufield ed. 1951); Keenan, The AFL-LLPE and How It Works, Id. at 114. For a complete account of PAC finances, see Overacker, Presidential Campaign Funds 55-71 (1946).

21 As a direct consequence of the passage of the Smith-Connally Act, 57 Stat. 163 (1943), 50 U.S.C. § 1501 (Supp. 1944), section 9 of which prohibited labor organizations from making “contributions” in connection with federal “elections," the CIO in July, 1943, created the Political Action Committee (PAC) to carry on political action directly. The Smith-Connally Act, in turn, was enacted as a consequence of the large sums contributed to the Democratic campaign by individual unions in the elections of 1936 and 1940. See further discussion of this matter in Section II infra.
At its convention in 1947 the AFL created a similar organization, Labor's League for Political Education. Both groups channelize their work through the administrative apparatus of constituent locals; both have viewed their primary function to be to gain "...the restoration of the rights of labor...and the realization of more sound and equitable labor relations." Together with other labor political leagues, the entire labor movement has been galvanized into political action, ranging from nationally televised shows and speeches to personal canvassing in local election precincts.

To secure post-election redemption of campaign pledges from successful candidates, organized labor has entered a third field of political activity. Consequently, lobbying committees have been maintained in Washington, functioning to have labor proposals enacted into law, oppose hostile measures, and carry on publicity campaigns to influence

While there has been widespread feeling, even within the ranks of labor, that the PAC's establishment represented a departure from traditional union political action, its activities up to the 1952 elections have been patently oriented to non-partisan policy. The militant nature of the organization, however, can only be understood if viewed in the context of the situation in which it was originally formed. In addition to losses in New Deal strength in the Congressional elections of 1942, there was mounting public expression of hostility to labor's active role in politics. See CIO Dept. of Research and Education 7, 8 (1951). For an account of the PAC's history, see Millis and Montgomery, op. cit. supra note 7, at 235-237. Statements of its purpose may be found in the Report to the Sixth Constitutional Convention of the CIO 52-53 (1943); CIO News 5 (Jan. 3, 1944); David, op. cit. supra note 6, at 107.

Like the PAC, the LLPE was established in 1947 AFL Convention, in large part a reaction to the enactment of the Taft-Hartley Act, and especially section 304. See Peterson, op. cit. supra note 1, p. 37.

Authorities generally agree that the PAC, from its inception, adopted a policy of more vigorous and militant activity than the LLPE, although there is no fundamental difference between the two organizations. See, e.g., Millis and Montgomery, op. cit. supra note 7, at 237, 238; Barbash, op. cit. supra note 10, at 148, 149; Peterson, op. cit. supra note 1, at 36, 37.

Comparable organizations in the larger independent unions are the International Association of Machinists' Nonpartisan Political League, and the Railway Labor's Political League established by the Railroad Brotherhoods. See, generally, Braunthal, American Labor in Politics, 12 Social Research 1 (1945).


On union expenditures in election campaigns, see Rosenfarb, op. cit. note 3, at 379; Reynolds, op. cit. supra note 3, at 122; and Overacker, op. cit. supra note 20, c. 3.
LABOR POLITICAL ACTION AND THE TAFT-HARTLEY ACT  559

public opinion. However, passage of a law does not insure effective and friendly administration, thereby necessitating labor participation in the increasingly important area of public administration. Commonly, representatives of labor have been given equal status with industry on various committees to administer, for example, the Fair Labor Standards Act. Moreover, they have served on advisory committees to government administrative bodies, and labor leaders have been assigned to key administrative posts.

The net effect of labor’s political activity is difficult to assess. Many authorities have attempted to do so. There is no question, however, of its value. For in addition to providing the worker with a representation of his interests in the national political arena and injecting the labor viewpoint into the “market place of ideas,” political action has enabled unions to seek and achieve its objectives in a direct and effective manner, through government.

Why do unions try to influence government? The answer is contained in three broad categories of organized labor’s political objectives. One of these embodies objectives applicable to workers in a particular industry and so are pursued by national unions operating in that in-

28 Such union participation in government administration reached its peak during World War II. Sidney Hillman, then President of the Amalgamated Clothing Workers, was co-director of the Office of Production Management, until that office was succeeded by the War Production Board—which agency continued to be staffed in large numbers by union leaders. On the War Manpower Commission, not only was labor given a vice-chairmanship, but it was equally represented on all of its various advisory committees. See Barbash, op. cit. supra note 10, at 152–153.
20 In addition, the Office of War Mobilization and Reconversion consisted of an advisory committee on which labor representatives served. Ibid.
21 On the other hand, this policy of equal representation was temporarily reversed shortly after the outbreak of the Korean War, at which time representatives of the AFL, CIO, and the Railway Executives Association formed a United Labor Policy Committee and protested its subordinate role in the mobilization program by walking out on government defense agencies. The Committee’s statement charged that these agencies “were staffed at its top level exclusively with men from the executive offices of business” who had no intention or desire to “give labor a real voice in the formulation of defense policy.” Labor Committee’s Statement on Quitting Defense Agencies (Feb. 28, 1951), quoted by Peterson, op. cit. supra note 1, at 43. The Administration subsequently adopted labor’s proposals for reorganizing the Wage Stabilization Board and delegating it authority to settle not only wage issues but also non-wage problems; moreover, a labor representative was appointed Assistant to the Director of Mobilization, and the Labor Committee lifted its boycott on the defense mobilization program.
28 See notes 28 and 29 supra and Barbash, op. cit. supra note 10, at 152–155.
51 See, e.g., Peterson, op. cit. supra note 1, at 39; Barbash, op. cit. supra note 10, at 146–148; Reynolds, op. cit. supra note 2, at 122; Rosenfarb, op. cit. supra note 3, pp. 376–390.
52 Justice Holmes, dissenting in Abrams v. United States, 250 U.S. 616, 630 (1919). This point is fully discussed in Section III infra.
dustry. The United Mine Workers, for instance, have been the most ardent spokesmen for federal legislation requiring the maintenance of mine health and safety standards, while the Brotherhood of Railroad Trainmen and other railway unions have promoted laws providing for government regulation of the railroads and federal employer liability legislation. Secondly, there are objectives, broadly characterized as egalitarian, which most unions have in common. Many have worked for reduction of every kind of economic, social, and political inequality; rights of political participation, greater education and vocational opportunities, an adequate and rising level of consumption and protection against the major types of economic insecurity have been demanded for workers. Finally, there are even broader objectives beneficial not only to workers but also to other groups in the economy. Generally, these include the various social welfare and other socio-economic measures.

---

34 Daugherty and Parrish, op. cit. supra note 1, at 237. The Bricklayers Union, through the AFL Housing Committee, is one of the most ardent spokesmen for large-scale housing programs, of the kind embodied in the Wagner-Ellender-Taft General Housing bill. See 59 American Federationist No. 8 at 8-10 (Aug. 1952).

35 Outstanding examples of this were the political programs adopted by the CIO and AFL Conventions in 1947 in preparation for the 1948 elections. The AFL Executive Council adopted and the Convention approved the following: support of Marshall Plan and extension of aid to foreign countries; support of the United Nations; reduction of excise taxes and other taxes on consumption, and increase in gift and estate taxes; support of the Wagner-Murray-Dingell bill to establish a system of insurance against costs of medical care; increase in minimum wages under FLSA; federal subsidizing of public housing projects to provide low rental housing accommodations for low-income families; and, of course, repeal of the Taft-Hartley Act. In addition to most of these items, the CIO adopted many other recommendations, including restoration of price controls, a “realistic” attack on monopolies in the basic industries, an FEPC law, a federal antilynch law, and a full slate of civil rights measures, reimposition of the war-time excess profits tax on corporations, federal aid to education, and extension of TVA principles to the Missouri Valley and Columbia Valley.

Recently, the CIO has vigorously protested the passage of the McCarran-Walter Immigration Act, e.g., CIO News 12 (May 19, 1952), and filed briefs amicus curiae with the Supreme Court supporting abolishment of segregation in the public schools, CIO News 6 (Nov. 24, 1952). See also the coverage of the defeat of a proposed amendment tightening the Senate cloture rule to facilitate passage of civil rights legislation in CIO News 3 (Jan. 12, 1953). Similarly the AFL has firmly and consistently supported sound medical insurance plans to alleviate high medical costs for wage-earners, 59 American Federationist No. 8 at 17 (Aug., 1952).

36 Ibid. Organized labor's advocacy of increased government intervention in these socio-economic fields does not rest on a doctrinaire socialist viewpoint, but rather on a pragmatic policy, based on the belief that the American industrial system should be operated primarily to serve human needs, and that a right to a decent and secure livelihood should be placed ahead of super-ficial property rights.

37 See note 34 supra.
The growth and success of labor’s political action in achieving many of these ends, however, has led to Congressional efforts to limit utilization of union funds for these purposes.

II. Section 304

It was not until 1943 that Congress adopted legislation designed to regulate union political activity. But section 9 of the Smith-Connally Act was limited in its scope to prohibiting “contributions” in connection with federal “elections,” thus excluding nominating procedures from its ban. Moreover, independently-created groups such as the CIO-PAC were held not to constitute “labor organizations,” so that their direct political action likewise fell beyond the purview of the law.

When organized labor quickly exploited these loopholes, Congressional investigating committees recommended, and the 80th Con-


However, three of these have been invalidated. See Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So.2d 810 (1944); AFL v. Reilly, 113 Colo. 90, 155 P.2d 145 (1944); AFL v. Bain, 165 Ore. 183, 106 P.2d 544 (1940). An attempt to present an initiative proposal to limit political contributions and expenditures by unions was forbidden by the Massachusetts Supreme Court because it violated the free press provision of the State Constitution. Bowe v. Secretary of the Commonwealth, 320 Mass. 230, 69 N.E.2d 115 (1946), discussed further in Section III infra.

The Texas prohibition, on the other hand, was upheld as a “reasonable regulation” by the Texas Supreme Court, since the law dealt only with “contributions” like the Federal Smith-Connally Act. AFL v. Mann, 188 S.W.2d 276 (Tex. Civ. App. 1945).

The following contain discussions of state legislation: Millis and Brown, op. cit. supra note 1, at 324-325, 328, 331; Dodd, Some State Legislators Go To War—On Labor Unions, 29 Iowa L. Rev. 148 (1944), and The Supreme Court and Organized Labor, 1941-45, 58 Harv. L. Rev. 1018, 1061 (1945); Kallenbach, The Taft-Hartley Act and Union Political Contributions and Expenditures, 33 Minn. L. Rev. 1, 9-11 (1949); Smith and DeLancey, The State Legislatures and Unionism, 38 Mich. L. Rev. 387 (1940); Note, 2 Wyo. L.J. 124 (1948); Note, 55 Yale L.J. 440 (1946).

88 See note 21 supra. These prohibitory provisions had no relation to the remainder of the Act, which was enacted as an emergency law to prevent wartime strikes. The Act expired by its own terms on June 30, 1947. See Note, The Smith-Connally Act, 3 Law. Guild Rev. 46, 50-51 (1943).

Newberry v. United States, 256 U.S. 232 (1921) limited the scope of federal control over elections to the general election.


90 Unions reorganized their financial structure, providing that political expenditures would be thereafter made from voluntarily contributed funds. See discussion in the text and citations at note 20 supra.

91 See notes 20, 21, 22, and especially 26 supra; see also Kallenbach, op. cit. supra note 37, at 6-7.
gress adopted, section 304, which encompasses two areas of political activity previously unregulated: (1) "expenditures" as well as "contributions" are now prohibited; and (2) these interdictions apply to general elections and all nominating procedures alike. In fact, they have been so broadly drawn that they have raised a multitude of questions of construction and constitutionality.

Section 304 provides in part as follows: "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5000; and every officer or director of any corporation, or office of any labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section shall be fined not more than $1000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both. For purposes of this section, 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purposes, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

Special investigation committees of the House and Senate recommended tightening of federal restrictions so as to extend to expenditures; but while the Senate group wanted to broaden the regulations to include all nominating procedures, the House Committee favored the original general election limitation. H.R. Rep. No. 2739, 79th Cong., 2d Sess. 39-40, 46 (1946); Sen. Rep. No. 1, pt. 2, 80th Cong., 1st Sess. 38-39 (1947). In the end the Hartley Bill was adopted by the House as recommended by the Committee, and the Senate acquiesced to the change. Hartley Bill, H.R. 3020, and Taft Bill, S. 1126. Ostensibly, the Section is an extension of corrupt practices legislation. That problem has been well covered by authoritative analyses and discussions. See authorities cited in Emerson and Haber, Political and Civil Rights 344-46 (1952).

"There can be little doubt of Congress' power to regulate the making of political contributions and expenditures by labor unions, as well as by other organizations and individuals in the interest of free and pure elections and the prevention of official corruption. . . ." Justice Rutledge, dissenting in the CIO case, 335 U.S. at 139. Article I, § 4 of the Constitution grants this broad regulatory power to Congress. United States v. Gradwell, 243 U.S. 476 (1917); cf. Smiley v. Holm, 285 U.S. 355 (1932). See generally Maurer, Congressional and State Control of Elections Under the Constitution, 16 Geo. L.J. 314, 324-27 (1928).

Since the Newberry case, the Supreme Court has reversed its position and extended federal control of elections to primaries as an integral part of the election process. United States v. Classic, 313 U.S. 299 (1941). This no doubt was a factor considered by Congress when it adopted Section 304.

Both the CIO and AFL attacked the "expenditures" extension, although they agreed to observe the bans on direct political contributions. See N.Y. Times, June 29, 1947, p. 1, col. 6, and Aug. 17, 1947, p. 17, col. 1.
Yet 304 has been subjected to only three judicial tests. Of these, the Supreme Court has spoken but once, that decision constituting the leading case in this field. In 1948, a federal grand jury indicted the CIO and its late president, Philip Murray, for publishing and distributing the CIO News to promote a Congressional candidate. The District Court dismissed the charges, finding that the provision abridged First Amendment freedoms. While the Supreme Court affirmed unanimously, five justices narrowed the issues to decide merely that the newspaper had been "distributed in the regular course to members or purchasers." This is true, in spite of the fact that the costs of publication are sustained by the union's general funds without regard to source. Moreover, the majority chose to "express no opinion as to the scope of this section where different circumstances exist and none upon the constitutionality of the section," even though 304, "if construed to prohibit the publication, by ... unions in the regular course of conducting their affairs, of periodicals advising their members ... of danger or advantage to their interests from the adoption of measures or the election to office of men espousing such measures, the gravest doubt would arise ... as to its constitutionality."

Applying this construction, two lower courts held that a Painters' and a Construction Union did not violate Section 304. In one case, political opinion was advertised in a daily commercial newspaper of general circulation and over a commercial radio station; in the other,

"United States v. CIO, 335 U.S. 106 (1948); United States v. Painters Local Union No. 481, 172 F.2d 854 (2d Cir. 1949); United States v. Construction and General Laborers Local Union, 101 F. Supp. 869 (W.D. Mo. 1951)."

A thousand copies of the edition containing the endorsement were published and circulated among union members living in the Third Congressional District of Maryland shortly before the special election of July 15, 1947. The Department of Justice initiated action eight months after the Act was passed. N.Y. Times, Feb. 12, 1948, p. 1, col. 5. Subsequent events leading to the indictment are described in the N.Y. Herald Tribune, Feb. 26, 1948, p. 1, col. 4, and Feb. 27, 1948, p. 1, col. 7. These proceedings were initiated only after both CIO and AFL had made several attempts to provoke the Justice Department into action. See N.Y. Times, Aug 11, 1947, p. 1, col. 5; July 11, 1947, p. 3, col. 2; Aug. 7, 1947, p. 11, col. 2; CIO News 1 (July 14, 1947).

77 F. Supp. 355 (D.D.C. 1948). The court had sustained a motion to dismiss the indictment on the grounds that because there was no "clear and present danger surrounding the enactment of this legislation," the abridgement of the First Amendment freedoms was unjustified.

Justice Reed wrote the majority opinion for Justices Reed, Burton, Jackson, and Chief Justice Vinson; Frankfurter, J., concurred separately. Justice Rutledge's dissent, concurred in by Justices Black, Douglas, and Murphy, is dealt with in Section III infra and has been quoted in note 42 supra.

335 U.S. at 111, 112.
42 Id. at 124.
43 Id. at 121.

51 United States v. Painters Local Union No. 481, 172 F.2d 584 (2d Cir. 1949). The indictment had been returned in two counts, the first against the union and the second against its president in his consent to the expenditures.
contributions of small sums were made to and expended by the union for its president, who was a Congressional candidate. Both decided this issue alone, but with undoubted regret that they were bound by the High Court ruling on 304's constitutionality.

Today, most of organized labor's political activity is financed through the various independent committees created for that purpose. Presumably, the earlier construction of "labor organization," excluding these groups from the definition of the phrase since they do not "deal with employers" concerning working conditions, is yet to be nullified. The sweeping terms of Section 304 make this a distinct possibility. So assuming, nearly all of labor's political activity would then be held to be financed from the general treasury, and a literal construction of the word "expenditures" would virtually prohibit all union political action. But the rationale in the CIO case and its

On January 2, 1948, the union placed an advertisement in the Hartford Times at the cost of $111.14, and paid $32.50 for a political broadcast. The checks were drawn from the union treasury, which was made up of union dues and fees. Judge Hincks overruled a defense motion to dismiss the indictment and held that is was "abundantly plain" that Congress intended to bring these actions within the scope of the Section. 79 F. Supp. 516 (D. Conn. 1948).

United States v. Construction and General Laborers Local Union, 101 F. Supp. 869 (W.D. Mo. 1951). Here, the union and its president and secretary accepted "contributions" in the form of services rendered by three employees of the union, and had made "expenditures" by paying persons wholly unconnected with the union for having devoted a considerable portion of their time to the political campaign, both contributions and expenditures having been made in connection with a federal "election." The union president was a candidate in the Fourth Congressional District in Missouri.

Judge A. Hand, writing for a unanimous court in the Painters case, said, "We should bear in mind the... important consideration that all of the Justices of the Supreme Court who participated in the CIO decision regarded the prohibition of the statute if applied to the facts of that case either as involving an undue abridgement of the rights of free speech, free press, and free assembly, or at best as of exceedingly doubtful constitutionality. Because of the similarity of the facts before us to those in the CIO decision,... we do not feel free to regard the issue of constitutionality as one completely of first impression. Under the circumstances, we are constrained to hold that the statute did not cover the publications effected by the defendants in the case at bar." 172 F.2d at 856. See also the language of the court in the Construction Union Case, 101 F. Supp. at 875; 47 Mich. L. Rev. 408 (1949); 96 U. of Penn. L. Rev. 888 (1948); 16 U.S.L. Week 3327 (1948). For a discussion of the CIO and the Painters cases, see Notes, 34 Va. L. Rev. 87 (1948); and 7 Wash. and Lee L. Rev. 87 (1950).

These prohibitions have equally serious implications for corporations. See the Construction Union Case, 101 F. Supp. at 875. See also Note 47, Col. L. Rev. 135 (1947). See also the President's veto message, N.Y. Times, June 21, 1947, p. 2, col. 7; N. Y. Herald Tribune, July 11, 1947, p. 1, col. 3.
thoroughgoing extension by the *Painters’* and *Construction Union* cases—merely to avoid a determination of 304's constitutionality—would seem to have effectively emasculated the statute.58

There were factual dissimilarities in both cases which cannot be overlooked. Unlike the CIO situation, the Painters’ Union, lacking its own publicity facilities, not only had no control over the newspaper's distribution, but the advertisement in the press and over the radio was addressed to the entire public.59 Moreover, even though the expenditures in the *Construction Union* case be trivial, they were clearly made “in connection with a federal election.”60 Labor unions are thus free, at least in Connecticut and the Western District of Missouri, to proceed with virtually unhampered political activity.61 And the national labor press may distribute its products freely.62

58 “If [Section 304] can be taken to cover the costs of any political publication by a labor union, I think it comprehends the ‘expenditures’ made in this case. By reading them out of the section, in order to not pass upon its validity, the Court in effect abdicates its function in the guise of applying the policy against deciding questions of constitutionality unnecessarily. I adhere to that policy. But I do not think it justifies invasion of the legislative function by rewriting or emasculating the statute.” Rutledge, J., dissenting in the CIO case, 335 U.S. at 129-130.

59 See the indictment returned in this case, Hartford Courant, Feb. 19, 1948, p. 1, col. 4. The Second Circuit said in support of its decision that since the union had no publication of its own, its use of the local press and radio was a “natural” means of communicating to its members; and the size of the audience reached could hardly be greater than that in the CIO case.

On the other hand, there are factual similarities in both CIO and Painters cases which would seem to be at odds with one of the few consistent distinctions drawn during Congressional debates. The majority decision in the CIO case turned not on the source of the funds expended for publication but on the newspapers' having been distributed “in its regular course;” the court there said that “The funds used may have been obtained from subscriptions of its readers or from... dues... , or from other general or special receipts.” 335 U.S. at 111. There was no question, however, that in the Painters case the union had drawn the advertisement expenditures from the “Union Treasury, which is made up of Union dues and fees.” 172 F.2d at 855.

Senator Taft, explaining the Section, had consistently distinguished as to the source of the funds, saying that if expenditures were made from union funds, the political activity would be illegal. And the Senate seemed to have accepted that explanation. See 93 Cong. Rec. 6436-37 (1947); N.Y. Herald Tribune, July 11, 1947, p. 1, col. 3; and Justice Rutledge’s dissent in the CIO case, 335 U.S. at 138-139.

60 The amounts generally involved were small—e.g., $20, $11.25, the highest disbursement being $200. The source of these funds was apparently assumed by the court to have been made from the union treasury, for it considered “not the degree of the activity, but the type of activity which would determine whether or not an expenditure had been made.” 101 F. Supp. at 876. Illegality under Section 304, then, as construed by this court, turns on the kind of political activity in which the union was engaged. Just where it would draw the line was not indicated.

61 There are no state laws comparable to Section 304 in these jurisdictions. See note 37 supra.

62 See note 26 supra.
Nonetheless, uncertainty as to how far unions may go in using their funds for political purposes has somewhat hampered labor's political program.

It has forced [the local unions, state and national bodies], which are the logical units for political action, to set up parallel organizations with separate facilities, separate titles, and separate financing. It prevents the ordinary union channel from collecting political funds, since the membership of a local union cannot vote by majority rule to have an assessment collected along with the next monthly dues. Each contribution must be collected on an individual basis. Complete sets of separate books with separate receipts and accounting systems had to be set up. In addition, complete records had to be kept of every single dollar contribution for purposes of reporting to Congress.\(^6\)

On the other hand, section 304 may have had more far-reaching and lasting beneficial effects—there have been strong indications that all branches of the labor movement, reconsidering former policies with regard to political action, have adopted long-range programs of more vigorous, concrete action than ever before.\(^6\) There are cogent reasons, then, why this statutory ban should be reanalyzed in terms of public policy.

\(^6\) Keenan, op. cit. supra note 20, at 115, statement was made with respect to AFL activities, though it is equally applicable to the CIO. See similar CIO statement quoted by Witney, op. cit. supra note 1, at 429-30.

\(^6\) Just as the enactment of the Smith-Connally Act led to the creation of the CIO-PAC, the AFL-LLPE was established as a direct consequence of Section 304. See notes 21 and 22 supra.

Senator Morse, opposing enactment of Section 304, warned that "Such attempts to weaken the political strength of labor will only serve to make the workers of this country more convinced than ever that they must take a very active part in politics if they are to protect their rights and freedoms." 93 Cong. Rec. 6606 (1947). "As Senator Morse expected, the immediate effect of . . . this provision was to stimulate political activity on the part of the unions," write Millis and Brown, op. cit. supra note 11, at 596. They continue, "Many of them used their papers to promote interest and spread information about the congressional campaigns. Many if not most worked to get their members registered and paid up as to poll tax, where that was necessary, and to be sure that they voted. The labor political organizations set up and financed on the basis of voluntary contributions were active, though they never achieved their aim of getting contributions from every member. In fact, the reports to the House Clerk on expenditures in the 1948 campaign showed a total collected by six major organizations of only $696,004 [citing Daily Labor Report, No. 211; A-1 (October 28, 1948)], with the PAC reporting donations of $306,720, the LLPE $243,024, Railway Labor's Political League $79,249, Labor's League for the Election of Truman and Barkley $32,535, the Trainmen's Political Educational League $16,435, and the UAW-CIO $8,040." At 653. Accord: Daugherty and Parrish, op. cit. supra note 1, at 769-770; Keenan, op. cit. supra note 20, at 116; and Barbash, op. cit. supra note 10, at 157.

More recently, preliminary studies conducted by Gibbons, op. cit. supra note 26, at 21, show that "in the major industrial sections of the country, Governor Stevenson polled more votes in this year's Presidential election than President Truman did four years ago." And the CIO has begun an intensive publicity campaign in support of its intensified lobbying activities in Washington; see, e.g., CIO News 1-8 (Jan. 5, 1953).
III. Section 304 Reexamined

1. The Issue of Constitutionality

If the facts of both the Painters and Construction Union cases properly fall within the CIO doctrine, then section 304 would appear to be a virtual nullity, and any analysis of the statute's constitutionality would be irrelevant. However, a court may yet find factual distinctions sufficient to bring an activity complained of within the statutory prohibition. Should such a contingency occur, section 304 may be invalidated on one of two constitutional grounds: it may fall as a prior restraint on the First Amendment freedoms; or, it may be deemed so vague that as a criminal statute, it would be void under the due process clause of the Fifth Amendment. To reach the constitutional issue, however, the doctrine of "strict necessity" must be surmounted. There is forceful precedent to allow it in civil liberties cases.

In the first place, the mere fact that the statute curbs money expenditures and so constitutes no restriction on free speech as such is not to say that these freedoms could be effectively exercised. Technological advances have so far outstripped many traditional concepts in this respect, that they have provided mass communication media—radio, television, the newspaper and other types of publications, and

---

65 Each of these three cases has turned on an extremely loose construction of the word "expenditure." By restricting its scope, the courts have virtually foreclosed the need for resolving the constitutional issue.

66 All three courts purportedly went no further than to decide whether or not the facts of the case before it fell inside the prohibitory scope of Section 304. Thus, uncertainty on the part of the unions will continue as to how far they may use their funds for political purposes, and to this extent the effectiveness of their activities will be hampered. Only an unequivocal decision on Section 304's constitutional status can remove this uncertainty—aside from some legislative solution. See text and citations at note 63 supra.

Legislative history of Section 304 furnishes no clue as to where this line will be drawn. In addition to the sparse debate which preceded enactment, what little discussion exists is contradictory and confusing. See 93 Cong. Rec. 6436-41, 6446-48 (1947).

67 "... judgment in the first instance is for the legislative body. But in our system where the line can constitutionally be placed presents a question this Court cannot escape answering independently, whatever the legislative judgment..." Justice Rutledge, Thomas v. Collins, 323 U.S. 516, 531 (1944).

Legislative enactments will generally be granted a presumption of validity; but when the applicable statute impinges on First Amendment freedoms, the Court has tended to brush aside this presumption and scrutinize the statute with more care. See Justice Stone's famous footnote 4 in United States v. Carolene Products Co., 304 U.S. 144 (1938), where there is a "narrower scope for operation of the presumption of constitutionality" when political processes are at stake. See also Rutledge J., dissenting in the CIO case, 335 U.S. at 139-40; Note, Presumption of Constitutionality Not Applicable to Statutes Dealing with Civil Liberties, 40 Col. L. Rev. 531 (1940); Notes, 47 Col. L. Rev. 595, 603-4, 607 n. 93 (1947); 61 Harv. L. Rev. 1, 2 n. 3, 47-51 (1951); 33 Minn. L. Rev. 390, 392 n. 17-20 (1949). See also Hyman, Judicial Standards for the Protection of Basic Freedoms, 1 Buffalo L. Rev. 221 (1952); Kauper, The First Ten Amendments, 37 A.B.A.J. 717 (1951); and Strong, American Constitutional Law, 395-418 (1950).
motion pictures—to reach millions of people. Since utilization of these media are made possible only by large outlays of money, it would seem that access to these channels of communication must be kept free, if freedom of speech is to have any significance in its modern context.

Yet, individuals seldom disseminate their political messages to the electorate without organization. And group freedom—to organize, to assemble, to form political parties and hence take organized political action—is well-established in our tradition as a protected freedom. The right to speak and the right to make expenditures for group political activity, then, are complementary. In the CIO case, the government advanced two propositions to justify a curb on these freedoms. The first urged that section 304 protects union members against coerced support of political objectives with which they do not agree. Except

---

68 See generally Emerson and Haber, op. cit. supra note 42, c. 6.
69 Because of added costs incurred in the use of these media, expenditures out of contributions to political parties have risen from nearly $4,500,000 in 1916 to about $21,000,000 in 1944; between 1912 and 1928, costs per vote ranged between 15 and 20 cents, but in the elections of 1940, 1944, and 1948, the cost has risen to 32 cents. See Overacker, Money in Elections 75-6 (1932); Overacker, Campaign Funds in a Depression Year, 27 Am. Pol. Sci. Rev. 769, 771 (1933); Overacker, Campaign Funds in the Presidential Election of 1936, 31 Am. Pol. Sci. Rev. 473, 477 (1937); Overacker, Campaign Finance in the Presidential Election of 1940, 35 Am. Pol. Sci. Rev. 701, 715 (1941); Overacker, Presidential Campaign Funds, 1944, 39 Am. Pol. Sci. Rev. 899, 906, 921 (1945); and Overacker, Presidential Campaign Funds 22 (1946).

The days of Thomas Jefferson, who reputedly spent but $50 in his campaign, can no longer be used as the measuring rod for freedom of speech.

70 "The central theme in our American heritage is the importance of the individual person. ... The welfare of the individual is the final goal of group life." President's Committee on Civil Rights, To Secure These Rights 4 (1947). See discussion of group action to protect individual rights, Wyzanski, The Open Window and the Open Door, 35 Col. L. Rev. 336, 341-46 (1947). See also the Bowe case, supra 320 Mass. at 252.


By indirect Section 304 nevertheless strikes effectively at freedom of speech. The Court has in the past invalidated such indirect restrictions because they were found to have the same effect as a direct ban on speech. See, e.g., Marsh v. Alabama, 326 U.S. 501 (1946); Cantwell v. Connecticut, 310 U.S. 290 (1940); Schneider v. State, 308 U.S. 147 (1939); Lovell v. Griffin, 303 U.S. 444 (1938).

Moreover, "The expression of bloc sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it." Justice Rutledge, dissenting opinion, CIO case, supra 335 U.S. at 143. See note 85 infra.

72 "Unions can act and speak today only by spending money, as indeed is true of nearly every organization and even of individuals if their action is to be effective," Justice Rutledge, dissenting opinion, CIO case, 335 U.S. at 146. See also note 69 supra.

73 Justice Rutledge, dissenting opinion, CIO case, 335 U.S. at 134; Senator Taft's comment in 93 Cong. Rec. 6440 (1947); Braunthal, American Labor in Politics, 12 Social Research 1, 9 (1945).
in unusual situations, such a minority would seem to be adequately protected by union elections and required approval procedures for significant political expenditures; or, if necessary, legislation may be drawn to meet any of these inadequacies.

The second argument supporting section 304's validity is based upon the "undue influence" unions have been able to exert in politics by reason of their "bloc" power and financial power. But labor's po-

"The number of cases in which the union is controlled oligarchically are few; most union constitutions provide for democratic operation and organization. For comprehensive discussions on this matter, see Barbash, op. cit. supra note 10, at 44-68; Daugherty and Parrish, op. cit. supra note 1, cc. 12, 13; Lindblom, Unions and Capitalism c. 4 (1949); Millis and Montgomery, op. cit. supra note 7, c. 6; Peterson, op. cit. supra note 1, at 48-109; House of Labor, op. cit. supra note 6, at 359-384.

See Justice Rutledge, dissenting opinion in CIO case, 335 U.S. at 149. See, for example, the Federal Labor Union, Local 24455, AFL, Constitution, Art. IV, (providing for election of officers), and Art. V, (providing that a monthly financial report be submitted to the membership for approval). See also note 74 supra.

The following suggested types of legislation to guarantee democratic union government, reasonably drawn, would not hamper union leaders or union functions, and would seem to provide adequate minority protection. (1) Requirements that annual elections be held for the election of officers and that broad political policies pursued by these officers be submitted to the membership for majority approval, See Lerner, Ideas Are Weapons 517-33 (1939). (2) Requirement that the majority of the union consent to political expenditures. See Overacker, Labor's Political Contributions, 54 Pol. Sci. Q. 56, 67-8 (1939).

See, generally, Commager, Majority Rule and Minority Rights (1943); Baldwin, Union Administration and Civil Liberties, 248 The Annals 56 (1946); Witmer, Civil Liberties and the Trade Union, 50 Yale L.J. 621 (1941).

Justice Rutledge, dissenting opinion, CIO case, 335 U.S. at 143; Overacker, Presidential Campaign Funds, op. cit. supra note 69, at 807-8, quoted Senator Bankhead, introducing an amendment to the Hatch Act, as saying that "money is the chief source of corruption."

But "Congress has always recognized that expenditure of money in elections is not in itself evil...." Tom C. Clark, Federal Regulation of Election Campaign Activities, 6 Fed. B.J. 5, 8 (1944). Moreover, there is little to sustain the charge that labor has in the past wielded an undue degree of influence, entirely out of proportion to their numbers. In recent Presidential elections, fourteen million union workers contributed but 4% to 7% of total campaign funds. See Overacker, Campaign Finance in the Presidential Election of 1940, note 69 supra; Peterson, op. cit. supra note 1, at 33-34 (1945).

Rather than labor, abundant evidence points to other groups who articulate their views by way of their monopolistic control of the various communication media. See, e.g., Commission on Freedom of the Press, A Free and Responsible Press 44-6 (1947); Lasswell, Democracy Through Public Opinion (1941); Lerner, op. cit. supra note 76, at 13-24; Lerner, It Is Later Than You Think 127-34 (1943); Hays, Civic Discussion Over the Air, 213 The Annals 37, 44 (1941). The N. Y. Times on November 26, 1950 reported that the AMA spent $1,110,000 within two weeks before the 1950 election to defeat proponents of government health insurance, and that this sum was drawn from a fund of $3,600,000—resulting from a $25 assessment of each member; the NAM spent $1,037,000 in 1943, preparing for the 1944 campaign; Rosenfarb, op. cit. supra note 3, at 379 and the Republican "spot" announcements during the past Presidential campaign cost an estimated $1.5 to $2 million in air time alone, The Reporter 7 (Nov. 25, 1952).
tical participation in the electoral process has enhanced rather than curtailed democratic methods.76 If, indeed, organized labor has abused its freedom in its political activity, specific Congressional action would seem more appropriate than a broadly-drawn measure which trenches on First Amendment freedoms.77 For the “most complete exercise of those rights is essential to the full, fair, and untrammeled operation of the electoral process.”78 That is to say, if this vital phase of democratic government is to function properly, there must be “the widest possible dissemination of information from the diverse and antagonistic sources.”79

Both propositions, then, cannot support the sweeping prohibitions of section 304. On the contrary, careful analysis shows that it may even be invalidated for want of specificity in its vague definition of the crime. This becomes particularly compelling when the statute effectively sweeps aside free speech and other correlative freedoms, albeit indirectly. The weight of authority seems to so hold.80 “It is difficult to conceive a statute affecting those rights more lacking in precision, more broad in the scope of doubt and uncertainty of its reach.”81 Such a statute seems clearly to violate constitutional standards of clarity and as such should be nullified.82

In addition, Senator Douglas reported that “incomplete reports from nine Republican committees showed total expenditures of $9,325,000, while six pro-Stevenson committees, including the political arms of the AFL and the CIO, spent $2,408,000 or only about one-quarter of the reported Eisenhower figures.

“I would not be surprised if the outlays by national groups came to as much as $20 million and that for every dollar the Democrats spent, the Republicans and their allies spent four or five.” The CIO News 5 (Jan. 12, 1953).

76 See discussion in Section 1 supra, and infra.

77 See Justice Rutledge, dissenting opinion, CIO case, supra note 44 at 145-146.

80 Justice Rutledge, dissenting opinion, 335 U.S. at 151.


83 Justice Rutledge, dissenting opinion, CIO case, 335 U.S. at 151.

84 See note 82 supra.
LABOR POLITICAL ACTION AND THE TAFT-HARTLEY ACT

On the other hand, should the issue of constitutionality never be raised by the courts, then the only alternative lies with Congressional action.

2. Repeal or Amendment

It was not without some justification that organized labor interpreted the enactment of section 304 as an attempt to reduce its political power. The restriction in practical effect is not a regulation, but a prohibition, which, had it been interpreted literally, would have driven unions entirely out of political life and activity. Three courts, however, including the High Court, have chosen not to do so. Accordingly, the constitutional issue aside, there remains the question: how can political contributions and expenditures be regulated without banning political activity in its entirety? The issue cannot be resolved unless it is considered in relation to other efforts to insure honest and free elections. That is to say, what needed controls must Congress legislate in regulating political financing to insure honest and free elections?

Experience has abundantly proved the inefficacy of punitive legislation which prohibits political participation by way of contribution and expenditure. For not only have unions met this ban by organizing parallel but separate organizations to undertake political action, but they have greatly increased labor's role and stake in the electoral pro-

---

85 Witney, op. cit. supra note 1, at 431-32, wrote that section 304's legislative history "shows beyond a reasonable doubt that all its sponsors had a burning desire to suppress political opinion in all union publications financed in whole or in part out of union funds." See Senator Taft's discussion of section 304 in 93 Cong. Rec. 6593-94, 6597 (1947). See Senator Pepper, an opponent of the section, challenge the section's attempt to deny free speech in 93 Cong. Rec. 6606 (1947). See also Witney, op. cit. supra note 1, at 428-29; and bitter statement in the CIO brief, CIO v. United States, 335 U.S. 106 (1948); Daily Labor Report, No. 80:A-5 (April 23, 1948).

86 See text and citations at notes 44-53 supra.

Moreover, the issue cannot be decided in a partisan spirit which attempts to limit the political effectiveness of any group of the electorate. It is fallaciously assumed by many that by restricting the political activities of unions and corporations alike by legislation, that both would be equally affected and treated. In the first place, few members of unions have sufficient means to be influential in politics unless they can work through their natural organization, the union. On the other hand, as individuals, executives and stockholders of corporations are often in such a position as to make substantial expenditures in political activity. As Senator Pepper points out, supra note 85, the worker can only approach the political strength of business by pooling their resources and effective organization for "collective expression."

Secondly, there is considerable evidence that business interests are reflected in the nation's press to a much greater extent than are labor's. See note 77 supra.

And finally, the corporation and the labor union differ in purpose, structure, and method of organization and operation; if parallels must be drawn in the name of equity, they cannot be between union and corporation, but perhaps between union and employer association or some other voluntary associations. See Witney, op. cit. supra note 1, at 433-44.
Rather than such a negative approach, perhaps improper electoral activity can best be deterred by reliance on full and prompt publicity of all individual and group electoral contributions and expenditures.

The passage of a law such as that is not without precedent. A federal statute so regulates the political parties. Section 9(f)(B) of the Taft-Hartley Act requires unions to file inter alia detailed financial

See Section I, and text and citations at note 64 supra. See also Millis and Brown, op. cit. supra note 1, at 596.

Ala. Code tit. 26, § 382(6) ("a complete financial statement of all fees, dues, fines, or assessments levied and/or received, together with an itemized list of all disbursements, with names or recipients and purposes therefor, covering the preceding twelve (12) months"); Colo. Stat. Ann. c. 97, § 94 (20) (4) (d) (Mitchie, 1947 Supp.) ("The [State Industrial] Commission shall examine books, and financial records of the corporation at least annually, and all books and records shall, during business hours, be open to the inspection of the members of the Commission"); Fla. Stat. Ann. tit. 29, c. 447, § 447.07 (1952) (all labor organizations are required to "keep accurate books of accounts, itemizing all receipts from whatsoever source and expenditures for whatsoever purpose, stating such sources and purposes. Any member of such labor organization shall be entitled at all reasonable times to inspect the books, records, and accounts"); Kan. Gen. Stat. § 44-806 (6) (Corrick, 1949) (every labor organization with 25 or more members must report to the Secretary of State annually "a verified statement of the income, expenditures, assets, and liabilities of the labor organization"); Ore. Comp. Laws Ann. § 102-909 (1940) (requirement to keep books and records, "itemizing all receipts and expenditures and the purposes of such expenditures. Any members...shall be entitled at all reasonable times to inspect" the books); Tex. Civ. Stat. Ann., Art. 5154a, § 3 (d) (1947) (unions must file annually with the Secretary of State "a complete financial statement of all fees, dues, fines, or assessments levied or received, together with an itemized list of all expenditures, with names of recipients and purposes therefor, covering the preceding twelve (12) months.")

In addition, the Massachusetts Supreme Court has approved a law which requires unions to make reports to the commissioner of labor and industries on all contributions, receipts, and expenditures; these are open to public inspection. Bowe v. Secretary of the Commonwealth, 320 Mass. 230, 69 N.E.2d 115 (1946). See similar holding in Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So.2d 810 (1944). On the other hand, courts have invalidated two of the above statutes, but on grounds other than the merits of the statute itself. AFL v. Reilly, 113 Colo. 90, 155 P.2d 145 (1944) (this section was inseparable from unconstitutional law of which it was a part); AFL v. Mann, 188 S.W.2d 276 (Tex. Civ. App. 1945) (while upholding the contributions ban on unions, the court found the publicity requirement had no "substantial relation" to the statute of which it was a part).

The Federal Corrupt Practices Act, 43 Stat. 1053 (1925), 1070 U.S.C. §§ 241, 242, 244 (1940), provides that any "political committee" which accepts contributions or makes expenditures "for the purposes of influencing or attempting to influence the election of candidates or presidential and vice presidential electors" in two or more states or as subsidiary of a national committee must file with the Clerk of the House of Representatives "at designated times" a statement containing the name and address of each contributor, the dates of the contribution, the name and address of every person to whom an expenditure was made, and the dates of these expenditures. The constitutionality of this law was upheld in Burroughs and Cannon v. United States, 290 U.S. 534 (1933).
data with the Secretary of Labor, but for different purposes.\(^9\) And in 1945, a Senatorial investigation of 1944 campaign expenditures not only completely exonerated the CIO-PAC of alleged violations of the then-existing political contributions statute\(^9\) but also resulted in a committee recommendation that a publicity statute be enacted.\(^9\)

Subsequent action on this recommendation was permanently tabled.\(^9\)

On the other hand, a publicity law imposed on all individuals and groups, standing alone, is not enough. The broader problem of curbing high campaign financing must be met with comprehensive parallel legislation. For publication of electoral expenses and contributions may be one means of enforcing laws which would set rigid ceilings on funds to be used in the course of a campaign by a candidate or a political party; it may complement other legislation providing for public financing of campaigns.\(^9\)

\(^9\) By its provisions, a union is deprived of all the benefits of the Taft-Hartley Act, such as the right to petition for election to become a bargaining agent, unless both local union and its national agent has "filed with the Secretary of Labor . . . a report showing all of (a) its receipts, (b) its total assets and liabilities as to the end of its last fiscal year, (c) disbursements made by it during such fiscal year, including the purposes for which made; and . . . furnished to all of [its] members copies of the financial report . . . ."

\(^9\) The Democratic majority of the committee so recommended. Id. at 83-4.

\(^9\) The Republican minority recommended a bill similar to section 304, but limited to federal elections. Id. at 24, 83. But the majority report criticized the minority recommendation in pointing up the practical difficulty of differentiating between expenditures for legitimate purposes and those political.

\(^9\) Senator Douglas has recently announced his intention to introduce such a series of measures for the consideration of Congress:

I am not . . . merely concerned because campaigns cost so much. [See notes 69 and 77 supra.] I am concerned about the vast majority of big donors who want something in return for their money which has necessarily financed a major part of a campaign of this proportion—contracts, jobs, loans, privileges, legislation, and so on.

I am concerned about the able men who either have no money of their own or cannot raise any appreciable amount from friends and supporters. Such men, despite their virtues, generally do not get selected as candidates for high office, or if nominated find themselves hopelessly handicapped.

I have proposed several remedies to reduce the high cost of running for office, and the problem it creates. First, we must seek greater financial support of candidates and parties by small contributors. If we want to make our candidates more independent . . . we must be willing to give more liberally to their campaign funds.

"Second, we must tighten up and more strictly enforce legislation fixing a ceiling on the total amounts which may be spent for a candidate or party. The existing legislation [has] enabled the spirit if not the letter of the law to be flagrantly violated. [E.g., Egan v. United States, 137 F.2d 369 (8th Cir. 1943) (corporate funds transferred to officers of the corporation by various subterfuges, which funds were contributed to elect Missouri State legislators friendly to the corporation's interests).] But Great Britain has demonstrated that such limits can be realistically set and enforced. Of what value in this campaign was the $3 million limit on national committees, when each part could institute such a number of 'Volunteers' or 'Citizens' or other 'Committees' as it saw fit?
Ever since section 304 was enacted, legislators and congressional committees have indicated dissatisfaction with its mandate. In spite of the virtual nullification of its effects by the federal courts, if the political program of organized labor is deemed in the public interest, and if this program is to be properly effectuated, then the prohibitive bans on union political activity should be lifted or amended and supplanted with a requirement of complete and immediate publicity of political financing.

IV. Labor and the Nation

In assaying organized labor's role in the American economy, it would appear to have two major functions. First of all, unions make out of taxes, a controversial issue originally proposed by Theodore Roosevelt back in 1907. The community would benefit from public servants no longer under obligation to big contributors, and from more widespread participation in public life of less wealthy citizens. Technical problems ... must be worked out ... We could start with the presidency and Congress by fixing a maximum of around 10 cents per registered voter for each office.

"Finally, the campaign now concluded leads me to stress more vigorously my contention that networks and local radio and television stations should be required to give a certain amount of time to the major political parties and their candidates without charge.

"There is no similar obligation for the newspapers to give free space because they are not using a public property. But they have a moral obligation to furnish fairly balanced and objective news, whatever may be their editorial policies, and at the very minimum they should not charge more for political than for other advertising. Vastly higher rates are now common.

"Such proposals are only the beginning of an attack on this problem. A system of presidential primaries, public reports on the income of important public officials all seem to me to be a part of a more sensible approach to political campaigns.

"Others have stressed the need for more publicity of campaign expenses and contributions and for shorter campaigns. Whatever solution may be finally adopted, 1952 proved the high cost of elections to be a fundamental problem of ethics in government, with which citizens and officials alike must grapple." CIO News 5 (Jan. 12, 1953). (Emphasis and bracketed notes supplied.) See also note 89, 90, 91 supra.

On July 10, 1947, Senators Aiken and Hatch introduced an amendment to Section 304 to lift the ban on union political expenditures. S. 1613 (1947) Senator Aiken remarked that "it was realized by some that [Section 304] went too far in restricting freedom of speech and of the press." N.Y. Times, July 12, 1947, p. 2, col. 3. And Senator Hatch said that the constitutional question should be "thoroughly explored here on the floor of the Senate." 20 Lab. Rel. Rep. 187 (1947).

Another indication of Congressional dissatisfaction with the Act was revealed by the Ball Committee Report. That Committee was the Joint Committee created by the Taft-Hartley Act to investigate the operation of the law and recommend necessary changes. In its first report, the Committee said that it had "given some thought to the advisability of ... an amendment ... which would define and except particular activities of regularly circulated newspapers and periodicals," and that it would continue to study 304's effects "with a view to making recommendations for amendment if experience demonstrates that they prohibit political activity which may be desirable." Ball Committee Report, Pt. 1 at 39-40 (Mar. 15, 1948); but cf. its Report, Pt. 3 at 63-5 (Dec. 31, 1948).
significant contributions to the discussion of political issues by setting forth the workers' interest and point of view more effectively than any other agency is likely to do. To the extent that in so doing the rank and file workers become politically educated and hence an increasingly better-informed citizenry, this contribution is all the more significant. And if government is to be democratically responsive to the needs of all population groups, unions should be allowed, indeed, encouraged, to make its influence felt in the policy-making process.

Moreover, there are practical reasons for allowing labor political activity. Embodied in our national labor policy is an explicit recognition of labor's economic function. But necessary to the achievement of its economic program is its activity in the political arena. For labor should be "free to turn its publicity on any labor oppression, sub-standard wages, employer unfairness, or objectionable working conditions." Additionally, there are economic goals which are impossible of realization through collective bargaining and can only be attained through legislation. Such things as good public education, unemployment compensation and other forms of social insurance, adequate housing and medical care, rather than being negotiated separately with each employer, must be evaluated and established as matters of public policy and applied uniformly throughout the community.

Fundamentally, then, the efficacy of section 304 turns on the desirability of the contributions of labor to the "free market place of ideas."

"See N.Y. Times, Sept. 22, 1952, editorial page, col. 2; see CIO-PAC in Unions, Management, and the Public, op. cit. supra note 6, at 226; Newfeld, House of Labor, op. cit. supra note 6, at 89.


Section 1 of the Taft-Hartley Act reads in part, "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."


This is abundantly testified to by both AFL and CIO. "The experiences and results attained through nonpartisan political policy of the American Federation of Labor . . . indicate that through its application the workers . . . have secured a much larger measure of fundamental legislation, establishing their rights, safe-guarding their interests, protecting their welfare, and opening the doors of opportunity, than have been secured by the workers of any other country." AFL, in Unions, Management, and the Public, op. cit. supra note 6, at 215. For a comparable CIO statement, see the same book at 225. See also Section I supra.

When all the relevant factors are taken into account, there would appear to be compelling reasons to either invalidate the prohibitive statute as falling within the bans of the First and/or Fifth Amendments, or alternatively to repeal or amend and supplant its all-pervasive provisions with legislation requiring full and prompt publicity of all political contributions and expenditures.¹⁰⁴

¹⁰³ See notes 33-36 and 101 supra. Speaking for the desirability of labor's continued political and economic contributions, Justice Rutledge said, "To say that labor unions as such have nothing of value to contribute to that [election] process and no vital or legitimate interest in it is to ignore the obvious facts of political and economic life and of their increasing interrelationship in modern society." Dissenting opinion, 335 U.S. at 144.


In addition, of the four dissenters in the CIO case, two remain: Justices Black and Douglas. The views of Warren, newly appointed Chief Justice, are as yet unknown. So that here, too, the likelihood of a ruling on Section 304's constitutionality appears to be slim.