Creating a Beck Statute: Recent Congressional Attempts and a Proposal for the Future

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CREATING A BECK STATUTE: RECENT CONGRESSIONAL ATTEMPTS AND A PROPOSAL FOR THE FUTURE

I. INTRODUCTION

In the wake of a presidential campaign that cost hundreds of millions of dollars, and as campaigns for political office become increasingly competitive financially, inquiries have been made into the financing of these undertakings. Contributions to these campaigns come from all facets of the society, including the nation’s labor unions. For instance, in the congressional races that culminated in November of 1996, the AFL-CIO union spent thirty-five million dollars in an attempt to defeat the Republicans. As one may surmise, the sources of these funds that unions utilize for political purposes often come from the dues and fees paid by union members and contributors. In addition, many of these due and fee payers may object to the application of their contributions to political causes that they do not support.

The typical union may receive funds in the form of dues and/or fees from two principal sources: (a) union members, and (b) those workers who are subject to a union security agreement or “agency

1. See Big Bucks, THE CAP. TIMES, Oct. 26, 1996, at 11A available in 1996 WL 13786515 (“The known cost of this year’s presidential election is a dizzying $800 million.”).
2. See generally Charles Lewis, A Politician and His Patrons: Presidential Campaigns are Less Horse Races Than Giant Auctions, CHRISTIAN SCI. MONITOR, Feb. 20, 1996, at 19 (“Our federal elections have become an exclusive ‘pay-or-play’ process.”).
3. Id.
5. See id.
7. See generally The Worker Right to Know Act: Hearings on H.R. 3580 Before the Subcomm. on Employer-Employee Relations of the Comm. on Econ. and Educ. Opportunities, 104th Cong. 33, 39 (1996) (statement of Charles R. Serio) (explaining that workers should be able to object to their union dues and agency fees being used for political purposes).
8. See Weinstein & Wielgus, supra note 6, at A14 (“[A]s many as 40 percent of AFL-CIO members may be forced to contribute to a campaign with which they disagree.”).
An "agency shop" arrangement applies to an arrangement under which all employees are required as a condition of employment to pay dues to the union and pay the union's initiation fee, but they need not actually become union members. An agreement of this kind is permitted by the National Labor Relations Act and has been determined by the U.S. Supreme Court to "not constitute an unfair labor practice." This practice has a commonly stated purpose of preventing the problem of "free riders" in union shops. "Free riders" is a phrase that connotes those non-union member workers who do not contribute to the union in the form of dues, but nonetheless receive the benefits of union representation, as unions must "represent all workers in a bargaining unit" as part of their obligations as the collective bargaining representative. The "agency shop" arrangement is the answer to this problem, as a workplace may not require as a condition of employment, membership in a union. The employer may however require contributions to the union which often amount to the equivalent of member dues, to pay for the cost of the union representing the employees' collective bargaining interests. It is said then that while the National Labor Relations Act, upon a plain reading, appears to allow employers and unions to require as a condition of employment membership therein, their "[m]embership . . . is whittled down to its financial core."

12. See General Motors Corp., 373 U.S. at 735.
14. See id.
16. See General Motors Corp., 373 U.S. at 744.
17. See id. at 743.
18. Id. at 742.
These concepts had their origin in the Taft-Hartley Act of 1947. Before the passage of the Taft-Hartley Act, the 1935 Wagner Act "permitted . . . 'closed shop' agreements" between employers and collective bargaining representatives which resulted in employers only hiring union members. The Congress then decided, under pressure to do so, that these agreements "create[d] too great a barrier to free employment to be longer tolerated." The Taft-Hartley Act then rid the practice of the "closed shop" agreements. It also addressed the problem of "free riders." Because employers and unions can require all of the represented workers to pay "agency fees" to the union as a condition of employment and if the union subsequently contributes money to a particular political cause, there arises then a potential for mandatory payments to political causes with which the contributor may strongly object.

Although the subject of employees objecting to the uses a union puts their contributions to dates back to cases arising under the Railway Labor Act, the topic attracted increased scrutiny after a United States Supreme Court case in 1988 and the attempted passage of the "Worker Right to Know Act" and the "Worker Paycheck Fairness Act."

The "Worker Right to Know Act" or House Bill 3580, was a proposal for legislation introduced into Congress on June 5, 1996 by Illinois Republican Congressman Harris Fawell. The Act sought to ensure that workers who pay fees or dues to a union have a right to express their views when the union attempts to utilize the fees for purposes other than the representation of the employees in the bargaining unit.

The "Worker Paycheck Fairness Act" or House Bill 1625 is another legislative proposal that seeks to allow "workers to make

20. See id.
22. See Beck, 487 U.S. at 747-49.
23. See id. at 749 (quoting Radio Officers v. NLRB, 347 U.S. 17, 41 (1954)).
24. See Weinstein & Wielgus, supra note 6, at A14.
25. See, e.g., Railway Employees' Dep't v. Hanson, 351 U.S. 225 (1956).
30. See H.R. 3580 § 3.
individual and informed choices about the political, social, or charitable causes they support is protected to the greatest extent possible.  

What follows is an analysis of the differences between the proposed Acts and the *Beck* case as well as the potential for abuse under the Acts. The analysis will essentially be based upon the purposes of the Acts and to whom they were or are to apply. Furthermore, it is also contended that the authors of both Bills failed to take into account the specific holding of the Supreme Court in the 1988 *Beck* decision and hence made errors in the drafting of the Acts.

II. RELEVANT HISTORY CULMINATING IN THE ATTEMPTED PASSAGE OF THE "WORKER RIGHT TO KNOW ACT" AND THE "WORKER PAYCHECK FAIRNESS ACT"

The Railway Labor Act provides in relevant part that

any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class.

It was under this provision of The Railway Labor Act that the first group of workers began to question the use of their union contributions.  

In *Railway Employees' Department v. Hanson*, the Supreme Court was faced with the question of the Constitutional validity of "union shop" agreements in the context of the Railway Labor Act, section 2, Eleventh. Here, a group of employees of a railroad company sought from the Court an injunction against the company and labor organizations from enforcing the union shop agreement

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33. See, e.g., Hanson, 351 U.S. 228.
34. 351 U.S. 225.
because they claimed it “violate[d] the ‘right to work’ provision of the Nebraska Constitution . . . .”\(^{35}\) In ruling against the employees, the Court found that “the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments.”\(^{36}\)

In a later case, the Supreme Court was again faced with a situation where a group of labor organizations and carriers entered into a union security agreement.\(^{37}\) The agreement required that all employees as a condition of employment make contributions to the union.\(^{38}\) The issue in the case was whether the union could use the contributions for political causes.\(^{39}\) The Court in *Street* held that a union could not use the funds collected from these workers to support political causes that the worker opposed.\(^{40}\) Using contributions for collective bargaining purposes was what made the “agency shop” agreements legal to begin with.\(^{41}\) In its decision, the Court discussed the “‘free rider’” problem as another justification for the collection of the “agency fees.”\(^{42}\) The Court suggested, but did not order a system of remedies for the correction of this problem.\(^{43}\)

The issue eventually arose under the National Labor Relations Act in *Communications Workers of America v. Beck.*\(^{44}\) The Act in its relevant portion, reads similarly to the Railway Labor Act portion that was discussed above.\(^{45}\) In fact, the Supreme Court has held that section 8(a)(3) and section 2, Eleventh of the Railway Labor Act are “‘statutory equivalent[s]’”\(^{46}\) and therefore, in questions arising under the National Labor Relations Act, their decision in

35. See id. at 228.
36. Id. at 238.
38. See id. at 742-44.
39. See id. at 768.
40. See id. at 769.
41. General Motors Corp., 373 U.S. at 740-41.
42. See Street, 367 U.S. at 765-70.
43. See id. at 771-75.
Street is "controlling." Section 8(a)(3) of the National Labor Relations Act reads as follows: "Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein . . . ." Essentially, section 8(a)(3) allows an employer and a union to enter into an agreement to force all employees of a workplace to contribute "agency fees" to the union as a condition of employment. As in the Street case, the employees are not actually union members and they are not technically paying "dues" to the union. They are nonetheless required to contribute "agency fees" to the union which often are the equivalent amount of union member dues, as a prerequisite to the continuation of employment. While these agreements are indeed permitted under the National Labor Relations Act, a question that arose under the Railway Labor Act, similarly arose in this context, namely whether these fees may be used by the union for purposes other than "collective bargaining, contract administration, [and] grievance adjustment" when the non-union member objected to such use. Similar to the situation in Street, the uses often include political or social funding.

The Supreme Court decided "fee-objector[ ]" cases in the context of the Railway Labor Act based on constitutional considerations. In the context of Communications Workers of America v. Beck, the Supreme Court "specifically tied the 'Beck' rights of private sector employees to the unions' duty of fair representation under section 8(b)(1)(A) of the National Labor Relations Act." In Beck, a group of non-union member employees who nonetheless contrib-

47. Beck, 487 U.S. at 745.
52. See id.; Street, 367 U.S. 740.
53. See Beck, 487 U.S. at 745; Street, 367 U.S. 740.
54. See Beck, 487 U.S. at 745; Street, 367 U.S. 740.
56. Id.
uted to the union in the form of "agency fees" as a condition of employment, brought suit challenging the fact that the union was able to use their contributions for purposes other than "collective bargaining, contract administration, [and] grievance adjustment." The employees contended that their right to fair representation, their First Amendment rights, section 8(a)(3) of the National Labor Relations Act and particular common law fiduciary duties were violated. Tracing their decision in *Street*, the Supreme Court found that section 8(a)(3) did not allow the union to use the contributions of the objecting non-member employees for purposes other than those "necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" Unlike in *Street*, where the Court did not provide for a remedy, the Court this time held that the remedy for this practice would be a refund of all of the objecting non-members' fees. Essentially then, the Court was saying that once an employee joined a union, he or she could not object to how their fees were utilized.

It wasn't until eight years following the *Beck* decision that the National Labor Relations Board was faced with the application of *Beck*. In *California Saw & Knife Works*, the National Labor Relations Board actually decided twelve cases that dealt with the varying requirements under *Beck*. The decision focused on essentially four issues: (a) notice of *Beck* rights to employees; (b) refund procedures as per *Beck*; (c) amount of the refund and what constitutes "collective bargaining" purposes and (d) enforcement of *Beck* rights. As to the requirement of notice under *Beck*, the Board

58. See id. at 740.
59. See id. at 762-63.
60. Id.
found that new employees and present employees must be given notice of their rights. In the case immediately facing the Board, the notice was printed inside the cover of a union magazine, which the Board held to be sufficient notice. Secondly, the Board approved of the objection procedures in place for non-member employees who wished to object to the uses to which their union contributions were applied. In the instant case, the procedure involved the non-members mailing the objections to the treasurer. While the Board implemented the Beck rights, it was not immediately clear what actually constituted uses that relate to "collective bargaining." In this regard, the Board permitted the use of in-house auditors to review the allocation of expenses. In a sort of criticism, it has been mentioned that while the Board made the above determinations, it has not outlined any indications as to what penalties will ensue if a union fails to abide by the Beck decision.

According to the proponents and sponsors of the "Worker Right to Know Act," there has been "little action" involving the Beck decision or any application of it by the National Labor Relations Board with the exception of the California Saw & Knife decision. Moreover, according to Harris Fawell, the sponsor of the "Worker Right to Know Act," following Beck, if a union employee wanted to object to the usage of his dues for purposes other than "collective bargaining, contract administration [and] grievance adjustment," he or she would have to engage in a complicated procedure, namely having to leave the union in order to object.

III. THE "WORKER RIGHT TO KNOW ACT"

In June of 1996, former union member, Harris Fawell, the Republican Congressman from Illinois presented to Congress, the

65. See California Saw & Knife, 320 N.L.R.B. at 224, 231.
66. See id. at 231.
67. See Breger, supra note 62, at 216.
68. See Breger, supra note 62, at 215.
69. See Breger, supra note 62, at 216-17.
70. See Breger, supra note 62, at 217.
71. See Breger, supra note 62, at 218.
73. See Harris Fawell, Workers Have a Right to Know, Wash. Times, June 17, 1996, at A21.
"Worker Right to Know Act." The Act was part of a larger bill aimed at campaign finance reform. The Act attempted to ensure that workers who are required to pay union dues as a condition of employment have adequate information about how the money they pay in dues to a union is spent and to remove obstacles to the ability of working people to exercise their right to object to the use of their dues.

The Act had as its intended goals the following: to require a union (a) to obtain a signed written authorization from all employees expressing their intention of allowing the union to use the fees for non-collective bargaining purposes; (b) to renew this written authorization annually between the months of September and October; (c) to disclose to the employee a ratio of which particular purposes the fees were applied, as conducted by an independent auditor; (d) to ensure that all workers who contributed to the union would be equally involved in the union's collective bargaining activities; and (e) to ensure that workers could not be required to join a union as a full fledged member as a condition of employment. The Act would accomplish these goals by amending the National Labor Relations Act particularly, sections 7 and 8. The Bill also sought to amend the Labor Management Reporting and Disclosure Act of 1959 in its "Disclosure to Workers" section as well as the Labor Management Relations Act, 1947 in its "Worker Consent" section. Touted as the Bill that would "implement [the] Beck" decision, the "Worker Right to Know Act" was defeated by

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77. H.R. 3580, 104th Cong. § 3 (1996).
79. See H.R. 3580, § 5; Strong, supra note 78, at B1.
80. See H.R. 3580, § 5; Strong, supra note 78, at B1.
81. See H.R. 3580, § 7; Strong, supra note 78, at B1.
82. See Strong, supra note 78, at B1.
83. See Worker Right to Know Act, H.R. 3580, 104th Cong. §§ 4-7 (1996).
84. See id. § 8.
85. See id. § 5.
86. See Union Dues: Worker Right to Know Falls with Defeat, supra note 76, at A-16.
a vote of 259 to 162 in the United States House of Representatives on July 25, 1996.87

IV. THE "WORKER PAYCHECK FAIRNESS ACT"

In 1997, Harris Fawell attempted again to address the issue of the uses to which the union applied its contributions in his new Bill, the "Worker Paycheck Fairness Act" or House Bill 1625.88 The Bill again seeks to require unions to obtain pre-authorization from each worker before it may use their contributions for uses not related to the collective bargaining representation.89 The Bill also provides for a revocation of the authorization as well as a civil cause of action by an employee against the labor organization when the organization does not abide by the authorization procedure or influences an employee from exercising his or her rights under the Bill.90 Moreover, as in the "Worker Right to Know Act," the "Worker Paycheck Fairness Act" provides for a written notice outlining the authorization procedures as well as an allocated expense report.91

The House Committee on Education and the Workforce considered and approved a marked-up version of the Bill by "a voice vote" on October 8, 1997.92

V. DIFFERING VIEWS ON THE ACTS

A. "Worker Right to Know Act"

Hailed as the workers' "'procedural bill of rights,'"93 which had tenets involving "'notice, consent, and disclosure[,]'"94 the "Worker Right to Know Act" has attracted many contrasting views on its attributes and deficiencies.95 Harris Fawell drafted the Act in reaction to workers' experiences when they tried to exercise their rights pursuant to the Beck decision: "They told of suffering union refus-

87. See Union Dues: Worker Right to Know Falls with Defeat, supra note 76, at A-16.
90. See id. § 4(c).
91. See id. §§ 5, 6.
93. See Union Dues: Worker Right to Know Falls with Defeat, supra note 76, at A-16.
94. See Union Dues: Worker Right to Know Falls with Defeat, supra note 76, at A-16.
95. See infra notes 96-140 and accompanying text.
als, threats, intimidation, indignities and intolerable delays in their efforts to resign from the union and to seek rebates as guaranteed by Beck." Moreover, some union member workers told of threats of job termination by the union when they contemplated exercising their Beck rights. Fawell also said that "[w]orkers have a right to know why money is taken out of their paychecks and how that money is used, and a right to stop money from being taken out of their paychecks for purposes with which they disagree." 

In supporting the Act as a sponsor, Newt Gingrich has maintained that a bill of this sort is needed for today's workers because under the present situation, it may take up to eight years to process a Beck request and all the while the worker's cohorts urge him or her to drop the request in order to prevent "'mak[ing] trouble.'" Although these accounts may be enough to justify the aims of the "Worker Right to Know Act," there exists situations where the worker may not even know of the rights due to them under Beck.

Peter Eide from the United States Chamber of Commerce maintained that many workers are not aware of their rights under Beck. He also said that if the workers were aware, they could petition the union for rebates if they were sure that they would not be retaliated against. In fact, a poll has indicated that seventy-eight percent of workers are not aware of their rights pursuant to the Beck decision. Even if the workers are made aware of their Beck rights, Diane Generous of the National Association of Manufacturers claimed that the reason the "Worker Right to Know" legislation is needed is that nobody actually knows how much money is spent for purposes that would justify rebates to contributors.

96. Harris Fawell, Workers Have a Right to Know, WASH. TIMES, June 17, 1996, at A21 (emphasis added).
97. Id.
101. Id.
102. Id.
Because the Bill came to light the summer prior to the nation’s elections, the union critics of the legislation called it “GOP election-year grandstanding.” AFL-CIO President John Sweeney maintained that the Act was merely “retaliation[]” against unions by the Republican leaders and that “unions already have more financial disclosure requirements than any other organization in the country.” Others maintained that the Bill is unfair as it allows non-members to participate equally with members in the affairs of the union.

Raymond J. LaJeunesse, Jr. from the National Right to Work Legal Defense Foundation, the organization that represented Mr. Beck in Communications Workers of America v. Beck, found strengths in the Bill, but nevertheless did withdraw his support. He submitted that the Bill made some progress in removing the term “membership” from the National Labor Relations Act, which appears to allow the union and the employer to require membership in a union as a condition of employment while contradicting the holdings of NLRB v. General Motors Corp. and Communications Workers of America v. Beck. This language, as LaJeunesse claimed, could be used by unions to mislead employees. Moreover, LaJeunesse applauded the authorization required by the Bill but advocated an option to allow a revocation of the authorization when the union subsequently utilizes the money to support causes with which the worker “disagrees.” Finally, he also felt that the Act would have done an effective job of eliminating the “Hobson’s choice” of a worker having to leave a union in order to exercise his or her Beck rights.

105. See id. at A-6.
109. See id. at 302.
112. See LaJeunesse, supra note 108, at 302-03.
113. See LaJeunesse, supra note 108, at 304.
114. See LaJeunesse, supra note 108, at 304.
LaJeunesse, however, did not support the Bill because he claimed that this type of act still forces a worker to contribute to the union "as a condition of employment."\textsuperscript{115} This in turn, he claimed, calls into question section 14(b) of the National Labor Relations Act which allows State Right to Work laws.\textsuperscript{116} LaJeunesse rightfully pointed out that the Act does not articulate what exactly is "'related to' collective bargaining"—the NLRB and the court could then rationally relate anything to these areas, thus giving unions wide latitude.\textsuperscript{117}

Conversely, Charles W. Baird, Ph.D. a Professor of Economics and Director of the Smith Center for Private Enterprise Studies at California State University advocated the "Worker Right to Know Act" on the basis of a moral choice.\textsuperscript{118} He expressed concern for the "pressure" that member employees face if they decide to file a Beck claim and advocated the amendment of the National Labor Relations Act with a new section 8(h) that would secure from the workers written authorization for the use of the funds.\textsuperscript{119} Moreover, Dr. Baird also claimed that the Act's section 8(b)(1) amendment allowing those workers who claim Beck rights the opportunity to participate in the affairs of the union, would correct the current practice of forcing members to drop out of the union.\textsuperscript{120} He also rejected the arguments of critics that the disclosure requirements would bankrupt local unions and that the Act would violate a union's First Amendment rights.\textsuperscript{121} He said that the unions "brought this on themselves" and that the First Amendment does not permit unions to take anything away from a person "against their will."\textsuperscript{122}

It is interesting to note that some who supported the Bill nonetheless found room for improvement.\textsuperscript{123} Hon. Marshall J. Breger

\textsuperscript{115} See LaJeunesse, supra note 108, at 305.
\textsuperscript{116} See LaJeunesse, supra note 108, at 305.
\textsuperscript{117} See LaJeunesse, supra note 108, at 308.
\textsuperscript{119} See id. at 234.
\textsuperscript{120} See id. at 235.
\textsuperscript{121} See id. at 235-36.
\textsuperscript{122} See id. at 235-36.
from the Columbus School of Law at the Catholic University of America claimed that the “Worker Right to Know Act” made “a good start” in addressing Beck issues. He claimed that the Act did a good job of addressing the notice problem associated with Beck. He also maintained that the prior written authorization “opt-in” procedure is “fairer” than an “opt-out” procedure. Moreover, Mr. Breger felt the fact that the Bill gave the non-union member the same rights as the member to participate in collective bargaining activities, is “a point of basic fairness” because it involves decisions that affect the “workers basic livelihood.” Mr. Breger did claim that the Bill stops short of giving descriptions of the allocation of expenses as to the refund process under Beck. He also said that the Act does not mention the specifics of “rules and procedures for Beck arbitration proceedings or whether any special statutory penalties for obstructing implementation of Beck rights are appropriate.”

James B. Coppess, a representative from the Communications Workers of America, in commenting on the “Worker Right to Know Act” claimed it is inconceivable to believe that political activity has nothing to do with collective bargaining and employment. He claimed that unions do not hide their political affiliations. Consequently, he maintained, employees know when they vote for union representation, that unions try to “advance [their] member interests” through political activity. He claimed that workers know this “when they vote on the level of dues” and who will control the union’s goals. He felt that they are aware of this factor when “they vote to approve collective bargaining agreements containing union security clauses . . . .”

124. See id. at 218.
125. See id. at 218-19.
126. Id. at 219.
127. Id. at 221.
128. See id. at 226.
129. Id. at 227.
131. See id. at 320.
132. See id.
133. See id.
134. Id.
H.R. 3580 punishes unions that engage in political activity. The bill effectively bars workers from joining such unions unless they annually restate their support for the union’s political program. And it imposes onerous accounting requirements that would cost unions upwards of $200 million a year. Under the bill, the only way for a union to escape these measures is to foreswear any political activity[,] said Coppess.\(^{135}\)

Others who opposed the Act claimed that in recent times, very few workers actually petition the union for their rebates under *Beck*.\(^{136}\) Jeff Miller from the Communications Workers of America, while opposing the Bill, maintained that very little money in the Communications Workers of America union is spent on political purposes and that in their organization, workers are already made aware through an adequate accounting structure of how their funds are allocated.\(^{137}\) Additionally, Accountant Thomas E. Seay claimed that local unions will not be able to keep up financially with the reporting requirements under the Act.\(^{138}\) He also said that the Act is misplaced as many local unions do not concentrate on political contributions.\(^{139}\) Accordingly, others claimed that the Act as it stands “far exceeds what is required by the *Beck* decision.”\(^{140}\)

**B. “Worker Paycheck Fairness Act”**

Harris Fawell, the sponsor of the “Worker Paycheck Fairness Act” and other supporters of the Bill say that it “codifies” the *Beck* decision.\(^{141}\) Other prominent leaders in the labor community have voiced their opposition to the Bill. William Gould, the Chairman of the National Labor Relations Board says that the Act is not needed

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135. *Id.* at 321.
137. See *id*.
138. See *id*.
139. See *id*.
because workers have already authorized the spending of funds on certain non-representative purposes. Chairmen Gould said that workers already have presumptively given permission for unions to make such expenditures by voting in the union in NLRB-conducted elections or through some other method demonstrating majority support. Workers may be very much influenced by whether a trade union is aligned with the Democratic Party, the Republican Party or some other party in determining whether they want the union to represent them.

Chairman Gould also questioned the provision in the Act allowing liability to flow from violations of the Act, asking whether it would apply to all sections of the National Labor Relations Act.

Alexis Herman, the Labor Secretary of the United States, also attacked the Bill. The Labor Secretary maintained that the Bill's "opt-in" procedure is the opposite of the Beck "opt-out" procedure. Hon. Herman added that "there is no basis for creating a special class of union members who enjoy all of the benefits of union membership but share only some of the financial responsibilities."

VI. PROBLEMS WITH THE DRAFTS OF THE BILLS

A. "Worker Right to Know Act"

Before an adequate analysis of the problems of the draft of the Bill can begin, it is first necessary to outline the changes that it sought to make to the National Labor Relations Act, section 302(c)(4) of the Labor Management Relations Act, 1947 and section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959.

The authors of the Bill claimed that

143. Id.
144. See id.
146. See Union Dues: House Panel Approves Bill, supra note 141, at AA-1.
147. See Union Dues: House Panel Approves Bill, supra note 141, at AA-1.
[the purpose of this Act is to ensure that workers who are required to pay union dues as a condition of employment have adequate information about how the money they pay in dues to a union is spent and to remove obstacles to the ability of working people to exercise their right to object to the use of their dues for political, legislative, social, or charitable causes with which they disagree, or for other activities not necessary to performing the duties of the exclusive representative of employees in dealing with the employer on labor-management issues.]

The Bill attempted to make substantive changes to the text of the National Labor Relations Act sections 7 and 8. First, the Bill amended section 7 of the Act by substituting language for the word "membership." The Act in section 7 would then have read as follows:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring 'the payment to a labor organization of dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation as a condition of employment as authorized in section 8(a)(3).'

In the "Unfair Labor Practice" section, the Act would have amended section 8 (a)(3) to read as follows:

It shall be an unfair labor practice for an employer—

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor

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149. Id. § 3.
150. Id.
151. Id. § 4.
152. The changes that the "Worker Right to Know Act" sought to make are indicated by an italic font with the exception of the word "Provided." This indication will apply to the text accompanying notes 153 to 165.
organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) to require as a condition of employment 'the payment to such labor organization of dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation'\textsuperscript{154} . . .

The Act also sought to ensure the requirement of the written authorization by adding a new section (h) to the end of section 8 of the National Labor Relations Act:\textsuperscript{155}

'(h) An employee subject to an agreement between an employer and a labor organization requiring the payment of dues or fees to such organization as authorized in section 8(a)(3) may not be required to pay such organization, nor may such organization accept payment of, any dues or fees not related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation unless the employee has agreed to pay such dues or fees in a signed written agreement that must be renewed between the first day of September and the first day of October of each year. Such signed written agreement shall include a ratio certified by an independent auditor, of the dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation and the dues or fees related to other purposes.'\textsuperscript{156}

Additionally, the Act sought to amend the Labor Management Relations Act, 1947, section 302(c)(4) in a similar fashion by providing for the requirement of written authorization before a labor organization could use dues for purposes other than "collective bargaining, contract administration, or grievance adjustment."\textsuperscript{157}

The Act further attempted to ensure that the workers subject to such circumstances receive notice of their right to only contribute fees used for collective bargaining by adding another new section to


\textsuperscript{155} See Worker Right to Know Act, H.R. 3580, 104th Cong. (1996).

\textsuperscript{156} See id. § 5(a).

section 8 of the National Labor Relations Act; section (i). The section would have read:

'(i) An employer shall be required to post a notice, of such size and in such form as the Board shall prescribe, in conspicuous places in and about its plants and offices, including all places where notices to employees are customarily posted, informing employees of their rights under section 7 of this Act and clarifying to employees that an agreement requiring the payment of dues or fees to a labor organization as a condition of employment as authorized in subsection (a)(3) may only require that employees pay to such organization any dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation. A copy of such notice shall be provided to each employee not later than 10 days after the first day of employment.'

Moreover, the Act in its “Worker Economic Rights” section sought to ensure that all employees who pay fees to a union have the right to participate in the union in activities related to “collective bargaining, contract administration, or grievance adjustment.” The Act attempted to accomplish this by amending section 8(b)(1) of the National Labor Relations Act to read as follows:

It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein ‘except that, an employee subject to an agreement between an employer and a labor organization requiring as a condition of employment the payment of dues or fees to such organization as authorized in subsection (a)(3), who pays such dues or fees, shall have the same right to participate in the affairs of the organization related to collective bargaining, contract administration, or grievance adjustment as any member of the organization;’ or (B) an employer in the selection of his representatives for the

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160. Id. § 7.
purposes of collective bargaining or the adjustment of grievances.\textsuperscript{161}

The Act, as was discussed above, also attempted to ensure effective reporting procedures so that members could make an accurate assessment as to what resources were used for "collective bargaining, contract administration, or grievance adjustment."\textsuperscript{162} To this end, the Act sought to amend section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959 through the addition of a sentence at the end of the section:

'\textit{Every labor organization shall be required to attribute and report expenses by function classification in such detail as necessary to allow its members to determine whether such expenses were related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation or were related to other purposes.}'\textsuperscript{163}

Also amended in this regard would have been section 201(c) of the Labor-Management Reporting and Disclosure Act of 1959.\textsuperscript{164} As amended the section would have read as follows:

Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all of its members 'and employees required to pay any dues or fees to such organization', and every such labor organization and its officers shall be under a duty enforceable at the suit of any member 'or employee required to pay any dues or fees to such organization' of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member 'or employee required to pay any dues or fees to such organization' for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or


\textsuperscript{162.} See H.R. 3580, § 8(a).


plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.¹⁶⁵

As was discussed above, the Act attempted to pick up where *Beck* left off and enable workers to ascertain how their fees would be used as evidenced by the sponsor of the Bill, Harris Fawell touting the Act as "mak[ing] real the rights created by the U.S. Supreme Court in *Communication Workers of America versus Beck.*"¹⁶⁶ In July of 1996, co-sponsor of the Bill, Newt Gingrich commented on the purposes of the Act saying:

"Union members have a right to know how their money is spent, which of their dues is taken out for representational purposes, and which of their dues is taken out for non-representational purposes[,] All we are doing, is putting into legislation rights that the Supreme Court said were due to working people [in the *Beck* decision]."¹⁶⁷

As will become clear, the Act is inconsistent with the specific holding of *Beck*.

B. "Worker Paycheck Fairness Act"

Unlike the "Worker Right to Know Act," the "Worker Paycheck Fairness Act" does not attempt to amend the National Labor Relations Act.¹⁶⁸ However, the Act, like the "Worker Right to Know Act," does seek to amend the Labor-Management Reporting and Disclosure Act of 1959.¹⁶⁹ The Bill simply provides for the labor organization to obtain written permission from each worker as a prerequisite to using the funds for purposes other than collective bargaining.¹⁷⁰ In its portion most relevant to the scope of this Note, the Bill provides:

(1) Authorization. —A labor organization accepting payment of any dues or fees from an employee as a condition of employment pursuant to an agreement authorized by Federal law must secure

¹⁷⁰. *See id.* § 4(a).
from each employee prior, voluntary, written authorization for any portion of such dues or fees which will be used for activities not necessary to performing the duties of the exclusive representative of the employees in dealing with the employer on labor-management issues.

(2) Requirements.—Such written authorization shall clearly state that an employee may not be required to provide such authorization and that if such authorization is provided, the employee agrees to allow any dues or fees paid to the labor organization to be used for activities which are not necessary to performing the duties of exclusive representation and which may be political, social, or charitable in nature.171

The Act also outlaws retaliation and coercion by a labor organization against an employee.172 The employee is also entitled to bring a civil cause of action against any labor organization who violates either the authorization section or the retaliation provision.173 Moreover, the Act mandates that the employer is to post a notice informing all of the workers of the above authorization provision.174 Lastly, the Act, like the "Worker Right to Know Act," seeks to amend sections 201(b) and (c) of the Labor-Management Reporting and Disclosure Act of 1959 to require every labor organization to provide an allocation of expenses that allow the workers to ascertain whether the expenses were related to collective bargaining or not.175 Section 205(b) would also be amended to require "the Secretary [to] make available complete copies of any report or other document filed pursuant to section 201."176

As was mentioned above, Harris Fawell maintained that "the bill simply codifies the U.S. Supreme Court's decision in Communications Workers of America v. Beck,"177 as he similarly did while supporting the "Worker Right to Know Act."178 As will become clear, for the same reasons that the "Worker Right to Know Act" was inconsistent with the Beck decision, the "Worker Paycheck Fairness Act" is inconsistent as well.

171. Id.
172. Id. § 7.
173. Id. § 4(c).
174. Id. § 5.
175. Id. § 6.
176. Id. § 6(c).
177. See Union Dues: House Panel Approves Bill, supra note 141, at AA-1.
178. See Union Dues: Worker Right to Know Falls With Defeat, supra note 167, at A-16.
The “agency fee” arrangement was created to prevent non-union members from benefitting from the collective bargaining representation by a union while not paying for the service. Essentially, the “agency fee” situation sought to prevent “‘free riding’” by non-union members. It is submitted that the problem of “‘free riding’” would be magnified by allowing union members to refuse to pay for union contributions utilized for nonrepresentational purposes. If union members are paying identical amounts as non-union members for the collective bargaining representation, then the option of not joining a union becomes moot. A worker could just simply pay for the collective bargaining uses and then refuse to pay for the political contributions, yet all the while receive the benefits of unionism (e.g., benefits that result from the union’s contributions to political causes). The result is “‘free riding’” by union members. Alexis Herman expressed this concern in commenting on the “Worker Paycheck Fairness Act.” This leads to a proposal for legislation that lawmakers may wish to follow in a future attempt to secure the aims of the well-intended “Worker Right to Know Act.”

The “Worker Right to Know Act” sought and the “Worker Paycheck Fairness Act” seeks to require written authorization from all workers before a union could utilize their fees and dues for political, non-collective bargaining purposes. The Acts, as distinguished from Beck make no distinction between non-members and union members. Remaining consistent with Beck, it would make better sense to require unions to inform prospective union members of the planned contributions of the union to non-collective bargaining areas. Essentially, this would provide for a planned budget before any of the workers in the unit join the union. The budget would take into account the concerns of the drafters of the “Worker Right to Know Act” by requiring that this budget be reviewed by


183. See id.
an outside, disinterested auditor. This proposal would enable prospective union members to make informed decisions about the prospects of joining a particular union. This process could be performed annually so as to ensure that union members who joined the union under one assumption of how their fees would be utilized would not be surprised later when the union decides to contribute to a cause with which the member disagrees. The union could remain the collective bargaining representative, but the issue of fees being used for non-collective bargaining purposes would be open for consideration by all employees.

This proposal is consistent with Beck, while nonetheless taking into account the concerns of the drafters of the Bills. Those workers who are informed of the proposed use of the funds could decide prior to joining the union, whether they wished to participate. Once they joined however, they would essentially be giving approval to the union’s plans and would be unable to object later. This is entirely consistent with Beck where the Supreme Court was concerned with the plight of non-union workers and not union members.\textsuperscript{184} The Beck Court in its decision expressed the concern of the drafters of the Taft-Hartley Act, that Congress did not want to become involved in the inner workings of a private voluntary union organization.\textsuperscript{185} The proposal also addresses these latter concerns of the Supreme Court. If enacted, it would also be consistent with the comments of Chairman Gould concerning the “Worker Paycheck Fairness Act.”\textsuperscript{186} As Chairman Gould reasoned, when the workers have voted in a collective bargaining representative, they have essentially authorized any spending that the union attempts.\textsuperscript{187} Similarly, when the workers make an informed decision as to whether to join a union, as this proposal will ensure, they should not be able to later object.

VII. SUGGESTIONS FOR A FUTURE “WORKER RIGHT TO KNOW ACT”

What follows is the author’s proposal for legislation that would amend the National Labor Relations Act by incorporating the con-

\textsuperscript{185} Id. at 758.
\textsuperscript{186} See Oct. 8 Speech by NLRB Chairman William B. Gould, supra note 142, at E-4.
\textsuperscript{187} See Oct. 8 Speech by NLRB Chairman William B. Gould, supra note 142, at E-4.
cerns of the sponsors of the "Worker Right to Know Act," but at the same time staying consistent with the holding of the Supreme Court in *Communications Workers of America v. Beck*. 188 The proposed legislation would essentially amend the same sections as the "Worker Right to Know Act" and also re-propose some of the changes that were made therein. 189 Moreover, the proposal would incorporate some of the additional concerns of the drafters of the "Worker Paycheck Fairness Act" as well.

The author's proposed revision would hold a similar purpose as the original "Worker Right to Know Act." 190 The author's revised "Purpose" section would read as follows:

> The purpose of this Act is to ensure that all workers are made aware of the rights due them as per the Supreme Court's holding in *Communications Workers of America v. Beck*; that they have the right as non-union members to request a refund of their fees used for purposes other than "collective bargaining, contract administration and grievance adjustment" 191 and that they have the opportunity to make an informed decision as to their participation in a labor union. 192

The "Worker Choice" or section 4 of the "Worker Right to Know Act," 193 would be re-proposed in the revised legislation. This amendment is necessary as it specifically defines what was decided in *NLRB v. General Motors Corp.* 194 that workers may not be required to join a union as a condition of employment, but rather are "whittled down to [their] financial core." 195 The National Labor Relations Act appears to allow a requirement that workers join a union as a condition of employment 196 and such a proposed change would make lucid what the law actually allows.

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189. See Worker Right to Know Act, H.R. 3580, 104th Cong. (1996). The changes suggested by the author's proposed revision are indicated by a bold font. This indication will apply to the text accompanying notes 192 to 208.
191. H.R. 3580, § 2(1).
192. Compare H.R. 3580, § 3, with author's proposal.
195. Id. at 742.
Moreover, section 7 of the National Labor Relations Act would be amended by the author's proposal through the addition of the following sentence at the end of the section:

A labor union or organization shall annually provide to each worker a detailed report outlining the proposed expenditures for the forthcoming year which is to be used by each employee to ascertain whether they wish to become a union member or retain their membership for the forthcoming year. Once said employee decides to become a member of the union, he or she waives all rights to objections to union expenditures on causes not related to the representative capacity of which said employee so consented for that year. 197

As was discussed above, section 5 or the "Worker Consent" section of the "Worker Right to Know Act" advocated the requirement of an annual signed written agreement of all workers before their contributions could be used for purposes other than "collective bargaining, contract administration, or grievance adjustment." While this section did have the well-intended goal of ensuring that employees are not forced to contribute to causes with which they disagree, it is inconsistent with Beck and the Congressional intent to not become involved in the inner workings of a voluntary organization that was thought so crucial in the Beck decision. 199 Therefore, the author's proposed section (h) that would appear at the end of section 8 200 would make the following changes to the Fawell Bill and would read as follows:

Prior to accepting into membership any employee, a union must disclose annually a report outlining the proposed expenditures for the forthcoming year. An employee subject to an agreement between an employer and a labor organization requiring the payment of dues or fees to such organization as authorized in section 8 (a)(3) may not be required to pay to such organization, nor may such organization accept payment of, any dues or fees not

198. See Worker Right to Know Act, H.R. 3580, 104th Cong. § 5 (1996).
199. See Beck, 487 U.S. at 758-59.
related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation unless the employee has agreed through the voluntary act of membership in a union after the union has informed the workers of its intent to contribute funds to causes not related to “collective bargaining, contract administration or grievance adjustment.”

The author suggests the language of the “Worker Right to Know Act” that attempted to amend section 302(c)(4) of the Labor Management Relations Act providing for written authorization should also be changed to read as follows:

Provided further, [t]hat no amount may be deducted for dues unrelated to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation unless the employee was informed of the union’s proposed expenditures prior to the employee’s joining the union and said employee became a union member nevertheless.

The author’s revised proposal would also essentially utilize section 7 or the “Worker Notice” of the “Worker Right to Know Act” but with changes to read as follows:

“(i) An employer shall be required to post a notice, of such size and in such form as the Board shall prescribe, in conspicuous places in and about its plants and offices, including all places where notices to employees are customarily posted, informing employees of their rights under section 7 of this Act and clarifying to non-union member employees that an agreement requiring the payment of dues or fees to a labor organization as a condition of employment as authorized in subsection (a)(3) may only require that non-union members pay to such organization any dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation. Such exclusive representative shall be required to annually post a notice addressed to all prospective union members informing them of the union’s proposed expenditures for the forthcoming year. A copy of such notice shall be provided to each employee not later

201. See H.R. 3580, § 5(a).
202. See id. § 5(b).
than 10 days after the first day of employment’ or of the first of
the year; whichever is applicable.203

Section 7 of the “Worker Right to Know Act” attempted to
amend section 8(b)(1) of the National Labor Relations Act to pro-
vide for equal participation by non-member contributors in the
affairs of the union related to “collective bargaining, contract
administration, or grievance adjustment.”204 The author’s proposal
would retain this section and its language because it is appropriate
that if an employee is forced to contribute to a union that is obli-
gated to negotiate a contract on behalf of all employees, all employ-
ees should have an equal say in its creation. The employee,
whether he or she is a member or not, will be bound by that negoti-
ated collective bargaining agreement.205

Section 8 of the Bill, titled “Disclosure to Workers,” attempted to
amend sections 201(b) and (c) of the Labor-Management Report-
ing and Disclosure Act of 1959 to provide for detailed reporting
requirements.206 The author’s proposed revision would make a fur-
ther amendment to the language to read as follows: “Every labor
organization shall be required to attribute and report’ proposed
expenditures for the year ‘by function classification in such detail as
necessary to allow’ all prospective union members for the forth-
coming year to decide if they wish to join or re-join the union.”207

As amended by the “Worker Right to Know Act,” section 201(c) of
the Labor-Management Reporting and Disclosure Act of 1959 sim-
ply would have applied to non-union members which is appropriate
and will be re-proposed in the author’s revision.208

Finally, the author’s proposed revision would include from the
“Worker Paycheck Fairness Act,” the idea of a ban on “retaliation
and coercion.”209 If a union announces it will contribute to a cause
in the upcoming year that a union member disagrees with, and that
member decides not to continue his or her membership for the

203. Compare H.R. 3580, § 6, with author’s proposal.
204. H.R. 3580, § 7.
205. See Hearings on H.R. 3580, The Worker Right to Know Act Before the Subcomm.
on Employer-Employee Relations of the Comm. on Econ. and Educ. Opportunities, 104th Cong.
206. See H.R. 3580, § 8.
207. Compare H.R. 3580, § 8, with author’s proposal.
208. See H.R. 3580, § 8(b).
upcoming year, it is important that no one in the union tries to intimidate that person into changing their decision.

VIII. CONCLUSION

The United States Supreme Court in *Communications Workers of America v. Beck*, held that workers who were subject to an “agency shop” agreement could object to their fee contributions being used for non-collective bargaining purposes and request a refund of those fees if they were non-members of the union. The holding did not extend this right to members of the union. Moreover, in the course of the decision, the Supreme Court considered the Taft-Hartley Act and found their decision in *International Ass'n of Machinists v. Street* to be controlling. In the process of refuting the petitioner's arguments, they also took into account the legislative history of Congress that essentially provided for the unwillingness of Congress to become embroiled in the inner workings of a voluntary membership union. Therefore, when Harris Fawell drafted a bill that was to “implement *Beck,*” providing for the members of a union being able to pick and choose which causes they wanted to support, he contradicted not only the holding of the case he sought to “implement,” but also the Congressional policy of nonintervention into union affairs.

The author's proposal, addresses the concerns of the drafters of the two Bills while remaining consistent with *Beck*. Requiring a disclosure of the proposed expenditures prior to the worker joining the union ensures that workers make an informed decision before they join the organization. This will enable the non-union workers to still request a refund of non-collective bargaining use of their fees, as is consistent with *Beck*. Also, it addresses the drafters' concerns that union members be able to object. The union members may object prior to their joining the union and if they discover after they join, they disagree with their choice, they may refuse to renew their membership the upcoming year based upon that year's report.

211. See id. at 759.
214. Id.
Finally, the "free rider" problem will be non-existent as all workers will be forced to pay for the benefits they receive and will not be able to refuse paying for such.

Therefore, it is urged that the United States Congress take the author's revised proposal into account the next time the issue of what uses a union may apply workers' contributions to appears on its agenda.

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