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Labor Law -- Unions -- Political Campaign Contributions -- United States v. Pipefitters Local 562

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Ratner, then, has interpreted Section 127(b)(6) of the Consumer Credit Protection Act as being "prospective" in scope and requiring as least a nominal annual percentage rate disclosure on the monthly billing statement to an obligor in an open end credit transaction, even if the obligor has not incurred a finance charge. This required disclosure will effectively assist the consumer to compare credit costs, and enable him to determine which creditor offers the best deal. In addition, the court determined that since the paramount purpose of the Consumer Credit Protection Act is to provide consumer protection, only clerical errors are sufficient to exempt creditors from the Act's civil proscriptions and that, accordingly, even "reasonable" mistakes are violations of the Act. The import of this conclusion is that the creditor will not be able to experiment with obligors' rights under the Act, and see how far the language can be stretched. Finally, by denying plaintiff class recovery the court concluded that class actions might not always be proper under the Act.

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Labor Law—Unions—Political Campaign Contributions—*United States v. Pipefitters Local 562.*[1]—In 1949, Local No. 562 of the Pipefitters Union established the Pipefitters Voluntary Political, Educational, Legislative, Charity and Defense Fund (Fund). Until the end of 1962, the Fund was maintained solely by the assessments of members of Local 562 and members of other unions working within Local 562's jurisdiction. The assessments were in addition to the union dues. During this time each union member was assessed a specified amount for each eight hour work day. These assessments were collected directly

creditor's fiscal year immediately preceding the fiscal year in which the failure occurred; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee which shall be the reasonable value of the services rendered by the attorney without regard to the amount of any recovery.

In determining the amount of punitive damages in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

S. 652, § 208, 92d Cong., 2d Sess. (1972). Senator Proxmire has called S. 652 the "'Bank Protection Act of 1972.'" S. Rep. No. 92-750, 92d Cong., 2d Sess. 22 (1972). As to the class action provision, Senator Proxmire states that the amendment would weaken the Consumer Credit Protection Act's civil liability provisions and concludes that the "maximum liability figure should be substantially raised in order to provide a meaningful compliance by large creditors." Id. at 33.

[1] 434 F.2d 1116 (8th Cir. 1970), aff'd on rehearing, 434 F.2d 1127 (8th Cir. 1970), cert. granted, 402 U.S. 994 (1971). The case was argued before the Supreme Court in January, 1972.

from union members by union stewards, or paid directly by the members to Local 562's headquarters. In 1963, Local 562 abandoned this assessment procedure[2] and substituted a system of voluntary contributions. The signatures of members and non-members working on Local 562 projects were obtained on voluntary contribution cards,[3] under which members and non-members pledged a specific amount per eight hour work day, with all contributions being used to finance the Fund. The contributions to the Fund were usually collected by the foreman at the job site who maintained collection sheets with the names of the employees, the hours worked, and the amount paid to the Fund. These collections were retained in a separate bank account of the Fund, and were not commingled with the union's general treasury funds or with the dues paid by union members.[4]

In 1968, the union and three of its officers were indicated for conspiring to violate Section 610 of Title 18 of the United States Code[5] during the 1963-1968 period. Section 610 prohibits labor organizations from making contributions or expenditures in connection with any political campaign for President, Vice President, Senator or Representative.[6] Each was found guilty by the jury in the United States District

[2] Prior to 1963, the union had financed both the Fund and the general union treasury through this assessment procedure. In 1963, the union instituted a check off system for collecting from Local 562 members the mandatory payments to the general treasury, in addition to initiating the voluntary contribution system for financing the Fund.

[3] The voluntary contribution card read as follows:

> I the undersigned, of my own free will and accord, desire to make regular contributions to the Political, Education, Legislative, Charity and Defense Fund which has been established and will be maintained by persons who are members of Local Union No. 562.
>
> I therefore, agree to hereafter contribute . . . % per eight hour day to said fund and authorize my contributions to be used and expended by those in charge of the fund, in their sole judgement and discretion, for political, educational, legislative, charity and defense purposes.
>
> I understand that contributions are voluntary on my part and that I may revoke this agreement by a written notice to that effect mailed to the fund or to persons in charge thereof. I also understand that my contributions are no part of the dues or financial obligations of Local Union 562 and that the union has nothing whatsoever to do with this fund.

Brief for Appellants at 20, United States v. Pipefitters Local 562 (8th Cir. 1970).

[4] The contributions to the Fund by the members of Local 562 and members of the other unions aggregated $1,230,968 during the indictment period (1963-68). Disbursements out of the Fund for contributions to candidates for federal offices aggregated $151,412.

[5] 18 U.S.C. § 610 (1970). The defendant-appellants were indicted under the conspiracy section of 18 U.S.C. § 371 (1970).

[6] Section 610 to the extent here pertinent provides:

> It is unlawful for 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. . . .
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> For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in

Court for the Eastern District of Missouri. The union was fined five thousand dollars and the three officers of Local 562 were each sentenced to a one year imprisonment and fined one thousand dollars.

On appeal to the Court of Appeals for the Eighth Circuit, the defendant-appellants argued that the Fund was not a fund of Pipefitters Local Union No. 562; rather, it was an entity separate and apart from the union, and therefore not a "labor organization" as required by section 610. The appellants' contention was based primarily on the assertion that the Fund was financed totally through voluntary contributions. Furthermore, they argued that if in fact section 610 were applicable to the Fund, then the statute unconstitutionally abridged the individual union members' freedom of association.[7] The Government contended that the political expenditures came from union funds because the contributions were not voluntary, but were collected as part of the union's mandatory dues. The Fund, it argued, was merely a device established by the appellants to give the appearance of an entity separate from a "labor organization." The Government concluded that the application of section 610 by the district court to this factual situation was not an unconstitutional abridgement of the union members' right of association, because contributions to separate voluntary political associations by union members were not proscribed by the interpretation given the statute. In a majority opinion affirming the convictions, the court HELD: that the controlling issue in determining a violation of section 610 was whether or not the Fund from which political contributions were made was a union fund and not whether or not the Fund was supported by voluntary contributions. In addition, the court held that the statute, thus construed, did not unconstitutionally infringe upon the union members' right of association because of the existence of a valid governmental interest. Any abridgement of the individual union members' right of association was outweighed by the compelling governmental interest of protecting those union members who subscribe to political views contrary to those supported by those in control of the Fund.

The issue before the court was whether the political expenditures were made by a "labor organization" under section 610. Specifically, the court of appeals had to determine whether the presence of voluntary contributions precluded characterizing the Fund as a "labor organization." The court concluded that the factor which distinguished a section 610 violation was whether or not the money in the Fund in fact belonged to the labor organization; and that the voluntary or involuntary nature of the payments to the Fund constituted only one of

which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

[7] This note will not consider other issues raised on appeal relating to the vagueness of the statute, the violation of due process-equal protection, or the right to vote for Senators and Representatives. These issues were collateral to the essential holding of *Pipefitters*.

many factors "relevant and material on the issue of whether the fund is the property of Local 562."[8] Indeed, the court was willing to concede only that where contributions are voluntarily made to a fund, "[i]f the voluntary fund is a separate and distinct entity and it made the [campaign] contributions, no violations of section 610 would exist as the voluntary fund as a separate entity would not constitute a labor organization."[9]

In its brief review of the background of section 610, the court of appeals relied upon Mr. Justice Rutledge's opinion in *United States v. CIO*[10] to support by implication its interpretation of the scope of this section. In that case Mr. Justice Rutledge declared that the three principal objectives of the statute were: (1) to minimize the undue influence of labor unions in elections; (2) to preserve the purity of elections against the use of aggregated wealth by unions; and (3) to protect those union members who oppose the use of their funds for candidates they do not support. He emphasized that "the differences [among the three objectives] as well as their . . . combination become important for deciding the *scope* of the section's coverage and its validity in specific application."[11] After considering these three objectives, the court in *Pipefitters* apparently was satisfied that its interpretation of the scope of section 610 was correct. That is, an entity had to satisfy two requirements in order to fall outside of the purview of that provision. It must be separate from the labor organization so that its existence does not defeat the first two objectives relating to the influence and wealth of a union entity; and it must be funded by voluntary contributions, which fact would negate any need to protect "minority" union members. Consequently, *any* fund which was not separate from the labor organization would necessarily fall within the coverage of section 610, regardless of the fact that all of the contributions to the fund might have been voluntary.

This casenote will focus upon the validity of the court's determination that the true test for a section 610 violation was whether the fund was an entity separate from the labor organization, rather than whether the union members had voluntarily contributed to the fund. Since reference to the strict language of the statute is inconclusive on this point, consideration shall be given to the legislative history of the statute and to the judicial decisions thereunder. The casenote will attempt to illustrate, first, that historically courts have been unwilling to apply section 610 where voluntary contributions were the *source* of the fund, regardless of the connection between the fund and the union. Secondly, the note will argue that the intent of Congress, as revealed by the legislative background of section 610, was to exclude from the

[8] 434 F.2d at 1120. In stating that there were other considerations involved the court enumerated only one—the intention of the donors as to ownership and control of the fund. Id.

[9] Id. at 1121.

[10] 335 U.S. 106 (1948).

[11] Id. at 135 (emphasis added).

scope of the statute those political expenditures attributable to funds voluntarily contributed. Since Congress recognized that the primary purpose of regulating union contributions was "minority protection," the use of only *voluntary* contributions would eliminate the necessity of protecting any minority from coercion to contribute. Finally, the case-note will examine the constitutionality of section 610 as interpreted by the court of appeals.

Support for the proposition that the issue of the "voluntariness" of the contribution is of primary importance in interpreting section 610 can be found in the decisions of the few cases brought thereunder. The Supreme Court's first opportunity to comment upon a case brought under section 610 arose when it decided *United States v. CIO*.[12] In that case, the *CIO News*, a union-published periodical financed by union funds, carried an editorial advocating the election of a certain candidate for Congress. The union was indicted under Section 313 of the Federal Corrupt Practices Act, now 18 U.S.C. § 610. The Government argued that, by publishing and distributing the periodical, the union had made a political "expenditure" proscribed by the Act. The district court[13] dismissed the indictment.[14] The district court felt that Congress could not impinge upon the union members' freedoms of press and speech.[15]

On direct appeal, the Supreme Court avoided the constitutional argument by narrowly construing the word "expenditure" to exclude expenses for the publication of union material distributed only to members.[16] Justice Reed, summarizing the statute's legislative history, recognized that Congress sought to deter the union officials from making contributions from the general union funds to a political party which the individual member might oppose.[17] All of the justices recognized that a "primary purpose" of section 610 was to protect union members holding political views contrary to those advocated by the union from having their funds used to promote acceptance of those opposing views.[18] Thus, the rationale of this initial case construing section 610 as applied to unions suggested, by its restricted interpretation of section 610 and its insistence on looking to the primary legislative intent of the statute, that voluntary contributions by individual members of the union to a political fund were not intended to be within the scope of section 610.

The Supreme Court explicitly articulated its earlier indication that section 610 did not forbid voluntary contributions from members

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[12] 335 U.S. 106 (1948). For a more detailed discussion of this case see Note, 47 Mich. L. Rev. 408 (1949); Note 1949 Wis. L. Rev. 184 (1949).

[13] 77 F. Supp. 355 (D.D.C. 1948).

[14] Id. at 358. The court stated that "no clear and present danger to the public interest can be found in the circumstances surrounding the enactment of this legislation."

[15] Id. at 357.

[16] 335 U.S. at 123.

[17] Id. at 115.

[18] Id. at 115, 134, 137.

of the union in *United States v. UAW*.[19] In that case, the union had been indicted under section 610 for using union dues to pay for commercial broadcasts urging the selection of certain candidates for federal office. The district court, in dismissing the complaint, held that union-paid broadcasts were not prohibited by the statute.[20] On appeal, the Supreme Court reversed, holding that the use of union dues to sponsor television endorsements of candidates would violate section 610. Mr. Justice Frankfurter, speaking for the Court, indicated that in a trial involving a purported section 610 violation, a paramount question would be whether or not the funds had been obtained on a voluntary basis,[21] and thereby implied that the appellants could have escaped the limitations imposed by section 610 if they had collected the funds through voluntary contributions.

On two occasions the federal district courts have been confronted with fact situations similar to that in *Pipefitters*. In *United States v. Warehouse Local 688*,[22] two-thirds of the members of a union had signed cards authorizing the allocation of a specific portion of their union dues for expenditures to be incurred in connection with federal elections. The United States District Court for the Eastern District of Missouri held that section 610 did not forbid *direct* contributions or expenditures by a union in connection with federal elections where the funds came from that portion of membership dues voluntarily designated for such political purposes by the individual union members.[23] Although a literal interpretation of section 610 would have prohibited such political contributions by the union, the court was satisfied that since each member had voluntarily granted permission to the union to use his dues for political purposes section 610 had not been violated. The court went on to state that an interpretation of section 610 which would prohibit political contributions under the instant circumstances would be of doubtful constitutional validity.[24]

In a similar case involving voluntary contributions, *United States v. Anchorage Central Labor Council*,[25] a labor council, made up of twenty-six local labor unions, was indicted under section 610 for making an "expenditure" from the general fund of the organization in connection with federal elections. This fund was financed by a per capita tax paid by each union after a vote of the membership decided whether or not to contribute and how much the per capita tax would be. In

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[19] 352 U.S. 567 (1957). For a discussion of this case see Note, 46 Geo. L.J. 176 (1957); Note, 1957 U. Ill. L.F. 319 (1957).

[20] 138 F. Supp. 53, 59 (E.D. Mich. 1956).

[21] 352 U.S. at 592.

[22] 47 L.R.R.M. 2005 (E.D.Mo. 1960). It is significant that the attorney for the union in this district court case, Henry Craig Esq., was the same attorney who had advised Local 562 regarding the collection of funds and the use of voluntary pledge cards. See Brief for Appellants at 16-17, United States v. Pipefitters Local 562, (8th Cir. 1970).

[23] 47 L.R.R.M. at 2006-07.

[24] Id.

[25] 193 F. Supp. 504 (D. Alas. 1961).

granting the defendant's motion for acquittal, the court held that the expenditures would not be illegal under section 610 unless it could be shown that contributions were paid out of union dues and were not the result of voluntary contributions.[26] This holding reemphasized the suggestion of Justice Frankfurter in *UAW* that a union can maintain a political fund provided that the source of that fund is voluntary contributions.

The above decisions indicate not only that the judiciary considered the concern for "minority protection" as the leading purpose of section 610, but, more importantly, that in determining the existence of a section 610 violation, the decisive issue should not be whether the fund was an independent entity separate from the union, but rather whether the members in fact voluntarily contributed to the fund.[27] Where the source of the funds was uncertain the appellate courts should remand the case[28] and allow the trier of fact to determine if the funds came from involuntary union dues. Only after this critical question was answered would the courts hold that section 610 had been violated. It must be admitted, however, that this conclusion rests on only a few decisions.

The paucity of cases under section 610, coupled with the lack of a definitive judicial statement on its scope, makes it both appropriate and essential to examine the legislative history of the statute. The earliest legislative antecedent of section 610, the Act of January 26, 1907,[29] provided that it was unlawful for any corporation to make a contribution to an election for federal office. The moving force behind this legislation was the congressional desire to destroy the influence of corporations over elections.[30] Furthermore, Congress felt that a corporation had no right to use corporate funds for contributions without the consent of its stockholders.[31] Thus, from their inception, congressional attempts to regulate political contributions were directed toward protecting the interests of an individual within a larger organization. Congress sought to minimize the possibility that a stockholder would be forced to contribute to causes or candidates which he did not support or to which he did not wish to contribute.

This prohibition against corporate contributions was re-enacted in the Federal Corrupt Practices Act of 1925 (FCPA).[32] Furthermore,

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[26] Id. at 507.

[27] See Comment, 46 Marq. L. Rev. 364, 370 (1963).

[28] 352 U.S. at 592-93. Judge Heaney in his dissent in *Pipefitters* would have granted the defendants a new trial to determine whether campaign expenditures were made from funds voluntarily contributed with the knowledge that the contributions were to be used for political purposes. 434 F.2d at 1126.

[29] 34 Stat. 864-65 (1907).

[30] 40 Cong. Rec. 96 (1906); 41 Cong. Rec. 22 (1907).

[31] Hearings Before the House Comm. on the Election of the President, 59th Cong., 1st Sess. 76 (1906); 40 Cong. Rec. 96 (1906).

[32] 43 Stat. 1070, 1074 (1925), partially included in 18 U.S.C. § 610 (1970).

pursuant to congressional recognition[33] that labor unions should come under the same restrictions regarding contributions to political campaigns as those imposed on corporations, the War Labor Disputes (Smith-Connally) Act of 1943[34] brought labor unions within the coverage of the FCPA for the duration of World War II. Congress determined not only that the influence of unions on elections through monetary expenditures should be minimized, but, more importantly, that it would be unfair to an individual union member to permit union leaders to make contributions from the union treasury which the individual member might oppose.[35] As Representative Halleck stated in the House debate over the Act of 1943: "If a union member wants to contribute, he has the same privilege as any other individual. His money could not be used politically as he would not want it used."[36] Another proponent argued that amending the FCPA to include restrictions on unions would protect a union member "by putting safeguards around the funds that are taken from him as dues."[37] This initial attempt to regulate a union's contributing to political campaigns, then, was not intended to prevent expenditures for such campaigns by political organizations whose financial support came from *voluntary* contributions of union members.[38]

The temporary extension of the FCPA to include labor unions was made permanent by Section 304 of the Labor-Management Relations Act of 1947 (Taft-Hartley Act).[39] In the debate over its passage,[40] both the sponsor of the Act, Senator Taft, and his colleagues agreed that its coverage depended on the source of the funds which were subsequently expended in making political contributions. Accordingly, the applicability of section 304, now encoded as 18 U.S.C. § 610, depended upon whether the funds came from the members' mandatory general dues, or were attributable to voluntary payments by the union members for political purposes.[41] Senator Taft stated that funds vol-

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[33] Hearings Before a Subcomm. of the Comm. on Labor on H. R. 804, and H. R. 1483, 78th Cong., 1st Sess. 2,4 (1943); S. Rep. No. 101, 79th Cong., 1st Sess. 24 (1945).

[34] 57 Stat. 163 (1943), 50 U.S.C. §§ 1501-11 (1946). For a discussion of the history of unions in politics see Kovarsky, Unions and Federal Elections—A Social and Legal Analysis, 12 St. Louis U. L.J. 358 (1968); Woll, Unions in Politics: A Study in Law and the Workers' Needs, 34 S. Cal. L. Rev. 130 (1961).

[35] 89 Cong. Rec. 5334, 5792 (1943).

[36] Id. at 5334.

[37] Id. at 5792 (remarks of Senator Revercomb).

[38] Leter from the United States Attorney General to Senator Moore, Sept. 23, 1944, in Dep't of Justice Press Release, Sept. 25, 1944, excerpted in Department of Justice Clears P.A.C., 4 Law. Guild Rev. 49 (Sept.-Oct. 1944).

[39] 18 U.S.C. § 610 (1970). See also Comment, Section 304, Taft-Hartley Act: Validity of Restrictions on Union Political Activity, 57 Yale L.J. 806 (1948); Chang, Labor Political Action and the Taft-Hartley Act, 33 Neb. L. Rev. 554 (1954); Kallenbach, The Taft-Hartley Act and Union Political Contributions and Expenditures, 33 Minn. L. Rev. 1 (1948).

[40] 93 Cong. Rec. 6436-40 (1947).

[41] Id. at 6440, 6448.

untarily contributed for election purposes might be used without violating section 610,[42] and that "[a] union can . . . receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for . . . [political] purpose."[43]

In interpreting Senator Taft's remarks on the scope of section 610, commentators have recognized that whether unions could legally organize funds for the purpose of contributing to political campaigns would depend on whether the funds were supported by voluntary contributions, as opposed to union dues.[44] The commentators agreed that the primary concern of Congress in having section 610 applied to unions was to protect those union members who found themselves in the minority on a given political issue within the union from an unapproved use of their dues.[45] The proscription of the use of union dues for political contributions is predicated upon the principle that admission to a union should not be qualified by a simultaneous surrender of political independence.

This examination of the legislative history of section 610 indicates that Congress, in passing the existing statute forbidding unions to contribute to political campaigns, strove to protect the individual union member from having his mandatory dues used to support political endeavors which he did not favor. Hence it would appear that the *Pipefitters* decision, that a fund which was *not* separate from the labor organization would automatically violate section 610, fails to correlate with Congress' emphasis on the primary purpose of protecting minority union members. This primary purpose could be realized only by an examination of the source of the funds. When union members have ***voluntarily*** contributed to a union fund, knowing their contributions would be used to support political campaigns, the members' rights need no protection, for no "minority" exists. In such a case, where there are only voluntary contributions, the concept of minority protection should not be relied upon to bring the fund within the prohibitory scope of section 610.

The attempt in *Pipefitters* to create a new standard for application of section 610 appears to be unwarranted and impracticable. Previous judicial reliance on a test looking to the voluntary nature of the contributions accords with the prevalent congressional purpose of protecting minority union members. When measured by that test, the statute has withstood attacks on its constitutionality. Furthermore, the acceptance over the years of this "voluntariness" test has furnished lower courts with guidelines in applying section 610, which guidelines have rendered the fact-finder's burden somewhat easier. A jury could

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[42] Id. at 6440.

[43] Id.

[44] 46 Marq. L. Rev., supra note 27, at 370; Clover, Political Contributions by Labor Unions, 40 Texas L. Rev. 665, 670 (1962).

[45] Clover, supra note 44, at 670; Kallenbach, supra note 39, at 16.

more readily determine what the term "voluntary" encompassed as opposed to the undefined term "separate entity." Finally, the unions' members have themselves relied upon prior decisions to organize funds which would comply with judicial interpretations of section 610.

Pipefitters overturns this relatively well-established interpretation of section 610. The "separate and distinct entity" test which it proposes is apparently founded on a literal reading of a requirement in section 610 that there be a "labor organization." Although the court failed to establish any criteria with which a fact-finder might identify such an "entity," it appears that, in fact, many of the criteria considered under the pre-*Pipefitters* test will be retained under the *Pipefitters* test, such as the relationship between the contributions and the union dues, the manner of collecting the contributions and the identity of the officers of the fund. Apart from these criteria, the individual fact-finder will be free to decide what remaining elements might constitute a "separate" fund. That proposition, however, is undesirable, not only because the union members are left with no indication of how they can legally contribute collectively to political candidates, but also because the coverage of section 610 thus interpreted may approach unconstitutional limits. The tenor of this new judicial test is directed not so much at minority protection as it is at limiting the union's influence in elections. By instituting this ill-defined test, under which the courts are given virtually unlimited discretion to determine what constitutes a "separate entity," the *Pipefitters* court augmented the power of the judiciary to control unions' financial support of political campaigns. Since the *Pipefitters* test is presented without adequate guidelines and hence may give rise to problems in judicial administration, and since the purpose behind that test is constitutionally questionable, it is submitted that the court should have adopted the pre-*Pipefitters* "voluntariness" test.[46]

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[46] The failure of *Pipefitters* to clearly delineate permissible union political activity was instrumental in the formulation of recent legislation. On January 19, 1972 Congress passed the Federal Election Campaign Act which amended 18 U.S.C. § 610 to include:

> As used in this section, the phrase "contribution or expenditure" . . . shall not include . . . the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a . . . labor organization: provided, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment. . . .

Title III, § 205, Federal Election Campaign Act, 86 Stat. 3 (Feb. 7, 1972).

This bill emphasizes the significance of the voluntariness of the contributions by explicitly stating what would constitute an involuntary contribution. The only remnant of the *Pipefitters* test incorporated in this bill is the requirement that the contributions be placed in a separate fund. That requirement is fundamental even under the pre-*Pipefitters* test, since the fund had to show it was financed by contributions and not union dues.

The amendment's sponsor, Representative Orval Hansen (R., Idaho) stated that the amendment was not intended to overrule Section 610, but rather merely to clarify it.

The court's interpretation in *Pipefitters* raises serious doubts concerning the constitutionality of section 610. The court upheld the constitutionality of the statute as it interpreted it on the ground that the "compelling" governmental interest in protecting the individual union members' right of political expression from subjugation to organizational control, clearly outweighed the concurrent infringement upon the union members' right of political expression through association.[47] The importance of an individual's right of association has been stressed repeatedly by the judiciary. The Supreme Court in *De Jonge v. Oregon*[48] recognized that the right of individuals to join together voluntarily in political organizations is just as fundamental a right as are freedom of speech and freedom of the press.[49] The *De Jonge* case proposed that in order to maintain free political discussion and a responsive government, and to enable peaceful changes within that government, freedom of association must come within the purview of the First Amendment.[50]

This independent right of association was more fully developed in *NAACP v. Alabama ex rel Patterson*.[51] The Court in that case recognized that effective advocacy of political ideologies and beliefs was "undeniably enhanced by group association," and it clearly recognized the nexus between freedom of speech and freedom of association.[52] Furthermore, group activity was held to be an indispensable liberty which was protected by the First Amendment against regulatory assaults by the government.[53] In applying this doctrine of freedom of association to political organizations, the Court in *Sweezy v. New Hampshire*[54] stated that "[o]ur form of government is built on the premise that every citizen shall have the right to engage in political expression and association. . . . Exercise of these basic freedoms in America has traditionally been through the media of political associations."[55]

The decision in *Pipefitters* directly limits the exercise of this freedom. The individual members of Local 562 sought to exercise their right of political expression and association by combining their volun-

Wall Street Journal, January 20, 1972, at 2, col. 2. Representative Hansen also stated that this amendment was "consistent with the legislative intent expressed by the original author of section 610." 118 Cong. Rec. H. 94 (daily ed. Jan. 19, 1972).

47 434 F.2d at 1123.

48 299 U.S. 353 (1937). See also: Emerson, Freedom of Association and Freedom of Expression, 74 Yale L.J. 1 (1964); Douglas, The Right of Association, 63 Colum. L. Rev. 1361 (1963).

49 299 U.S. at 364.

50 Id. at 365.

51 357 U.S. 449 (1958). For a discussion of this case see Comment, State Control Over Political Organizations: First Amendment Checks on Powers of Regulation, 66 Yale L.J. 545 (1957).

52 357 U.S. at 460.

53 Id.

54 354 U.S. 234 (1957); see also NAACP v. Button, 371 U.S. 415, 430 (1963); United States v. CIO, 335 U.S. 143-44 (Rutledge, J., concurring).

55 354 U.S. at 250.

tary political contributions for the aggregate support of candidates. The court's application of section 610 to prohibit voluntary political contributions to a non-separate fund of the union directly interfered with the union members' exercise of these rights.

However, freedom of association, like all First Amendment rights, is not an absolute right, and can, in certain instances, be regulated by the government. Concerning the government's right to regulate or infringe upon First Amendment rights, Mr. Justice Frankfurter, in his often-cited concurring opinion in *Dennis v. United States*,[56] proposed that, in determining whether First Amendment rights have been violated, the court should "weigh the competing [private and public] interests."[57] The approach to be taken under this "weighing test" was originally adopted by the Court in *Schneider v. State*.[58] The issue in that case involved the constitutionality of city ordinances prohibiting the distribution of handbills. Mr. Justice Roberts, speaking for the Court, stated that a court "must weigh the circumstances and . . . appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the [First Amendment] rights."[59] In *Bridges v. California*,[60] the Court attempted to clarify the *Schneider* "weighing test." The Court explicitly held that an interest sufficient to outweigh any infringement of First Amendment rights must deal with a substantive evil that is extremely dangerous and extremely imminent.[61] It is this "interest" which deals with a substantive evil that the court of appeals in *Pipefitters* sought to characterize as "compelling" in justifying section 610's limitation on the union members' right of association.[62]

In analyzing the "weighing test" of the Supreme Court, one commentator has compared it to a pair of scales onto which the court places two co-ordinate weights.[63] If the court finds that the valid governmental interest only incidentally limits the First Amendment rights, then the "scale" tips in favor of the legality of the given legislation or regula-

[56] 341 U.S. 494 (1951).

[57] Id. at 524-25. For comments on the doctrine of "weighing interests," see Frantz, The First Amendment in the Balance, 71 Yale L.J. 1424 (1962); Fried, Two Concepts of Interests: Some Reflections on the Supreme Court's Balancing Test, 76 Harv. L. Rev. 755 (1963); Meiklejohn, The Balancing of Self-Preservation Against Political Freedom, 49 Cal. L. Rev. 4 (1961); Mendelson, On the Meaning of the First Amendment: Absolutes in the Balance, 50 Cal. L. Rev. 821 (1962); Frantz, Is the First Amendment Law?—A Reply to Professor Mendelson, 51 Cal. L. Rev. 729 (1963).

[58] 308 U.S. 147 (1939).

[59] Id. at 161.

[60] 314 U.S. 252 (1941).

[61] Id. at 263. See also Thomas v. Collins, 323 U.S. 516, 530 (1945); Sherbert v. Verner, 374 U.S. 398, 406 (1963).

[62] 434 F.2d at 1123. The court cited as authority for its use of "compelling" both the *Bridges* and *Sherbert* cases. It should be noted that *Bridges* utilized the phrase "substantive evil" without mentioning any "compelling" interest, whereas *Sherbert*, in recognizing the necessity of "compelling" interest, equated this with an interest dealing with "only the gravest abuses, endangering paramount interests." 374 U.S. at 406.

[63] Meiklejohn, supra note 57, at 12.

tion.[64] No matter how substantial the legitimate public interest is, however, the legislation or regulation must center on the abuse and narrowly seek to prevent it, for the public interests cannot be furthered by a regulation that broadly stifles First Amendment rights.[65]

If the *Pipefitters* court were seeking to protect union minorities or to eliminate union influence in elections, or to do both, it is submitted that these goals could not be properly achieved by broadly prohibiting union members from voluntarily contributing to political campaigns. That is, such a broad prohibition does not correlate with the two requirements or limitations within the "weighing test" of *Schneider*. The first, as advocated in *Bridges*, requires a "compelling" interest which would encompass a substantive evil endangering public interests; the second requires that the government regulation must narrowly seek to eliminate or control the evil, minimizing the First Amendment infringement.

In *Pipefitters*, the court recognized that section 610 impinged upon freedom of association and, therefore, it attempted to weigh the interests involved to determine the validity of the government regulation.[66] The "weight" which the court of appeals saw as tipping the scale for the validity of section 610 was "minority protection." The court asserted that the protection of the individual against appropriation of his dues for political causes which he did not support was a valid governmental interest and that section 610 could be applied to protect this interest without infringing unnecessarily upon any constitutional rights.[67] Yet such an assertion is paradoxical in light of the court's holding that a determination of whether the minority funds were voluntarily contributed to Local 562 for use in political campaigns was *not* necessary. That is, the court in *Pipefitters* sought to meet the *Schneider* requirement by placing on the "scale" the valid public interest of minority protection. Such protection of individual union members from exploitation also met the *Bridges* test by dealing with the "substantive evil." Thus the court of appeals made extensive use of minority protection; yet it did so without even determining whether in fact funds of a "minority" had been appropriated for Local 562's Fund for political campaigns. In short, there is lacking in *Pipefitters* the necessary answer to the paramount question[68] of whether Local 562 did in fact utilize funds contributed as dues by individual members who did not wish that their money be used for political purposes. Absent this answer, there could not be a finding that the constitutionality of the *Pipefitters* interpretation of section 610 was supported by the "compelling" interest of minority protection.

[64] See Konigsberg v. State Bar, 366 U.S. 36 (1961); Communist Party v. Subversive Activities Board, 367 U.S. 1 (1961), where the governmental interest was able to tip the scales against the First Amendment.

[65] Shelton v. Tucker, 364 U.S. 479, 493 (1960) (Frankfurter, J., dissenting).

[66] 434 F.2d at 1122.

[67] Id. at 1123.

[68] Id. at 1125 (Heaney, J., dissenting).

This non-existence of a "compelling" interest based on minority protection did not preclude the court from finding its interpretation of the statute constitutional on another ground. In order to make such a finding another "weight" to counterbalance freedom of association was needed. The secondary purpose of section 610—the prevention of undue influence of labor unions in elections[69]—may be used to provide such a counterbalance, offsetting the "weight" of the right of union members to associate and express themselves politically.

The argument that the prevention of undue influence of labor organizations could serve as this "weight" was considered, and rejected, in the concurring opinion in *United States v. CIO*.[70] Mr. Justice Rutledge there asserted that denial of association by section 610 could not be justified on the grounds that the prohibition was necessary to prevent undue influence by labor groups.[71] "The expression of bloc [e.g., aggregate expenditures by unions] sentiment is and always has been an integral part of our democratic electoral and legislative processes. They could hardly go on without it."[72] This position was re-emphasized in Mr. Justice Douglas' dissent in *United States v. UAW*.[73] In asserting that all the purposes behind the enactment of section 610 would not act as sufficient "weight" to justify the resulting sacrifice of First Amendment rights, Mr. Justice Douglas stated that, "First Amendment rights are part of the heritage of all persons and groups in this country. They are not to be dispensed or withheld merely because we or the Congress thinks the person or group is worthy or unworthy."[74] In addition to these judicial expressions, the "interest" of preventing undue influence of unions in elections does not appear to satisfy the requirement enunciated in *Bridges* that the regulation must seek to eliminate or control a substantive evil which is extremely dangerous to the public. The concurring opinion in *CIO* and the dissent in *UAW* strongly suggest that the requirement of "compelling" interest is not met by the limited purpose of preventing undue influence of unions in elections.

Section 610, in light of the cases brought thereunder and its legislative history, was apparently misinterpreted in *Pipefitters* when the court insisted that the issue of the "voluntariness" of the contributions was not controlling. The legislative and judicial authorities support the proposition that *any* fund financed entirely by voluntary contributions is outside the scope of section 610. Furthermore, the court of appeals created a paradox when it declared that a fund financed through *voluntary* contributions could be within the purview of section 610, and simultaneously based the statute's constitutionality upon the "com-

[69] Id. at 1119.

[70] 335 U.S. 106 (1948).

[71] Id. at 143-49. For a similar opinion see Comment, 57 Yale L.J. 806 supra note 39, at 827.

[72] 335 U.S. at 143.

[73] 352 U.S. 567, 593 (1957).

[74] Id. at 597.

pelling" interest of protecting the union minority from being *required* to contribute to causes which they as individuals would not have supported. There is no valid justification for deterring the union members from freely associating for the furtherance of expressing their political preferences. Where the "compelling" interest upon which the regulation is supposedly justified lacks substantial foundation, the constitutionality of section 610 as interpreted and applied in *Pipefitters* is questionable.*

DANIEL J. GRIFFIN JR.

Admiralty—Limitation on Sovereign Immunity—Governmental Liability for Negligent Misrepresentation—*De Bardeleben Marine Corp. v. United States.*[1]—Plaintiff tugboat owner was commissioned by Coyle Lines on February 8, 1964, to anchor two barges off a Tampa dock and to retrieve them the next day. In the process of removal, the anchor of one of the barges ruptured a submerged natural gas pipeline. The resulting fire and explosion caused damage to the tugboat and both barges and inflicted personal injuries on the crew. The presence of the pipeline was first noted in *Weekly Notice to Mariners* of March 16, 1963. Its location was then marked on the Coast and Geodetic Survey Chart issued September 16, 1963.[2] Notice of issuance of this corrected map was subsequently published in *Weekly Notice to Mariners* of October 19, 1963. None of these publications, however, was aboard the tug. The chart that was aboard, dated December 17, 1962, was officially stamped "Corrected through *Weekly Notice* of July 20, 1963." Though stamped as corrected, this chart did not include the location of the pipeline. The tugboat owner brought suit[3] under the Suits in Admiralty Act (SIA),[4] alleging that the issuance of the faulty chart constituted negligent misrepresentation and breach of warranty. In the district court, both parties were found negligent and the damages were apportioned.[5]

* Subsequent to submission of this article for publication, *Pipefitters* was reversed by the United States Supreme Court. United States v. Pipefitters Local 562, 40 U.S.L.W. 4781 (U.S. June 22, 1972). The Court held, *inter alia*, that 18 U.S.C. § 610 does not prohibit union contributions and expenditures from a political fund financed by voluntary donations of members. The Court also held that such a fund need not be separate from the union but must be strictly segregated from the union dues and assessments.

1 No. 29,360 (5th Cir., Sept. 8, 1971).

2 These notices are issued in accordance with 33 C.F.R. § 72.01-1 (1971), which states: "Through the means of Notices to Mariners, the Coast Guard disseminates information concerning establishments, changes, discontinuances, and certain deficiencies in operation of aides to navigation maintained by and under the authority of the Commandant." These regulations, issued pursuant to 33 U.S.C. §§ 883(a)-(d) (1970), authorize the collection and dissemination of maritime data for the purpose of alerting mariners to new hazards and changes in the navigable waters of the United States.

3 No. 29,360 (5th Cir., Sept. 8, 1971).

4 46 U.S.C. §§ 741-52 (1970).

5 No. 29,360 (5th Cir., Sept. 8, 1971). In applying a comparative theory of tort