

**Testimony of Joan Claybrook
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Regarding ACompelled Speech@
and Campaign Finance Reform
Before the Senate Committee on Rules and Administration**

April 12, 2000

Mr. Chairman and Members of the Committee, Good morning and thank you very much for inviting me to testify at this important hearing on alleged Acompelled speech@ by union members in the context of campaign finance reform.

Various so-called Apaycheck protection@ proposals have been introduced in Congress over the last several years. In general they aim to stop unions from spending any of their members= dues on political campaigns and activities without individual authorization. Lately, opponents of major campaign reform bills banning soft money to political parties and regulating phony issue ads have stepped up their insistence that so-called Apaycheck protection@ must be part of any meaningful campaign reform bill.

What I would like to discuss today is why the basic assumptions behind this demand are fatally flawed. I believe we at Public Citizen are particularly well equipped to give the Committee a broad perspective on this issue because, in addition to our historic involvement in campaign finance reform, our Litigation Group for twenty-five years has long represented dissidents in labor unions to assure that internal democracy flourishes.

What we hear from the opponents of the McCain-Feingold and Shays-Meehan reform bills is something like this: Don=t ban soft money, which mostly comes from corporations, without curbing the Acompelled@ use of union dues for partisan union political campaigns. Otherwise, you will significantly weaken pro-business forces and enable union-supported Democratic candidates to swamp the Republicans. There is little or no factual basis for the various components of this argument. I will elaborate.

1. Even without soft money, pro-business forces maintain an overwhelming advantage over pro-union ones in contributions to candidates and parties and in lobbying expenditures.

Looking at contributions data from the Center of Responsive Politics during the 1998 election cycle, and not counting soft money, individuals and political action committees (PACs) associated with business outspent those affiliated with labor unions by 10 to 1 (\$500 million to \$51 million). Including soft money, the ratio is a slightly higher 11 to 1 (\$667 million to \$61 million)ⁱ. Furthermore, business=s advantage in expenditures for lobbying federal officials is even more astronomical: unions spent \$24 million in 1998, a small fraction of what was spent by numerous major industries including: finance, insurance and electronics (\$203 million),

communications/electronics (\$186 million), miscellaneous business (\$172 million), health (\$165 million), energy and natural resources (\$144 million), agribusiness (\$119 million), transportation (\$115 million), and defense (\$48 million)ⁱⁱ-- a total of \$1.15 billion for these industries.

This financial reality helps explain why a leading business group like the Committee for Economic Development can come out in favor of a ban on overwhelmingly corporate soft money without feeling that its interests will be endangered.

2. Even without soft money, Republicans have a large campaign contributions advantage over Democrats.

Not counting soft money, in the 1998 election Republicans raised \$734 million while Democrats raised only \$533 million.ⁱⁱⁱ Moreover, the Republican Party had a greater margin of superiority over the Democratic Party in hard than in soft money (Republicans raised 65% of total hard money but only 59% of soft money)^{iv}. It is therefore arguable that the Republican Party would gain relative strength by abolishing soft money!

3. Pro-business and pro-Republican groups as well as labor unions use their treasuries in limited ways under the law to support partisan organizational campaigns.

Under the Federal Elections Campaign Act, corporations, unions and membership organizations may not make hard money campaign contributions but may conduct limited partisan activities that are directed at their restricted class[@] rather than the general public. Beyond executive/administrative personnel, the restricted class for corporations is shareholders; for unions and membership groups, it is members. Families are also included. All the organizations are allowed to spend treasury money directed at their restricted class to:

- ! set up and operate a PAC to solicit and receive voluntary contributions
- ! expressly advocate or solicit others to voluntarily support a candidate or party
- ! conduct partisan or nonpartisan voter registration/get-out-the-vote drives

It is impossible to know exactly what is spent on these activities since hardly any of these expenditures (with the exception of communications that are primarily express advocacy totaling over \$2000) are required to be reported to the Federal Elections Commission.

It is clear however that business groups put considerable resources into establishing and operating PACs which solicit their relatively affluent restricted class to give money. In the 1998 election, 2,321 business PACs collected \$166 million of which 65% went to Republicans (\$107 million), while 237 labor PACs harvested only \$50 million, 91% of which went to Democrats (\$47 million)^v.

On the other hand, labor traditionally concentrates money and especially staff on efforts to

mobilize voters from its far less affluent but numerous restricted class (16 million unionized workers and their families). For example, the AFL-CIO's pro-Democratic "ALabor 1996" program included: distribution of 11.5 million voter guides to members comparing candidates in conjunction with 114 congressional elections and two Senate races; 5.5 million phone contacts; organization of public events (often in coalitions); and mass voter registration and get-out-the-vote programs^{vi}.

Mr. Chairman, a frequently cited estimate of the actual cost of such union activities is \$300 million to \$500 million. It appears that the principal source of this estimate is testimony given before the House Committee on Oversight in 1998 by Prof. Leo Troy of Rutgers University. At the time, Prof. Troy said he based his estimate of union time, effort and resources spent on political mobilization on a multiple of 3 to 5 times the \$95 million he said was spent by labor PACs in the 1991-92 presidential election cycle. He called this a rule of thumb.^{vii} In a recent conversation with Public Citizen staff, Prof. Troy acknowledged that there was no specific evidence he could cite to justify his rule of thumb and that the real figure could well be, say \$150 million or \$450 million. It should be noted that even under Troy's rule of thumb his estimate would have to be cut nearly in half as applied to recent elections. Labor PACs donated only \$49 million in the 1996 election^{viii}.

Prof. Troy also acknowledged that others do it too. In fact, overwhelmingly pro-Republican groups (including business ones) are increasingly conducting substantial member political mobilization activities. Here are some leading examples:

! **The National Rifle Association (NRA)** has a membership of more than 3 million. In 1996 it used voter guides (published in its magazine, *The American Rifleman*), endorsements, direct mailings and media events as part of its overwhelmingly pro-Republican campaign in the presidential race, more than 280 House contests and some Senate ones^{ix}. This year, 280,000 NRA members have signed up to be election volunteers, compared to 100,000 in 1998. Our constituency, unlike much of the conservative movement, is very energized, says Chuck Cunningham, director of the NRA's voter mobilization effort. The NRA is also reaching out to sympathetic non-NRA members (hunters, gun show attendees, shooting club members), encouraging them to register to vote^x. Recently, the head of the National Shooting Sports Federation said his group would join the NRA in opposing greater gun restrictions and was gathering the names of 500,000 people who would be encouraged to support gun-friendly candidates for Congress and president^{xi}.

! **The National Federation of Independent Business (NFIB)** boasts more than 600,000 small business owner/members. During the 1996 election, NFIB mailed out 240,000 voter guides to its members urging them to vote for specific candidates, overwhelmingly Republicans. It also mailed nearly 200,000 letters and telemarketed to recruit volunteers from its membership to help organize support for candidates in 103 congressional districts. NFIB members held press conferences and member meetings in targeted districts^{xii}.

! **The National Association of Realtors (NAR)** represents 730,000 real estate professionals

in local boards and state and national associations. NAR political representatives instruct interested realtors in campaign techniques and how to volunteer for appropriate campaign positions. They work with politically active realtors to register real estate agents, recruit campaign volunteers, and mobilize realtors on election day via direct mail and phone banks^{xiii}.

As we all know, there are also a variety of nonprofit, tax-exempt groups that attempt to mobilize the general public behind Republican or Democratic candidates. Perhaps the most famous of these is the **Christian Coalition**, which lost its 501(c)(4) tax status because of its partisan activities, but is reorganizing as a 527 political group. Such an organization can conduct partisan-oriented get-out-the-vote, research and other activities as long as it does not employ express advocacy. During the 1996 election, the Coalition claimed to have distributed 54 million voter guides which were carefully crafted to highlight Republican support of Coalition positions^{xiv}.

4. It is misleading to brand labor unions= use of members= dues for political campaigns Acompelled speech.@

By law and administrative rulings, no worker in the United States can be required to pay for union expenses other than those associated with collective bargaining, grievance adjustment and contract administration. Therefore, no worker can be compelled to pay for union involvement in federal elections.

In the 21 states with so-called ARight to Work@ laws, workers are free to join and pay dues to a union or not to do so. If they join and don=t like the union=s politics they can try to change it (democratic union elections are mandated by federal law for private employees) or resign from the union. They are in exactly the same position as members of the NRA, AARP or U.S. Chamber of Commerce who may disagree with their organization=s political choices. Curiously, no one has called for legislation to protect members of the NRA, AARP and Chamber of Commerce from Acompelled speech.@

The remainder of the states have not overridden the longstanding provision of the National Labor Relations Act authorizing union security agreements that **require** employees to become Amembers@ of a union as a condition of employment. However, in 1963 the Supreme Court held that the only Amembership@ that can be imposed as a condition of employment is the payment of dues or fees. (*NLRB v. General Motors*, 373 U.S. 734) In 1988 the Court decided that those who choose to only pay dues could not be forced, over their objections, to pay for political and other activities not germane to the union=s functions of collective bargaining, contract administration and grievance adjustment. (*Communications Workers v. Beck*, 487 U.S. 735).

Together, these two decisions changed the nature of the union security agreement. First, no one need ever become a Amember,@ in the ordinary sense of the word, of a union to work for any employer. Second, while the nonmembers may still be required to pay dues or fees, they cannot be obliged to pay for anything other than the costs associated with their representation in labor relations.

Following a decade of lawsuits during which procedures for implementing the *Beck* decision began to be elaborated, the National Labor Relations Board in December 1995 detailed procedures that unions had to follow to transform the generalities of the *Beck* decision into a workable system that was fair to those that the union represented^{xv}. In *California Saw and Knife* (320 NLRB No.11) and *United Paperworkers International Union* (320 NLRB No.12), the Board held that unions must inform all employees (including newly hired nonmembers before asking them to pay dues) that they have a *General Motors* right not to be a member of the union and that nonmembers have the right:

(1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections^{xvi}.

If an objector challenges the union's calculations, the union bears the burden of proving their accuracy. Employees who believe they have been mistreated have recourse to the NLRB and the federal court system.

The NLRB has elaborated on this system over the last four years (Public Citizen has reviewed 20 relevant cases in 1999 alone), ruling on such issues as: what expenses are chargeable to *Beck* objectors, when employees must be given a statement of such expenses, what is an independent audit,[@] and whether *Beck* rights have to be explicitly stated in union security agreements. In addition, the federal courts have also decided a number of important issues such as whether an annual notice of *Beck* rights in a union newspaper is adequate notification^{xvii}.

In short, there is a real system of legally established rights and operational procedures. While nothing works perfectly in practice, I am aware of no objective inquiry that has challenged the fundamental integrity of this system. That is why it is simply not accurate to talk generally of compelled speech[@] by union members and why legislation to endow these members with free speech[@] is not only unnecessary but could add confusion to what is now an operational system of protecting the rights of workers in relation to their union activities. Even if it did appear that there were some operational problems in the system, these would be of a far different order than the problems of soft money and phony issue ads -- where there are no rules or procedures at all!

Finally, it must be noted that for those workers who decide to be full members of a union, there are federally guaranteed rights under the Landrum-Griffin Act to democratic procedures within unions. These guarantees concern both the election of the officers who may make decisions about political activities and the right to criticize those decisions and campaign against them in between elections. The federal government devotes resources to enforcing these guarantees of democracy, as does Public Citizen. But we should note, such democratic rights to control political expenditures are not guaranteed by the federal government to members of such organizations as the NRA and the U.S. Chamber of Commerce or to shareholders in U.S. corporations.

In conclusion, the contention that incremental McCain-Feingold type reforms, particularly

banning soft money, would tip the balance against business and Republicans by elevating the power of unions with compelled political dues doesn't stand up to the facts. Hying the power of the political opposition may be a good fund-raising tactic. But it doesn't make for good public policy.

ENDNOTES

i Center for Responsive Politics, The Big Picture: The Money Behind the 1998 Elections (September 1999), pp. 38-40.

ii. *Ibid.*, p. 92

iii. *Ibid.*, p. 2

iv. Federal Election Commission, AFEC Reports on Political Party Activity for 1997-98,@ April 1999, pp. 4-7.

v. Center for Responsive Politics, The Big Picture, p. 39. The number of business and labor PACs was reported in a telephone conversation with the Center=s research department.

vi. Robin Gerber, ABuilding to Win, Building to Last: AFL-CIO COPE Takes on the Republican Congress,@ in Robert Biersack, Paul S. Herrnson and Clyde Wilcox, After the Revolution (Boston: Allyn and Bacon, 1999), pp. 77-93.

vii. Committee on House Oversight, U.S. House of Representatives, Influencing Political Activity of Labor Unions, Hearing, March 21, 1996 (unpublished transcript), written statement of Prof. Leo Troy and oral testimony, p. 35.

viii. Center for Responsive Politics, APolitical Union@, available from website, www.opensecrets.org

ix. Kelly D. Patterson, APolitical Firepower: The National Rifle Association,= in Biersack et. al, After the Revolution, pp. 66-76.

x. Juliet Eilperin, AREjuvenated NRA Arms for Election-Year Showdown,@ Washington Post, March 5, 2000, pp. A2, A6.

xi. Michael Janofsky, APressured by Suits, Gun Makers Turn to Political Efforts,@ New York Times, January 18, 2000, pp. A1, A14.

xii. Ronald G. Shaiko and Marc A. Wallace, AFrom Wall Street to Main Street: The National Federation of Independent Business and the New Republican Majority,@ in Biersack et.al, After the Revolution, pp. 18-35.

xiii. Ann H. Bedlington, AThe Realtors= Political Action Committee: Covering All Contingencies,@ in *Ibid.*, pp. 170-83.

xiv. Paul S. Herrnson, Congressional Elections (Washington: Congressional Quarterly, 1998), p.

125; Elizabeth Drew, *Whatever It Takes* (New York: Penguin, 1997), pp. 26-27; David Rosenbaum, *Tax-Exempt Status Rejected, Christian Coalition Regroups*, @ *New York Times*, June 11, 1999; Laurie Goodstein, *Coalition's Woes May Hinder Goals of Christian Right*, @ *New York Times*, August 2, 1999, pp. A1, A10.

xv. Previously procedures had developed in a non-uniform way through judicial common-law decision-making.

xvi. *California Saw and Knife*, 320 NLRB No. 11, p. 233.

xvii. Under the National Labor Relations Act, workers also have the right to petition to eliminate union security clauses (without giving up union representation). If 30% sign the petition, the NLRB holds what is called a *deauthorization* election. 29 U.S.C. sec. 159 (e) (1).