NATIONAL REVIEW

JUNE 22, 1998 VOL. L, NO. 11

Protection Racket

The Right's favorite campaign reform idea sounds too good to be true. It is.

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LAST Tuesday, Californians defeated the Right's political move of the year: Proposition 226, the "paycheck protection" initiative, to require unions to ask each member's permission annually before collecting the portion of dues dedicated to political activity. But the issue is not limited to California. Grover Norquist's Americans for Tax Reform is spearheading an effort to implement paycheck protection in more than twenty states. Laws have already passed in Washington, Michigan, Idaho, and Wyoming, and initiatives are ready to go in Nevada, Oregon, and Colorado.

There is a partisan aspect to the campaign: the GOP understandably wants to avoid a reprise of labor's $100-million Republican-eradication campaign in 1996. Supporters also invoke high principle: no one should be forced to pay for the propagation of political ideas he finds offensive. The problem is that "paycheck protection" does little to secure this principle. It seems likely to deliver less than backers claim but more than they should want.

In the first place, these laws can regulate only a small portion of private sector union dues spent on political and ideological activity, and unions have a strong financial incentive to avoid even these regulations. Both deficiencies are on display in Washington State, which is hailed by backers of paycheck protection. In 1992, voters there passed a sprawling campaign-finance-reform initiative that contained two paragraphs requiring unions to receive annual permission from members before spending their mandatory payroll deductions on politics.

At that time, the Washington Education Association maintained a PAC, funded with a $13 annual contribution from 49,000 members who had given their consent at some point. In response to the law, WEA renamed its PAC a "Community Outreach Program" and funded it with a $1-per-month payroll deduction—this time mandatory for all 65,000 members. In addition, it created a new political organization, WEA-PAC, funded voluntarily. Only 11,000 of the WEA members ponied up another dollar a month for this particular fund. Although this drop is widely cited as an example of the effectiveness of paycheck protection, taking both funds together, the union raked in 55 per cent *more* than it did before.

The Community Outreach money could no longer be spent directly on politics, but the WEA solved this problem by funneling a portion of it to the new WEA-PAC (through overhead reimbursements and a forgivable loan). Some teachers and the Evergreen Freedom Foundation, a state-based conservative think tank, brought these shenanigans to the attention of Washington State's campaign-finance regulators. In the resulting settlement, the WEA, though accused of laundering $319,000, was fined only $100,000. The teachers, who pay on average $650 in annual dues to local, state, and national unions, will get only a one-time $5 reduction in their mandatory COP dues.

Worse, new guidelines issued after the settlement allow unions to spend "general treasury funds [on] contributions to candidates and political committees" including WEA-PAC. "These guidelines are not administrative rules, they are get-out-of-jail-free cards," complains EFF president Bob Williams, who plans legal action. Cindy Omlin, a former member of the WEA who fought its political activity, says the voter initiative "has been castrated."

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Another question nags: Even if the ruling against the WEA had had teeth, would it have made much difference? While the WEA was winding its way around the law—tapping its coffers to

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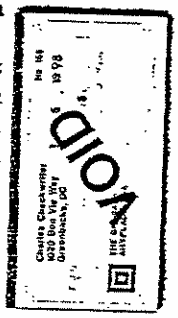
defeat charter-school and school-choice initiatives—the state's other union PACs were hardly hurting for money. In 1992, before paycheck protection went into effect, union PACs raised $3.3 million. In the 1994 election cycle, in which the law was fully operative, they raised $3.4 million. In 1996, the bounty jumped to $4 million. "It has had no visible effect" on union involvement in politics, says Brett Bader, a longtime Republican campaign consultant in the state. John Carlson, a Republican activist and syndicated columnist, concurs: "I don't see much of a change."



The authors of California's Proposition 226, learning from Washington's mistakes, included a clause prohibiting unions from increasing the dues of individuals who refuse to pay for politics. And unlike Washington's law, 226 covers union expenditures as well as member donations, which means national unions won't be able to fill any funding gap. But there is still a larger problem that no amount of clever wording can address. Due to Supreme Court decisions and Federal Labor Law, state-based paycheck protection can regulate only some political spending at the state level. It can't regulate spending in federal elections, which is governed by the FEC, nor can it restrict spending on member education through newsletters. And issue-advocacy ads that aren't coordinated with specific campaigns—the very ads that so vexed Republican congressional candidates in 1996—are protected under the First Amendment.

This severely restricts the amount of "protection" these initiatives offer anyone's paycheck. The amount of money at stake in Washington State was $13 per year. A Heritage Foundation study praising Prop. 226 says that California's two million union members can each expect to keep approximately $18 a year, out of total dues averaging $400.

This is exactly what is taking place in Michigan. In 1994, according to data compiled by the Michigan Chamber of Commerce, the state's top ten labor PACs raised just over $4.3 million, including $2.6 million from teachers. After a form of paycheck protection went into effect in 1997, labor PAC funds fell substantially. The Michigan Education Association's PAC, for example, raised just $140,288 from January 1 through October 20 of 1997.

"The results were dramatic, at least in terms of dollars," states Robert S. LaBrant, the Chamber of Commerce's Vice President for Political Affairs. "That's the good news. The bad news is that those union treasuries still contain exactly the same amount of money." No one got a reduction in dues after the law passed. Says LaBrant, "Unless we attack the [entire] non-collective-bargaining portion of the union's budget, those dollars will just flow into issue advocacy."

That's the difference between paycheck protection and implementation of the 1988 U.S. Supreme Court decision *Communications Workers v. Beck*, with which it is often confused. Under *Beck* and other decisions, individuals in union shops have the right to resign from the union and (so that they cannot get a free ride on others' contributions) pay only the portion of dues dedicated to bargaining. An individual can typically expect to get one-third of his dues back. Both in California and in Washington State, for example, teachers can at any time quit their unions and keep roughly $200 out of the $600 to $650 they are assessed in dues. According to the National Right to Work Foundation, which negotiated these settlements, about 5 per cent of eligible teachers exercise this option.

This distinction is key: Under *Beck*, an individual can quit the union and receive a refund of all his dues not spent on collective bargaining. Under paycheck protection, an individual can stay in the union and receive a refund on those dues used for political activity narrowly defined. This is important not only practically, but also philosophically.

The philosophical question is, What kind of organizations should unions be in a free society: voluntary groups that pursue the common interests of their members, or creatures of the state that enjoy special legal privileges but are highly regulated in return? Right now they occupy a halfway house: pursuing big-government interests like many other groups, but uniquely enjoying certain legal privileges. Individuals must often join a union as a condition of employment. In a meaningful sense, the law gives them no choice.

This is the central injustice which the Supreme Court sought to address in *Beck*. Admittedly, the *Beck* solution has never been properly implemented. Neither President Reagan nor President Bush ever made enforcing it a priority. And one of Bill Clinton's first acts as President was to rescind a Bush executive order instructing the Labor Department to notify workers of their *Beck* rights. As a result, polls show, few workers are aware of them.

But policymakers can address this issue in one of two ways. They can either strip unions of special privileges, in which case they would be like the NRA or AARP, groups that cannot coerce membership but whose policies and fee structures are no business of politicians or ballot initiatives. Or they can leave these privileges in place and then attempt to meddle in unions' internal affairs. Paycheck protection takes the latter route.

Rep. Harris Fawell (R., Ill.), sponsor of a federal paycheck-protection bill, seems to understand the choices. He scolded union representatives in a March 1997 hearing: "It would be much easier to, say, Get rid of any law that would mandate that some third party has the right to be able to divert the wages of the working man. That is what the right-to-work people are talking about here. You are going to make them look good." Indeed. □

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