

**U.S. House of Representatives**  
**Committee on Oversight and Government Reform**  
**Darrell Issa (CA-49), Chairman**



**Workplace Freedom and Fairness: Are Workers Forced to Fund Political Causes they Oppose?**

**STAFF REPORT**  
**U.S. HOUSE OF REPRESENTATIVES**  
**112<sup>th</sup> CONGRESS**  
**February 6, 2012**

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors is sinful and tyrannical." – Thomas Jefferson

## **Executive Summary**

Freedom and choice are the cornerstones of what our system of government was built on. They also represent the core principles that helped create unionization in America. Over time, the role of unions has evolved from being a protector of workers against being forced to work long hours in difficult conditions to a being a powerful agent in the political process.

During the 2010 election cycle, unions spent more than \$1.1 billion in dues monies to finance political and lobbying activities. With this emphasis on union political action, a debate is unfolding regarding how to best balance the political view of union bosses against the rights of workers and protecting their freedom of choice.

Recent court decisions have lifted limitations on the use of dues for political spending, and unions may now use dues to fund a myriad of political activities. Many workers are intentionally left unaware of their rights, and in some cases are subjected to a campaign of threats and extortion. Additionally, because the Administration is no longer auditing international union's books, unions can get around a worker's Beck rights by inaccurately categorizing almost all union expenditures as representational expenses.

The House Committee on Oversight and Government Reform's focus on this issue is not an examination of the validity of unions or their right to exist, but rather an effort to ensure that the political activities of unions do not infringe on the rights and freedoms of union workers. Every worker should have a choice on whether or not money is taken from their paychecks and used to fund political activities. Furthermore, every union member has a fundamental right to know how their money is being spent. The following report and the Committee's examination moving forward will rely on hardworking men and women who have come forward to share their own personal stories of abuse and unfair treatment.

This fight for fairness and choice is something that should stretch across the ideological spectrum. No one should have money taken from their paycheck to donate to a political cause or candidate they do not believe in.

## **Unionization in America**

The emergence of unions in the United States dates back to colonial times and a need to balance the interests of workers and management.<sup>1</sup> During the industrial revolution, unions grew politically stronger when it was documented that workers, both young and old, were forced to work long hours under difficult conditions.<sup>2</sup> To protect workers' interests, unions were viewed as a legitimate mechanism to facilitate negotiations between an employer and workers over wages and other employment conditions.<sup>3</sup> In the New Deal era, the status of unions were memorialized by the enactment of various labor laws including the National Labor Relations Act

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<sup>1</sup> Anna Stolley Persky, *State of the Union: The Role of Labor in America's Future*, *Washington Lawyer* (July/Aug. 2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

(NLRA), which created the collective bargaining process and the legal framework for workers to create and dissolve unions.<sup>4</sup>

In 1985, the Supreme Court declared that no worker can be forced to be a member of a union.<sup>5</sup> However, the National Labor Relations Act (NLRA) does permit what is known as “union security agreements.”<sup>6</sup> These agreements authorize a union to deduct “agency fees,” which are effectively union dues, from a worker’s paycheck, even if that worker is not a member of the union.<sup>7</sup> Proponents of union security agreements claim that they are necessary to address the “free-rider problem” – the idea that some workers may benefit from the union’s representation in collective bargaining even though they did not contribute to it.<sup>8</sup> Under union security agreements, the union is allowed to collect “agency fees” from a worker without his or her consent.

While the NLRA does permit unions to collect agency fees, Section 14(b) of the act also permits individual states to fashion their own laws on the issue.<sup>9</sup> Owing to our federalist system, two competing union security legal regimes have developed in the United States. Twenty-three states – mostly in the South and West – have adopted what is known as a “right-to-work” law.<sup>10</sup> Under these statutes, a worker cannot be compelled to either join a union or to pay union dues. Proponents of right-to-work laws advocate for the core constitutional principle of freedom of association.<sup>11</sup>

Twenty-seven states have not adopted right-to-work laws.<sup>12</sup> In these compulsory union states, workers are *theoretically* allowed to resign their union membership. But compulsory union states permit unions to forcibly deduct agency fees from a worker’s paycheck, even if that worker has resigned his or her membership. Proponents of compulsory unionism prioritize the free-rider issue over the individual worker’s freedom of association.

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<sup>4</sup> *Id.*

<sup>5</sup> See *Pattern Makers' League v. NLRB*, 473 U.S. 95 (holding that the right to refrain from concerted activity is protected by the National Labor Relations Act, and a union member may resign at any time without notice).

<sup>6</sup> See Benjamin J. Taylor & Fred Witney, *LABOR RELATIONS LAW* 377 (4th ed. 1983); see also §8(a)(3) of the NLRA, 29 U.S.C. 158(a)(3).

<sup>7</sup> See *NLRB v. General Motors Corp.*, 373 U.S. 734, 735 (1963) (holding that an employee covered by a union security clause need not become a member of the union, but must continue to pay the dues and initiation fees required of union members).

<sup>8</sup> David M. Burns, *Requiring Unions to Notify Covered Employees of their Right to be an Agency Fee Payer in the Post Beck Era*, 48 *CATH. U. L. REV.* 475, 476 (1999).

<sup>9</sup> 29 U.S.C. 164 (“Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.”)

<sup>10</sup> Tom LoBianco, *Indiana joins right-to-work ranks, gov. signs bill*, *THE ATLANTA JOURNAL CONSTITUTION*, Feb. 1, 2012.

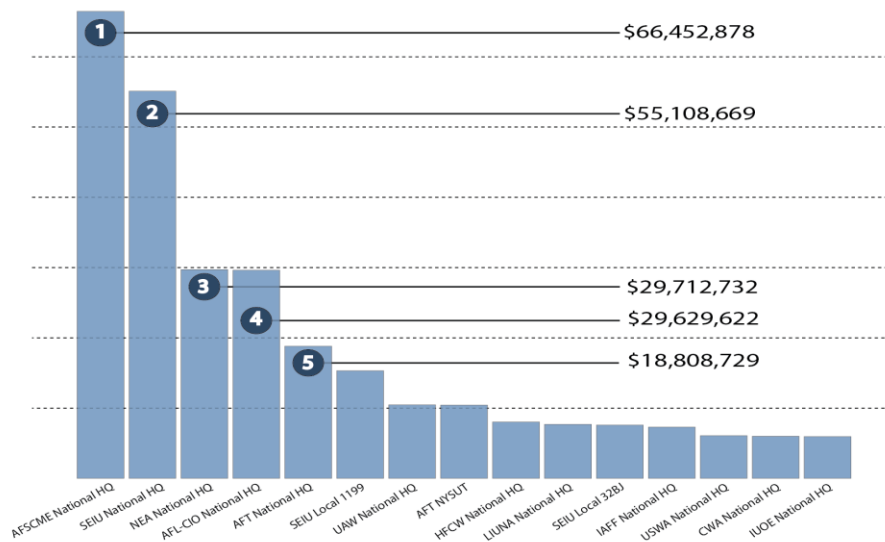
<sup>11</sup> Howard C. Hay, *Union Security and Freedom of Association* in *LABOR RELATIONS LAW IN THE PUBLIC SECTOR* 146-55 (Andria S. Knapp ed., 1977)

<sup>12</sup> See Kenneth Bullock, *Official Time as a Form of Union Security in Federal Sector Labor-Management Relations*, *A.F. L. Rev.* 153, 162 (2007).

## Union Political Spending

While unions use a significant portion of union dues to finance the negotiation and administration of collective bargaining agreements, unions also heavily inject their funds into political activities.<sup>13</sup> There is evidence – from both opinion polls and personal testimonials – suggesting that many workers are not comfortable with the level of political activism in which unions engage. Data shows most union workers would prefer this money not be used for politics. Indeed, 69 percent government and non government union employees think that union leaders should stop spending union dues on politics, and 66 percent believe it to be unreasonable that such spending can occur without their consent.<sup>14</sup> One group of workers are so passionate about union political spending that they formed an organization, Union Conservatives, which boasts over 1,000 members, to “provid[e] liberty to union members who have differing political views than their union leadership.”<sup>15</sup> The reluctance of union members to finance political causes has not dissuaded unions from doing so. During the 2010 election cycle, unions spent over \$1.1 billion dollars in dues monies to finance political and lobbying activities.<sup>16</sup> The chart below outlines the fifteen biggest political spenders of union dues in the 2010 election cycle:

## 2010 ELECTION CYCLE UNION POLITICAL SPENDING



Source: NILRR study of USDOL LM-2 Reports for the Years 2007-2010

<sup>13</sup> See Marick F. Masters, Raymond Gibney, and Thomas J. Zagenczyk, Worker Pay Protection: Implications for Labor’s Political Spending and Voice, *Industrial Relations*, Vol. 48, No. 4 (Oct. 2009).

<sup>14</sup> Union Facts.com, Use of Dues for Politics *available at* <http://www.unionfacts.com/political-money/use-of-dues-for-politics>.

<sup>15</sup> Union Conservatives, Mission Statement *available at* <http://www.unionconservatives.com/Mission.html>; Committee staff telephone interview with Terry Bowan, founder Union Conservatives (Dec. 19, 2011).

<sup>16</sup> National Institute for Labor Relations Research Report: Big Labor Poured \$2 Billion Into the Last Two Election Cycles, Sept. 9, 2011 *available at* <http://www.nilrr.org/node/207>.

Union political spending occurs in a variety of ways—through contributions to candidates, political ads supporting or opposing a candidate, get-out-the-vote activities, voter guides, political rally participation, candidate support among union members and their families, the administration of political action committees (PACs), and lobbying activities.<sup>17</sup> Depending on the type of political activity, it is typically financed through a union administered PAC or dues collected from union members and union represented nonmembers.<sup>18</sup> Historically, campaign finance laws did not permit unions to use union dues to support or oppose political candidates.<sup>19</sup> Instead, unions did so through voluntary PAC contributions.<sup>20</sup> Dues, on the other hand, could be used to finance the indirect type of political spending mentioned above.<sup>21</sup> Recent court decisions have lifted limitations on the use of dues for political spending, and unions now may use dues to fund almost all political activities with the exception of direct contributions to political candidates.<sup>22</sup>

## Status of the Law

Within compulsory union states, workers who resign from the union but still pay agency fees have been guaranteed certain constitutional and statutory protections to keep their money out of politics. In 1961, in *International Association of Machinists v. Street*,<sup>23</sup> the Supreme Court held that the Railway Labor Act does not allow a union to spend agency fees on political causes over the objection of its nonunion workers. In 1977, in *Abood v. Detroit Board of Education* the Supreme Court, invoking the First Amendment, extended the right to object to union political spending to union represented public workers.<sup>24</sup> Then, in 1988, in a more well-known case related to union political spending, *Communications Workers of America et al. v. Beck et al.*,<sup>25</sup> the Supreme Court ruled that the NLRA does not allow a union, over the objection of dues-paying nonmember workers, to spend agency fees on activities unrelated to collective bargaining. However, it is often difficult for the workers to object to these fees and exercise their rights. Many workers are intentionally left unaware of their rights, and in some cases are subjected to a campaign of threats and extortion. Additionally, because unions do not have to submit agency fee determinations to an independent auditor, unions can get around a worker's

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<sup>17</sup> See Raymond J. LaJeunesse, Jr., Esq, Workers' Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002; see also R. Sam Garrett, The State of Campaign Financy Policy: Recent Developments and Issues for Congress, Congressional Research Service, Dec. 5, 2011.

<sup>18</sup> Marick F. Masters, Raymond Gibney, and Thomas J. Zagenczyk, Worker Pay Protection: Implications for Labor's Political Spending and Voice, Industrial Relations, Vol. 48, No. 4 (Oct. 2009).

<sup>19</sup> See R. Sam Garrett, The State of Campaign Financy Policy: Recent Developments and Issues for Congress, Congressional Research Service, Dec. 5, 2011.

<sup>20</sup> See R. Sam Garrett, The State of Campaign Financy Policy: Recent Developments and Issues for Congress, Congressional Research Service, Dec. 5, 2011.

<sup>21</sup> Bipartisan Campaign Reform Act (BCRA), 2 U.S.C. § 441b(b)(2) (2002) (amending Federal Election Campaign Act (FECA), 2 U.S.C. § 431 (1971))

<sup>22</sup> See R. Sam Garrett, The State of Campaign Financy Policy: Recent Developments and Issues for Congress, Congressional Research Service, Dec. 5, 2011.

<sup>23</sup> 367 U.S. 740 (1961).

<sup>24</sup> *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977)

<sup>25</sup> 487 U.S. 735 (1988).

*Beck* right by inaccurately categorizing almost all union expenditures as representational expenses.<sup>26</sup>

### **Workers' Obstacles to Exercising *Beck* Rights**

To be clear, *Beck* Rights only extend to nonunion members who pay agency fees in compulsory union states. *Beck* rights do not apply to union members. For the subset of workers who do have *Beck* rights, several obstacles exist to exercising one's *Beck* rights. First, many workers are unaware of the existence of their right to demand repayment of agency fees that are used for non-representational activities. Indeed, a McLaughlin & Associates poll discovered that 67 percent of workers were unaware of their right to withhold mandatory fees for political purposes.<sup>27</sup> Second, in *Beck*, the Supreme Court did not determine if unions have an affirmative duty to notify workers about their *Beck* rights, nor did it proscribe a particular manner for workers to exercise these rights.<sup>28</sup> Finally, in some cases where employees do know about their rights and choose to object to union spending they may "face coercion, threats, and abuse."<sup>29</sup>

There has been an effort at the federal level to notify workers of their *Beck* rights, but it has been inconsistent and subject to political whims. In 1992, President George H.W. Bush issued Executive Order 12800 that required federal contractors to notify their employees of their *Beck* rights, but this policy was rescinded by President Clinton in 1993.<sup>30</sup> President George W. Bush reinstated the policy through E.O. 13201 in 2001. However, within the first two weeks President Obama was in office, he revoked President Bush's executive order and issued his own order governing notification of employee rights under federal labor laws.<sup>31</sup> Notwithstanding the Supreme Court's decision to recognize *Beck* rights under the NLRA, President Obama's executive order did not discuss these rights. In fact, in the Department of Labor's (DOL) final rule implementing the executive order, DOL determined that:

"...explication of *Beck* rights will not be included [in employer notices of worker rights] because of space limitations and because of the policy choice, as expressed in Executive Order 13496, to revoke a more explicit notice to employees of *Beck* rights."<sup>32</sup>

Aside from efforts made through executive orders to inform workers of their *Beck* rights, questions about appropriate notification and processes have been left to an *ad hoc* determination

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<sup>26</sup> See *Recent Regulation: Labor Law - Department of Labor Increases Union Financial Reporting Requirements*, 117 HARV. L. REV. 1734 (2004) (stating "[t]he failure of the Labor Department to adopt an independent audit requirement jeopardizes the effectiveness of its financial accountability regulations for labor unions.")

<sup>27</sup> <http://www.unionfacts.com/political-money/use-of-dues-for-politics>

<sup>28</sup> Jeff Canfield, Note: What a Sham(e): The Broken *Beck* Rights System in the Real World Workplace, 47 WAYNE L. REV. 1049(2001).

<sup>29</sup> Raymond J. LaJeunesse, Jr., Esq, Workers' Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.

<sup>30</sup> Marick F. Masters, Raymond Gibney, and Thomas J. Zagenczyk, Worker Pay Protection: Implications for Labor's Political Spending and Voice, *Industrial Relations*, Vol. 48, No. 4 (Oct. 2009).

<sup>31</sup> Notification of Employee Rights Under Federal Labor Laws, E.O. 13496, Jan. 30, 2009.

<sup>32</sup> Department of Labor, Office of Labor Management Standards, Notification of Employee Rights Under Federal Labor Laws; Final Rule, 29 CFR Part 471 (May 20, 2010).

from the National Labor Relations Board (NLRB) and the courts.<sup>33</sup> Accordingly, *Beck* rights are enforced on a case-by-case basis only when challenged by workers.<sup>34</sup> Therefore, policies and procedures related to exercising *Beck* rights vary by union and the type of worker. Despite this ad hoc process, some uniformity in the notification of *Beck* rights has emerged as a general practice. Typically, unions will provide notice of *Beck* rights when workers are hired and once a year in union magazines.<sup>35</sup> Both forms of notification are inadequate. In the first instance, when a newly hired worker is informed of their right to refrain from union membership and the ability to exercise their *Beck* Rights (but also pay the required fee to the union) they also may be presented with the decision to become a union “member in good standing” as a condition of employment. This presents a conflicting message that can confuse workers not aware of the differences between paying the union a required fee and full membership. Indeed, Supreme Court Justices Kennedy and Thomas opined that:

“When an employee who is approached regarding union membership expresses reluctance, a union frequently will produce or invoke the collective bargaining agreement.... The employee, unschooled in semantic legal fictions, cannot possibly discern his rights from a document that has been designed by the union to conceal them. In such a context, “member” is not a term of “art,” ... but one of deception.”<sup>36</sup>

There is evidence that unions try to make it difficult for people to understand how to exercise their *Beck* right by limiting worker notification of their rights. For instance, unions will often notify workers of *Beck* Rights within a union publication or magazine. However, workers who opt not to join the union or those who disagree with the union’s politics are less likely to peruse the union’s publications, and therefore are less likely to obtain notice of their rights.<sup>37</sup> As evidenced by the 67 percent of workers who are unaware of their *Beck* rights, these forms of notification are clearly ineffective.<sup>38</sup>

Another obstacle to exercising *Beck* rights is that many unions only allow a worker to object to non-representational activities once a year, during a small window of time, usually lasting a month or less.<sup>39</sup> While this practice has been approved by federal courts, the result is that workers can be forced to finance union political activities merely because they missed an arbitrary deadline under rules set by the union.<sup>40</sup> In addition to this roadblock, many unions

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<sup>33</sup> See Raymond J. LaJeunesse, Jr., Esq, Workers’ Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.

<sup>34</sup> Raymond J. LaJeunesse, Jr., Esq, Workers’ Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.

<sup>35</sup> Jeff Canfield, Note: What a Sham(e): The Broken *Beck* Rights System in the Real World Workplace, 47 WAYNE L. REV. 1049 (2001).

<sup>36</sup> 525 U.S. 33, 53 (1998) (quoting *Bloom v. NLRB*, 153 F.3d 844, 850-51 (8th Cir. 1998), *vacated*, 525 U.S. 1133 (1999)).

<sup>37</sup> Jeff Canfield, Note: What a Sham(e): The Broken *Beck* Rights System in the Real World Workplace, 47 WAYNE L. REV. 1049(2001).

<sup>38</sup> <http://www.unionfacts.com/political-money/use-of-dues-for-politics>

<sup>39</sup> Raymond J. LaJeunesse, Jr., Esq, Workers’ Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.

<sup>40</sup> Raymond J. LaJeunesse, Jr., Esq, Workers’ Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.



traditionally mandated that *Beck* objections be renewed each year.<sup>41</sup> Failing to renew an objection from the previous year during the narrow window determined by the Union would result in the forfeiture of *Beck* rights – in other words, the onus is on workers to opt out, rather than opt in. The courts and the NLRB have begun to recognize the inherent unfairness of this practice, and there appears to be a trend to strike down annual renewal requirements.<sup>42</sup> However, it has not yet been determined that annual renewal requirements are *per se* unlawful under the NLRA.

### **Lack of Transparency: Barriers to Accessing Union Financial Information**

In addition to the limited applicability of *Beck* rights, many workers, unionized or otherwise, face barriers to determine how their dues or agency fees are being spent. Currently, it is difficult for most union members to access information about the spending activities of their union. In the wake of union corruption scandals uncovered by the Select Committee on Improper Activities in Labor and Management in the 1950's, Congress enacted the Labor Management Reporting and Disclosure Act of 1959 (LMRDA) to codify a “bill of rights” for union members, which was supposed to ensure members’ rights to democratic union participation.<sup>43</sup> A keystone provision of this law requires each union to file an annual financial report (Form LM-2) with the Office of Labor-Management Standards (OLMS) to “let union members know what is happening to their money.”<sup>44</sup> This disclosure is almost always a union member’s sole source of information on how his or her dues are being spent.<sup>45</sup>

It appears as if this reform alone is insufficient to guarantee the rights of workers. While the LM-2 disclosure reports are publically available at the OLMS website, navigating the website and the LM-2 database is extremely difficult. Moreover, the usefulness of this tool presupposes that union members are aware of the existence of the OLMS, let alone Form LM-2. A more proactive approach – and one that better promotes union transparency and responsible stewardship – is for a union to make Form LM-2 accessible on the union’s own website. This approach has been embraced by SEIU Local 284 in South St. Paul, Minnesota, which allows its members to readily access a copy of their local’s financial report on its local website.<sup>46</sup> This local is the exception and not the rule.

In addition to the lack of effort on the part of unions to be transparent about the nature of their expenditures, this Administration has significantly weakened their incentive to do so. One of its first acts in February 2009 was to freeze, and ultimately rescind, regulations that would

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<sup>41</sup> Raymond J. LaJeunesse, Jr., Esq, Workers’ Experiences in Attempting to Exercise Their Rights Under Communications Workers v. Beck and Related Cases, Engage Volume 3 Apr. 2002.

<sup>42</sup> See e.g., *Prime v. Machinists Local 2777*, 355 N.L.R.B. No. 174 (2010); see also *Shea v. Machinists*, 154 F.3d 508 (5th Cir. 1998).

<sup>43</sup> See Michael J. Nelson, Comment: Slowing Union Corruption: Reforming the Landrum-Griffin Act to Better Combat Union Embezzlement, 8 GEO. MASON L. REV. 527, 528 (2000).

<sup>44</sup> *United States v. Improto*, 542 F. Supp. 904, 907 (E.D. Pa. 1982).

<sup>45</sup> *Hearing Before the H. Comm. on Education and the Workforce, Subcommittee on Health, Employment, Labor, and Pensions*, 112th Cong. (2011) (statement of Arthur L. Fox II, Counsel, Lobel, Novins & Lamont, LLP).

<sup>46</sup> See SEIU Local 284, Form LM-2 Labor Organization Annual Report, available at <http://www.seiu284.org/admin/Assets/AssetContent/32fccdd3-179e-496e-a8fd-54e8f1cff2ae/546bfa9e-94e2-495f-9d30-54cc81f55e47/19dd6d99-f92a-42aa-9a05-760411f04008/1/284%20LM-2%202008.pdf>.

have required unions to report the full dollar value of the compensation packages paid to officers and employees of labor organizations.<sup>47</sup> It also completely eliminated Form T-1, which required unions to report the finances of trusts in which they were invested.<sup>48</sup> These trusts constitute a major repository of union funds, and Form T-1 closed a major loophole in reporting requirements.<sup>49</sup> That loophole is, once again, wide open.

In addition to weakening Form LM-2 reporting requirements, the Administration has quietly scaled back the Department of Labor's ability to conduct effective financial oversight of labor organizations. In addition to a 35% voluntary reduction in its staffing allotment, the OLMS completely disbanded the Division of International Union Audits, "a division that had responsibility for auditing the largest labor organizations in the country," some with more than \$600 million in receipts."<sup>50</sup> These actions have had an immediate impact: on page 21 of its FY 2012 Congressional budget justification, OLMS flatly states that it plans to conduct "zero I-CAP audits in FY 2012."<sup>51</sup> Form LM-2 and the work of the OLMS were a cornerstone of the "Union Members' Bill of Rights" that Senator Robert Kennedy fought for in 1959. By rolling back these protections, the Administration has dealt a blow to workers' right to know how their dues are being spent.

While unionized workers in right-to-work states have the opportunity, however obscured, to object to the way their dues are being spent on political activities, union members do not have this right. Moreover, unions in general do not strive to make their expenditures transparent. In sum, challenges to exercising *Beck* rights, its limited applicability to nonunion workers, and limited transparency tools emphasize the need to bring awareness to the issue of union political spending that is often carried out regardless of objections of union and non union members alike. The stories below put faces on the importance of this issue.

### **In Their Own Words: Stories of Union Workers**

The following stories come from hardworking men and women across the country and represent just a small sample of people nationwide whose rights are being abridged.

#### *Terry Bowman*

Terry Bowman is a proud union member and believes in the benefits unions can provide, but he deeply opposes the pervasive role politics has come to play in union activity. Instead, he advocates for a more inclusive, informative, and non-partisan union experience.<sup>52</sup>

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<sup>47</sup> Labor Organization Annual Financial Reports, 74 Fed. Reg. 5,899 (Feb. 3, 2009) (freezing regulation requiring heightened reporting); Labor Organization Annual Financial Reports, 74 Fed. Reg. 52,401 (Oct. 13, 2009) (rescinding regulation requiring heightened reporting).

<sup>48</sup> Recission of Form T-1, Trust Annual Report, 75 Fed. Reg. 74936 (Dec. 1, 2010).

<sup>49</sup> *Hearing Before the H. Comm. on Education and the Workforce, Subcomm. on Health, Employment, Labor, and Pensions*, (Apr. 4, 2011) (testimony of Nathan Paul Mehrens, Counsel, Americans for Limited Government Research Foundation)

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> Telephone Interview with Terry Bowman, Founder, Union Conservatives (December 19, 2011).

An assembly line worker at a Ford Motor Company plant in Rawsonville, Michigan, Terry has been a member of United Auto Workers (UAW) for the past 14 years. He enjoys the camaraderie and unity the union fosters among his colleagues, as well as the opportunity for issue advocacy it provides.<sup>53</sup>

Terry's experience has not been without a downside. Over time, Terry and others have experienced criticism for expressing their conservative views in the face of UAW's growing political agenda.<sup>54</sup> If an individual speaks out against the majority view, Terry maintains that he or she is "going to be harassed and persecuted on the job for doing so."<sup>55</sup> According to Terry, these workers are often treated as "less" than others in the group and "left out of the big picture" in the workplace.<sup>56</sup>

Terry and his colleagues have also seen their hard-earned dues fund political activity disguised as "educational" or "legitimate union" activity. The UAW, for instance, maintains its "Black Lake Facility" with regular member dues.<sup>57</sup> This facility is used for all-inclusive, week-long, "educational" retreats for union members. Only certain members are invited,<sup>58</sup> though, and the "training sessions" are reportedly not simply union-related, but are "full of political propaganda" and "constantly disparage the Republican party."<sup>59</sup> Regular dues also finance UAW's *Solidarity* publication, which Terry states is purported to be educational, but is actually full of propaganda.<sup>60</sup> Most recently, UAW has promised to "commit resources"<sup>61</sup> to the Occupy Wall Street movement, which is highly controversial.

To combat this discrimination and give a voice to the membership's minority, Terry founded Union Conservatives in 2010, a pro-union group aimed at informing members about the labor, political, and industry-related policies important to rank and file workers nationwide.<sup>62</sup> Union Conservatives does not support candidates or a political agenda, but, rather, is non-partisan and seeks to inform members based solely "on solid, propaganda-free truth."<sup>63</sup> Since its conception, Terry has seen Union Conservatives grow to include over 1,000 members nationwide. The group's success serves to demonstrate that others across the country are having similar experiences, share in his sentiment, and believe in his cause of liberty in the workplace.<sup>64</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Union Conservatives, "About Us," at [http://www.unionconservatives.com/About\\_Us.html](http://www.unionconservatives.com/About_Us.html) (accessed January 31, 2012).

<sup>57</sup> Email with Terry Bowman, Founder, Union Conservatives (January 31, 2012) (on file with author).

<sup>58</sup> Although Terry Bowman has worked at Ford for over 15 years, he has not once been invited to attend this week-long seminar (Email with Terry Bowman (January 31, 2012)).

<sup>59</sup> E-mail with Terry Bowman (January 31, 2012).

<sup>60</sup> Telephone Interview with Terry Bowman, Founder, Union Conservatives, (December 19, 2011).

<sup>61</sup> "UAW endorses Occupy Wall Street," at <http://www.uaw.org/page/uaw-endorses-occupy-wall-street> (accessed January 31 2012).

<sup>62</sup> Union Conservatives, "About Us," at [http://www.unionconservatives.com/About\\_Us.html](http://www.unionconservatives.com/About_Us.html) (accessed January 31, 2012).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

*Sally Coomer*

Sally Coomer is a homecare worker, business owner, and mother of a disabled adult daughter. The union's arrival to her home state has overtaken the homecare industry, invaded her home life, and compelled membership in an organization whose agenda and politics she neither supports nor wishes to contribute to.<sup>65</sup>

Sally lives in Duvall, Washington, where she not only owns a home healthcare agency, but also cares for her adult disabled daughter, Becky. She receives Medicaid funding to provide full-time care for Becky, and, due to the lack of union presence in the state prior to 2009, she was able to do so freely as an employee of a non-union homecare agency.<sup>66</sup> By operation of current law, however, Sally has been forced to become a member of Service Employees International Union (SEIU).

Prior to 2001, homecare workers caring for Medicaid clients did so as either agency workers or independent providers.<sup>67</sup> SEIU arrived in Washington in 2001, however, and immediately advocated for the Long-Term In-Home Care Services Act, by which all "independent providers" would become subject to compelled union membership.<sup>68</sup> Later, in 2009, the state also passed House Bill 2361, stating that a *family member* caring for an adult disabled child is to be considered an "independent provider."<sup>69</sup> As a result, Sally was no longer able to simply care for Becky privately as a non-union agency employee, but had to instead resign her agency position and sign up with the state as an independent provider. In order to receive Medicaid funding and as a condition of this new employment status, Sally was compelled to join SEIU and pay dues within 30 days or else risk termination.<sup>70</sup>

According to Sally, these new laws have created a twisted and complicated relationship between the state, Sally, and her daughter.<sup>71</sup> Under state law, an independent provider is an employee of the Medicaid client he or she cares for.<sup>72</sup> The state is considered the independent provider's employer for collective bargaining purposes only.<sup>73</sup> Sally, therefore, is the employee of her daughter Becky, a mentally incapacitated 21-year-old incapable of making her own decisions.<sup>74</sup> Because she is also Becky's mother and legal guardian, Sally understands this to mean that she is, in effect, her own employer.<sup>75</sup> According to Sally, the state's failure to strictly define the employer-employee relationship in these situations leaves everyone asking, "Who is really the employer?"<sup>76</sup> Sally feels as if she is "on both sides" of the state-Medicaid client

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<sup>65</sup> Telephone Interview with Sally Coomer, Member, Service Employees International Union (December 19, 2011).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Wash. Ballot Initiative 775 (Long-Term In-Home Services Care Act)(2001).

<sup>69</sup> H.B. 2361, 61<sup>st</sup> Leg., Reg. Sess. (Wash. 2009).

<sup>70</sup> Collective Bargaining Agreement between the State of Washington and the Service Employees International Union Healthcare (July 1, 2011) at 5, *available at* <http://www.ofm.wa.gov/labor/agreements/11-13/homecare.pdf>, E-mail with Sally Coomer (January 31, 2012) (on file with author).

<sup>71</sup> Telephone Interview with Sally Coomer, Duvall, WA (December 19, 2011).

<sup>72</sup> Telephone Interview with Sally Coomer (February 2, 2012).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

relationship and, at times, as if she is employed by the state as well.<sup>77</sup> As Sally puts it, “the deeper you dig, the more bizarre it gets.”<sup>78</sup>

Not only does Washington’s compelled union membership create complex relationships, it also affects Sally’s ability to secure financial stability for retirement. When she worked as a non-union agency employee, Sally was able to pay into the Social Security system. Under Tax Law Publication 926, however, unionized individual parent providers cannot pay into Social Security.<sup>79</sup> By excluding the Medicaid wages of parent homecare providers from the Social Security wages classification, the law robs Sally of the ability to contribute to her financial future.<sup>80</sup> Sally states that this was an unintended consequence the state was not aware of “when they forced all family members and parent providers to become [independent providers].”<sup>81</sup>

Aside from the personal hardships Sally has experienced as a result of the state’s unionization, she also takes issue with a number of union activities her member dues ultimately contribute to. During her time as an SEIU member, Sally has received an abundance of paperwork and union correspondence enthusiastically supporting one slate of candidates and policies she personally opposes. She states that these pamphlets include the union’s “recommendations” for how to vote on a given set of initiatives or slate of candidates.<sup>82</sup> According to Sally, SEIU propaganda only informs members of one side of the story and is not representative of the full membership, yet is paid for by the union dues of all workers.<sup>83</sup> Sally has also received “notices about increase[s] in dues for [the union’s] ‘political accountability fund,’” which she does not support but is forced to pay for.<sup>84</sup>

### *Claire Waits*

Claire Waites has dedicated her life to education and has contributed much to the children and families of her community. She joined the local teachers union to obtain liability insurance, and wishes to shed light on the various tactics her union and its affiliates have engaged in to pressure her to further a political agenda she does not support.<sup>85</sup>

Claire teaches science to 8<sup>th</sup> graders at Daphne Middle School in Bay Minette, Alabama. She has been teaching for 32 years, and is a member of the National Education Association (NEA), the Alabama Education Association (AEA), and the Baldwin County Education Association (BCEA). Alabama is a right to work state, but Claire is essentially forced to remain a union member in order to obtain the necessary professional liability insurance not otherwise available in the state.<sup>86</sup>

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<sup>77</sup> Telephone Interview with Sally Coomer (December 19, 2011).

<sup>78</sup> *Id.*

<sup>79</sup> Internal Revenue Service, Publication 926, “Household Employer’s Tax Guide for Wages Paid in 2009” at 4 (March 10, 2009).

<sup>80</sup> E-mail with Sally Coomer (January 31, 2012).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Telephone Interview with Sally Coomer (December 19, 2011).

<sup>84</sup> E-mail with Sally Coomer (January 31, 2011).

<sup>85</sup> Telephone Interview with Claire Waites, Member, National Education Association (January 9, 2012).

<sup>86</sup> *Id.*

In 2004, Claire attended an NEA convention as a delegate selected by her state union. Each delegate was given a stipend, funded by regular dues paid by state union members, to cover his or her expenses for each full convention day attended. During the convention, the delegates were asked to contribute a part of their stipends to a “children’s fund,” which she did.<sup>87</sup> She later learned this fund was, in reality, a political action committee (PAC) used to contribute to democratic candidates.<sup>88</sup> Union leadership failed to inform the members about the true purpose of the fund.<sup>89</sup> Upon becoming aware that it was a democratic PAC, Claire unsuccessfully attempted to get her money back.

Claire was again selected as a delegate in 2008, and again attended NEA’s national convention. Upon arriving at the convention, Claire was informed that money for a contribution to the “children’s fund” had been included in her travel stipend—funded by regular dues from her local union—and made in her name.<sup>90</sup> It appears as if this was done to avoid campaign finance laws that prohibit the use of member dues for political contributions, as well as to avoid opposition by delegates. When Claire protested this involuntary contribution, however, she was once again unable to get her money back.

Claire has expressed concern about the various elements of wrongdoing by her union. Her story sheds light on a number of questionable practices by NEA and its local affiliates. First, it is unlawful for union officials to encourage and solicit contributions under false pretenses and without disclosing the political nature of the solicitation.<sup>91</sup> Claire believes this law was broken when officials asked delegates to contribute to a “children’s fund” without disclosing that it was actually a PAC.<sup>92</sup> She also recalls that these “requests” rose to the level of “pressure” to make the contribution, as the local union delegate groups with low participation were publicly singled out.<sup>93</sup> Second, when seeking voluntary contributions, union officials must inform members of their right to refuse to contribute to this fund without any negative consequences.<sup>94</sup> Claire asserts that NEA and BCEA failed to provide any such information.<sup>95</sup> Third, federal law prohibits campaign contributions made in the name of another person.<sup>96</sup> Claire believes that BCEA President, Saadia Hunter, may have violated this law when she contributed a portion of Claire’s dues-funded travel stipend to the children’s fund.<sup>97</sup> Lastly, it is illegal for unions to contribute to political action committees using dues or other money required as a condition of membership in a labor organization.<sup>98</sup> Claire states that the contribution made to a PAC on her behalf from her travel stipend in 2008 was paid for by regular BCEA union dues, which would be prohibited by

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<sup>87</sup> PAC was formally named “NEA Fund for Children and Education,” and has since be renamed “NEA Fund for Children & Public Education.”

<sup>88</sup> Telephone Interview with Claire Waites (January 9, 2012).

<sup>89</sup> *Id.*

<sup>90</sup> It is illegal to make a campaign contribution in the name of another person (11 CFR 110.4(b)).

<sup>91</sup> Bipartisan Campaign Reform Act (BCRA), 2 U.S.C. § 441b(b)(3)(B)(2002)(amending Federal Election Campaign Act (FECA), 2 U.S.C. § 431 (1971)).

<sup>92</sup> Telephone Interview with Claire Waites (January 9, 2012).

<sup>93</sup> *Id.*

<sup>94</sup> 2 U.S.C. § 441b(b)(3)(C)(2002).

<sup>95</sup> Telephone Interview with Claire Waites (January 9, 2012).

<sup>96</sup> 2 U.S.C. 441f

<sup>97</sup> Telephone Interview with Claire Waites (January 9, 2012).

<sup>98</sup> 2 U.S.C. § 441b(b)(3)(A)(2002).

federal law.<sup>99</sup> Claire has since taken a stand on this issue, and states that the “NEA got really mad at [her]” for speaking out.<sup>100</sup>

### *Phillip Knerr*

Philip Knerr is a proud member of his local union, but is dissatisfied with the fact that the majority of local members’ dues are diverted to the national union, leaving the local union with limited resources to carry out its basic functions.<sup>101</sup>

Philip Knerr lives in Flint, Michigan, where he works as a painter in the Engineering Department of McLaren Hospital. He is a member of American Federation of State, Federal, and Municipal Employees (AFSCME), and is happy with his local union and the benefits it provides. Only 2 percent of the dues their local members pay, however, remain with the local union.<sup>102</sup> The rest are sent “up the chain” to AFSCME’s national level to support candidates and an agenda he does not agree with. Phillip contends that his hard-earned dues are being used by unions to promote a “leftist” agenda through correspondence that amounts to propaganda.<sup>103</sup> A large portion of the membership opposes the union’s points of view, yet they are all forced to pay for it.<sup>104</sup>

By electing to direct such a large percentage—98 percent—of dues to the national union, Phillip believes that AFSCME has neglected local union needs.<sup>105</sup> He shared that “he is happy with [his] local group” and, in order to keep it properly functioning, he and his fellow local members have elected to pay additional dues that fund local union activities only.<sup>106</sup> According to Philip, AFSCME’s decision to take such a large portion of the dues for use at the national level has imposed an additional burden on the members of his local group.<sup>107</sup>

In addition to the significant dues and political agenda the union uses them to promote, Philip also takes issue with the difficulty of exercising Beck rights to avoid contributing to it at all.<sup>108</sup> He states that if you want to use your Beck rights and object to political spending, the process for getting your money back “is laid out to work against you.”<sup>109</sup> According to Phillip, Beck rights do not provide an adequate remedy to what seems to amount to forced political spending.<sup>110</sup>

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<sup>99</sup> Telephone Interview with Claire Waites (January 9, 2012).

<sup>100</sup> *Id.*

<sup>101</sup> Telephone Interview with Phillip Knerr, Member, American Federation of State, Federal, and Municipal Employees (December 20, 2011).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

### *Chris Mosquera*

Chris Mosquera is a Housing Inspector with the Housing Opportunity Commission in Rockville, Maryland. He is a member of United Food and Commercial Workers International Union (UFCW) and served as a shop steward from 2000-2011, but resigned because he could not continue to “go along with the union’s deceptive practices.”<sup>111</sup>

During his time as shop steward, Chris witnessed a number of deceptive practices. He describes one instance in which the union sent out workers to conduct campaign activities, while reporting that the funds were being spent on “worker training.”<sup>112</sup> Records indicate that those employees were present in the workplace during the time they were actually campaigning, and that they were receiving regular pay for those hours.<sup>113</sup>

Chris has also become frustrated with the union’s lack of disclosure and transparency, its use of dues for political purposes, and its lack of sensitivity and responsiveness to the needs and wants of its membership. He states that it is “impossible to get ahold of union leadership” should you want to reach them.<sup>114</sup> “Because membership is captured and the union receives dues regardless,” he explains, “the union is not really doing anything to advocate for workers and their benefits.”<sup>115</sup> To illustrate this, Chris shared that he has not received a raise in three years.<sup>116</sup>

### *Dustin Kuzan*

Dustin Kuzan is an agency-fee payer that wants to shed light on unions’ flawed structure and lack of transparency. He also objects to the fact that his non-member agency fee is almost as much as regular member dues, yet he has not reaped significant benefits of union advocacy.

Dustin works in Bowie, Maryland as a transportation engineer. Dustin is not a full member, but rather an agency fee-paying non-member of American Federation of Teachers (AFT) as well as Maryland Professional Employees Council (MPEC). Non-members in compulsory union states are required to pay what is called an “agency fee” to compensate the union for bargaining-related activities that the worker benefits from regardless of union membership. He has elected to become an agency fee payer primarily because he believes unions are flawed and lack the accountability necessary to ensure their responsiveness to members.<sup>117</sup> According to Dustin, the “union doesn’t have a good reputation with employees.”<sup>118</sup>

Dustin believes one reason for this discontent is that unions are exempt from the transparency and accountability requirements the government must follow.<sup>119</sup> He believes the

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<sup>111</sup> Telephone Interview with Chris Mosquera, Member, United Food and Commercial Workers International Union (December 16, 2011).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Telephone Interview with Dustin Kuzan, Member, American Federation of Teachers (December 16, 2011).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*



key issue is how exactly unions spend dues money, and their failure to disclose records and information has only aroused more suspicion.<sup>120</sup> For instance, Dustin has requested from the union their financial plan, to which they responded that they did not have one.<sup>121</sup> He also describes a more general lack of responsiveness on the part of the union to concerns, questions, and inquiries—such as records requests—made by members and non-members alike. He believes that this lack of transparency results in a union that is not sufficiently representative of the workers it is intended to protect.<sup>122</sup>

Since Dustin is a non-member in a compulsory union state, he is required to pay agency fees. The amount of the agency fee withdrawn from Dustin’s paycheck, however, is nearly as much as the amount of regular member dues. Because the fees are so high relative to the amount of collective bargaining activity the union appears to engage in, Dustin has sought to ensure that his Beck rights are being honored by the union. He has inquired with the union as to how his fees are being spent, but, due to the union’s lack of transparency and responsiveness, he was unable to acquire any information. The union’s silence coupled with Dustin’s investigatory efforts have led him to suspect that many of the “chargeable” items funded by agency fees to be objectionable and that the union is playing “a game of shuffle” to avoid reporting the money as political contributions, despite its claim that the fees would not be used for political support.<sup>123</sup>

Although Dustin is a Democrat and may not necessarily disagree with the union’s political views, he nonetheless endorses transparency as a means of ensuring that his hard-earned money—money that is only supposed to be used for legitimate union activity—is not diverted to political causes.<sup>124</sup>

## **Conclusion**

It is evident that too many workers in America have been denied their right to choose how their hard earned dollars are spent by politically active unions. Lack of transparency, significant gaps in the law, and forced unionism all conspire to deny workers freedom of choice. While the Supreme Court has recognized that some workers have the right to object to political expenditures, the remedy provided by the court is ineffective in application. Moreover, workers who wish to remain in a union have no practical mechanism to challenge how union leaders in Washington spend union dues. America’s workers deserve better. Accordingly, the Committee on Oversight and Government Reform will continue to investigate and report on instances where workers are compelled to support political causes they do not believe in.

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

## **About the Committee**

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The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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