

**THE RIGHT TO CHOOSE: PROTECTING UNION
WORKERS FROM FORCED POLITICAL CON-
TRIBUTIONS**

HEARING

BEFORE THE

**COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM**

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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THE RIGHT TO CHOOSE: PROTECTING UNION WORKERS FROM FORCED POLITICAL CONTRIBUTIONS

WEDNESDAY, FEBRUARY 8, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, McHenry, Jordan, Chaffetz, Walberg, Lankford, Gosar, Labrador, DesJarlais, Walsh, Gowdy, Ross, Guinta, Kelly, Cummings, Towns, Norton, Kucinich, Tierney, Clay, Lynch, Connolly, Quigley, Davis, Welch, Murphy.

Staff present: Kurt Bardella, senior policy advisor; Michael R. Bebeau and Gwen D'Luzansky, assistant clerks; Robert Borden, general counsel; Will L. Boyington, staff assistant; Molly Boyd, parliamentarian; Lawrence J. Brady, staff director; David Brewer, counsel; John Cuaderes, deputy staff director; Linda Good, chief clerk; Tyler Grimm and Michael Whatley, professional staff members; Frederick Hill, director of communications and senior policy advisor; Christopher Hixon, deputy chief counsel, oversight; Justin LoFranco, deputy director of digital strategy; Mark D. Marin, director of oversight; Christine Martin, counsel; Kristina M. Moore, senior counsel; Beverly Britton Fraser, Claire Coleman, Yvette Cravins, and Brian Quinn, minority counsels; Lisa Cody, minority investigator; Kevin Corbin, minority deputy clerk; Ashley Etienne, minority director of communications; Susanne Sachsman Grooms, minority chief counsel; Carla Hultberg, minority chief clerk; and Jason Powell, minority senior counsel.

Chairman ISSA. The committee will come to order.

We exist to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent. And second, Americans deserve an effective, efficient government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers, because taxpayers have a right to know what they get from their government.

It is our responsibility to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is our mission.

I will now recognize myself for an opening statement.

Individual freedom and personal choice are both cornerstones of our democracy and at the heart of unionization in America. However, the roles of unions have evolved from being protectorates of workers to being a powerful force in the political process. In America, what things become they have a right to become.

However, during the 2010 election cycle, unions spent more than \$1.1 billion to finance political and lobbying activities. The House Committee on Oversight and Government Reform's focus on these issue will not be on the examination of the validity of unions or the right to exist, but rather, an effort to ensure that the political activities of unions does not infringe on individual rights and freedoms of its workers. We are going to examine in a series of hearings the process by which union dues are collected and how transparent they are and how the money is spent.

I would like to thank our witnesses today for having the courage to stand up in public and share their stories with us and the American people. Union spending transparency, this is not a unique word to be said in this committee. Government transparency, bank transparency, privacy issues and knowing when or how your personal information is being used, these are all part of transparency in government, a cornerstone of this committee.

So today, as we look at recent court decisions that have lifted limitations on the use of dues for political spending, and I might add, lifted the limits on corporations in political spending, many workers are intentionally left unaware of their rights, and in some cases are subject to campaigns of threats and extortion.

Since taking office in 2009, the Obama administration has acted to reduce union transparency and reporting requirements, particularly on what is called the LM2. Right now, union workers do not know how much of their money is being spent or funneled to Super PACs, like the one President Obama expressed support for yesterday.

Under Citizens United, all of this is legal, under Citizens United, all of these activities are completely constitutional, and likely not to change in the foreseeable future. But today, workers don't have a say. There is no reporting requirement that provides workers with transparency we believe they deserve. In fact, just 2 weeks after the Supreme Court ruling that paved the way for Super PACs, the Obama administration began scrapping some of the disclosure requirements, particularly on international unions.

In addition to weakening the reporting requirements, the Obama administration quietly scaled back on the Department of Labor's ability to conduct effective financial oversight of labor organizations, and in fact, disbanded the Division of International Union Audits.

Although I can reach a conclusion that this is a union-friendly administration, that in fact this was what the union would want, and the like, I won't reach that conclusion here today. I will only reach a conclusion that this committee, in order to further transparency, asks, why wouldn't we reinstate greater reporting? Why wouldn't we ensure that money taken involuntarily from union members is in fact money that they have a right to know?

Additionally, in the coming weeks and months, this committee will look at the other side. I pledge today to look at corporate contributions to Super PACs.

Citizens United is now the law of the land. We don't dispute that. But Congress has a role particularly in ensuring greater transparency. We believe that nothing will be outside the Constitution in ensuring that the money be tracked in a way in which there is accountability for who is in fact providing great influence to the outcome of this coming year's election. But let's all realize that in the last few weeks, we have seen Super PACs play a huge role in the outcome of primaries. Whether you are for one candidate, the other, or none of them, we know Super PACs are here to stay. We know that they are receiving large amounts of money.

And today, we are going to ask a more narrow question, which is, do workers in unionized organizations have a right to know more than they currently know about when it is being taken, what it is being used for and whether in fact it has to be taken from them.

As the ranking member is recognized, I have purchased copies of a book that I think is very noteworthy for all of us through all this series of hearings. And I recommend it to all of you. It really outlines the last time, I think, that the Senate did serious work in looking at unions, not from an anti-union standpoint, but from in fact a friend of the unionized workers standpoint. Hopefully it will be taken to heart by both sides of the aisle.

With that, I recognize the ranking member for an opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. And thank you for the book.

If you read today's hearing title, you would think that it is about protecting union workers. Unfortunately, the real purpose of today's hearing is to continue the majority's unprecedented year-long attack against millions of middle-class American workers and their right to bargain collectively for their better wages and working conditions.

The majority's premise for today's hearing is that we need to conduct aggressive oversight to prevent unions from using the dues of their members to fund political activities. The majority expresses great concern and urgency over the prospect that unions are using the dues of their members to advocate on behalf of certain candidates or causes.

Let's start with the facts. First, Federal law already makes it clear that employment may not be conditioned on an employee's willingness to fund a union's political activities. In addition, unions may not force their members to pay for political activities they disagree with. Unions are already subject to extensive administrative procedures and reporting requirements to ensure they comply with these laws.

In contrast, after the Supreme Court's decision in Citizens United, private corporations are free to spend limitless amounts of money influencing political decisions. Corporate money is flooding into American politics big-time. According to statistics from the Center for Responsive Politics, the U.S. Chamber of Commerce, which is funded by corporate donations, spent more than \$32 mil-

lion on electioneering communications during the 2010 election season, about 94 percent of which was on behalf of Republican candidates. This unlimited corporate money bankrolls political action committees that will inject more than \$200 million into the 2012 races, according to estimates.

As the Wall Street Journal observed, these corporate funds constitute possibly the largest force in the 2012 campaign aside from the Presidential candidates themselves and political parties. These corporations are not subject to any of the same rules that unions face with respect to obtaining shareholder consent or input on political spending. Even if shareholders object to political spending by a corporation, they have no comparable legal rights to opt out of financing corporations' political activities or to seek reimbursement for these funds.

Our colleagues on the other side of the aisle like to use rhetoric that sounds like they have the interests of workers in mind. They talk about the right to work, States and paycheck protection. But their rhetoric does not match the reality. These proposals hurt millions of American workers by driving down wages, eliminating benefits and putting more money in the pockets of corporate execs.

According to an analysis by the Economic Policy Institute, right to work laws lower the average income to workers by \$1,500 a year and significantly decrease the ability of workers to obtain health insurance or pensions through their jobs. This hearing is not about protecting the rights of workers. It is about further silencing the voice of unions across this country that represent millions of American workers while at the same time encouraging private corporations to spend limitless amounts of money without transparency or accountability. If the majority were really interested in giving the American citizens a greater voice in how their money is spent on political activities, it would immediately call hearings on the proliferation of corporate spending this election season after the Supreme Court's decision in *Citizens United*.

I am very pleased to hear the chairman say that we will begin to at some point look at the *Citizens United* and the ramifications of it. That is very, very good news. If the committee did this on an even-handed and balanced basis, that is something I would strongly support.

With that, Mr. Chairman, I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

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Opening Statement
Ranking Member Elijah E. Cummings
Committee on Oversight and Government Reform

**Hearing on "The Right to Choose:
Protecting Union Workers from Forced Political Contributions"**

February 8, 2012

If you read today's hearing title, you would think it is about protecting union workers. Unfortunately, the real purpose of today's hearing is to continue the majority's unprecedented year-long attack against millions of middle-class American workers and their rights to bargain collectively for better wages and working conditions.

The majority's premise for today's hearing is that we need to conduct aggressive oversight to prevent unions from using the dues of their members to fund political activities. The majority expresses great concern and urgency over the prospect that unions are using the dues of their members to advocate on behalf of certain candidates or causes.

But let's start with the facts. First, federal law already makes clear that employment may not be conditioned on an employee's willingness to fund a union's political activities. In addition, unions may not force their members to pay for political activities they disagree with. Unions are already subject to extensive administrative procedures and reporting requirements to ensure they comply with these laws.

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This unlimited corporate money bankrolls political action committees that will inject more than \$200 million into the 2012 races, according to estimates. As the Wall Street Journal observed, these corporate funds constitute "possibly the largest force in the 2012 campaign, aside from the presidential candidates themselves and the political parties."

These corporations are not subject to any of the same rules that unions face with respect to obtaining shareholder consent or input on political spending. Even if shareholders object to political spending by a corporation, they have no comparable legal rights to opt out of financing a corporation's political activity or to seek reimbursement for these funds.

Our colleagues on the other side of the aisle like to use rhetoric that sounds like they have the interests of workers in mind. They talk about "right to work" states and "paycheck protection." But their rhetoric does not match reality. Their proposals hurt millions of American workers by driving down wages, eliminating benefits, and putting more money in the pockets of corporate executives.

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This hearing is not about protecting the rights of workers. It is about further silencing the voices of unions across this country that represent millions of American workers, while at the same time encouraging private corporations to spend limitless amounts of money without transparency or accountability.

If the majority were really interested in giving American citizens a greater voice in how their money is spent on political activities, it would immediately call hearings on the proliferation of corporate spending this election season after the Supreme Court's decision in *Citizens United*. If the Committee did this on an even-handed and balanced basis, that is something I would support.

Chairman ISSA. I thank the gentleman. Would the gentleman yield before he yields back?

Mr. CUMMINGS. Certainly.

Chairman ISSA. I made that pledge for a reason. The fact is that the unlimited dollars are, as the gentleman said in his opening statement, are on both sides. And although I don't think you can have a single panel talk about both, I know that your witness will in fact touch on it. And whether or not it is a minority day or in fact it is the second in the series, it is my intention to look at the growing effect of Super PACs. I want to make sure that I do each of them in a way that talks about the transparency.

I would say to the gentleman, the one thing that I know is that you and I can't un-ring the bell of the Supreme Court. So the intention of this committee is to concentrate on legislation after effective hearings that mandate in law greater transparency. And I will only offer legislation after we have looked at all the elements that feed dollars into the process. I thank the gentleman for his opening statement.

Mr. CUMMINGS. Thank you very much.

Chairman ISSA. With that, all Members will have 5 legislative days to include not only their opening statements but other insertions for the record and extraneous information.

With that, we now recognize our first and only panel of witnesses. First we go to Ms. Claire Waites. She is a school teacher in Alabama and a member of the National Education Association. Mr. Terry Bowman is an auto worker in Ypsilanti, MI, close to my alma mater, and a member of the United Auto Workers. Ms. Sally Coomer is a home health care worker in Duvall, WA, and is a member of the SEIU, or Service Employees International Union. Last, Dr. Kenneth G. Dau-Schmidt is a Willard and Margaret Carr professor of labor and employment law at the Maurer School of Law at Indiana University in Bloomington, IN.

And with that, if you would all rise, pursuant to the rules of the committee, all witnesses are to be sworn. Please raise your right hands.

[Witnesses sworn.]

Chairman ISSA. Let the record respond all witnesses answered in the affirmative. Please have a seat.

It is our practice to go down the row. It is committee practice to have opening statements be 5 minutes. I understand all of you prepared roughly 5 minutes. Your entire opening statements will be placed in the record completely. So you need not read verbatim from them, if you choose not to. The only thing I will say is that as we get to 5 minutes, and you will see the indication in front of you, you will hear a quiet tapping. Please know that that is an opportunity to sum up, if you haven't already.

Thank you very much. With that, we recognize Ms. Waites.

STATEMENTS OF CLAIRE WAITES, EMPLOYEE OF BALDWIN COUNTY PUBLIC SCHOOLS, ALABAMA, AND 2004 AND 2008 NATIONAL EDUCATION ASSOCIATION REPRESENTATIVE ASSEMBLY DELEGATE; TERRY BOWMAN, UAW MEMBER AND PRESIDENT OF UNION CONSERVATIVES, INC.; SALLY COOMER, SEATTLE, WA, AREA HOME CARE PROVIDER; AND KENNETH G. DAU-SCHMIDT, JD., PH.D., WILLARD AND MARGARET CARR PROFESSOR OF LABOR AND MANAGEMENT LAW, INDIANA UNIVERSITY, MAURER SCHOOL OF LAW

STATEMENT OF CLAIRE WAITES

Ms. WAITES. I would like to thank Chairman Issa, Ranking Member Cummings and the members of the committee for allowing me to be present today to tell my story. My name is Claire Waites, and I am a 28-year veteran teacher in Baldwin County Public School System in Baldwin County, Alabama.

I am currently a member in good standing of Baldwin County Education Association, which is affiliated with the Alabama Education Association and the National Education Association.

I would like to share with you my experiences with the NEA Representative Assembly in the years of 2004 and 2008 of which I attended as a delegate. I would like to focus on NEA's Fund for Children and Public Education and how the name itself leads one to believe it is a charitable fund to benefit children, when in fact it is a political action fund to benefit the candidates of NEA's choice.

In 2004, prior to attending my first representative assembly, during a required meeting of the local BCEA, delegates were told by the president at the time that we were expected to donate to the NEA Fund for Children and Public Education. We were told this contribution was non-negotiable.

While in Washington, during the delegate assembly, all Alabama delegates were reminded daily to make their donation to the fund. Oddly enough, we were even told how to contribute. We must make two different payments, totaling the amount of \$180. In the beginning, I was puzzled why the two different payments had to be made and neither payment was tax-deductible. I consoled myself by saying it was for children.

Instead of making the contribution right away, I procrastinated for several days, because my travel budget was tight. Every morning the AEA president would name off one by one the counties that had already reached 100 percent. I soon began to fear that they would know I was the only hold-out and obediently donated the money with misgivings. I consoled myself again that it was for children. It was not until later in the day that I found out the true nature of the fund. It was announced NEA would be endorsing John Kerry for President, and the money from the funds that were raised would be going to his campaign.

I must tell you, I felt a wave of illness come over like none I have ever felt before. Educators, who were supposed to be my people, had duped me into donating to a candidate I was not supporting.

Once again, I attended the NEA representative assembly in 2008. I was strong in my resolve that I would not make the same mistake twice: I would not donate to the Children's Fund. However,

I never had the chance to show my strength. The BCEA president at the time made the contribution in my name from a fund that was given to us for travel. I was furious. I told her she had no right to make a political contribution in my name under any circumstances. She replied to me by saying it was not a political contribution, it was a contribution to a Children's Fund.

I explained to her what I had learned about the fund in 2004 and I did not want to contribute and I wanted the money back. She replied that she did not think that I was correct in my statement, but would have to confer with an AEA State leader. Still angry over the issue the next morning, I found the AEA president and explained the contribution was made in my name without my permission and I wanted the money back. She refused.

On that same day, the BCEA president and I spoke again, and she verified that the contribution would go to the Obama campaign, which was another candidate I did not support. She now told me presumably after checking with AEA that I would not get my money back. She also suggested that I should not insist upon the contribution being returned, because the amount of the contribution had been included in our travel money. I told her I still wanted the money back. If it were returned to me, then I would return it to the BCEA.

To this day, I have never received the involuntary contribution money back. Instead, I believe it was used to help elect Senator Obama, which was completely contrary to my wishes.

[The prepared statement of Ms. Waites follows:]

Claire Waites

**Employee of Baldwin County Public Schools (Alabama)
and a 2004 & 2008 National Education Association (NEA) Representative Assembly Delegate**

Testimony before the Full Committee
U.S. House Committee on Oversight and Government Reform

8 February 2012

I would like to thank Chairman Issa, Ranking Member Cummings, and the members of the committee for allowing me to tell my story.

My name is Claire Waites. I am a resident of Daphne, Alabama and I am an employee of Baldwin County Public Schools where I hold the position of Eighth Grade Science Teacher. I am also a member in good standing of Baldwin County Education Association (BCEA), Alabama Education Association (AEA), and the National Education Association (NEA).

In 2004 and again in 2008 I was nominated and elected by my colleagues as a delegate to the national convention of the NEA. The NEA refers to its convention as its Representative Assembly (RA).

The 2004 NEA Convention was held in Washington D.C. In preparation for attending my first national convention, I attended a meeting of the local Baldwin County NEA. The president of the local at the time, Pat Siano, briefed us on what was expected of us. During this briefing, she told us about the NEA Children's Fund. The accurate name for the fund is The NEA Fund for Children and Public Education.

President Siano told us that we were all expected to contribute to this fund and that this contribution requirement was "nonnegotiable."

On arrival in Washington D.C. at the NEA Convention, we were told that we were required to attend a morning meeting of the Alabama delegation every day. Every day during that meeting, we were told by the Alabama NEA President to contribute to the Children's Fund.

Oddly, we were even told specifically how to contribute. We were instructed that we must make two different payments. In the beginning I was puzzled by the fact we had to make

Claire Waites
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8 February 2012
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two different payments and that neither of the payments were tax deductible. After all, it was a charity or so I thought at the time. It certainly sounded like a charity, and I even speculated on what they might use the money for, classroom grants, and underprivileged children.

Instead of making the contribution right away, I procrastinated for several days because my money was very tight. Every morning the Alabama NEA president would preach to us that we (Alabama NEA) needed to be 100% supporters of the Children's Fund. I soon began to fear they would know I was the only hold out especially since my local NEA President, Pat Siano, kept telling us to donate. I eventually donated the money with misgivings, and consoled myself with the fact it was for children.

Later that day, while in the restroom, I over heard two ladies from California discussing the Children's Fund. I asked them if they were required to give and the ladies told me no. They did not give to it because it is a political contribution.

I cannot tell you the rush that came over me at that time. It was a mixture of anger and stupidity. I felt as though I had been totally duped. To add insult to injury, later that afternoon, then NEA President, Reg Weaver announced the NEA would be endorsing John Kerry for President. President Weaver went on to announce the NEA Children's Fund had raised a large amount of money; and that, too would go to our friend in education, John Kerry.

I felt a wave of illness come over me like none I have ever felt before. These who were supposed to be my people; duped me into donating to a candidate I was voting against.

I immediately went out, bought a re-elect George Bush button, and wore it the rest of the convention.

In 2008, I was again nominated and elected to attend the NEA National Convention. I recounted in my mind what had happened to me in 2004 so that I would be strong and stand up to the powers that be and skip the Children's fund contribution. I was not going to repeat the same mistake!

Claire Waites
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Because of a conflict, I missed the first night of the 2008 NEA Convention. However, I arrived the next day to meet Dr. Jeanne Fox, an administrator in my school whom was also a delegate. The Baldwin County NEA President in 2008 was Saadia Hunter. Dr. Fox and I were in phone contact with President Hunter. Hunter told Dr. Fox that she had made contributions to the Children's Fund on behalf of Dr. Fox and me using the money Hunter had withheld from our travel money provided by the local. Delegates are given 80% of their travel money up front and are given the rest on the last day of the NEA Convention if they were on the convention floor 80% of the time.

I was furious about this, Dr. Fox handed me the phone and I told Ms. Hunter she had no right to do that. She could not make a political contribution in my name under any circumstances. She replied that it was not a political contribution, this was a contribution to a children's fund. I explained to her what I had learned about the Children's Fund in 2004, and that I did not want to contribute. I continued to tell her I thought making an involuntary contribution in my name could be illegal, and the two small payments (instead of one big one) also showed something improper was going on.

President Hunter replied that she did not think I was correct in my statements and would have to confer with Dr. Joe Reed, the Alabama NEA leader, about it and get back with me. President Hunter said she would see about getting my money back.

That night Dr. Fox and I went to the room in which the Alabama NEA delegation met to find the Alabama's President Peggy Mobley. We went to find President Mobley that night, but did not find her until the next morning. I explained to her my Children's fund contribution was made without my permission and I wanted my money back. She refused and told me they did not do that.

When I pressed the issue with her, she became condescending and told me that she would make sure my money didn't go to the presidential campaign. I told her once again I wanted my money back.

Claire Waites
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That same day I spoke again with my local NEA President Hunter about the involuntary contribution. She admitted that my contribution would go to the Obama campaign (another candidate I did not support) and that contributing in my name was probably illegal. She now told me (presumably after checking with the AEA) that I could not get my money back. She suggested that I should not insist upon getting my Children's Fund Contribution back because part of my travel money included an amount for the donation. I told her I still wanted my money back. Needless to say, I never got my money back.

John Hudson, an employee of the Alabama NEA, told me that my local NEA union included the Children's Fund contribution in the expense reimbursement of every Baldwin County convention delegate.

To this day, my involuntary contribution to the Children's Fund has not been returned. Instead, I believe it was used to help elect Senator Obama – which was completely contrary to my wishes. I went to the 2008 NEA Convention determined that I would not be duped into involuntarily supporting the NEA's Children's Fund. Despite my firm determination, again my money, unwillingly, was used to support the NEA's political activity fund known as the Children's Fund and political candidates who I opposed.

Chairman ISSA. Thank you.
Ms. Coomer.

STATEMENT OF SALLY COOMER

Ms. COOMER. Mr. Chairman Issa, Ranking Member Cummings and members of the committee, thank you so much for this opportunity that you have given me to share my testimony regarding forced unionization and the dues I am required to pay that go toward political causes that I am opposed to.

If it were not for the forced unionization of parents like me, who are merely caring for their loved ones, I would not be here today.

My name is Sally Coomer and I live in Washington State, near the Seattle area. My husband Tom and I are the parents of seven children and I have been married for 30 years.

To help you understand the unique situation regarding my union membership, I would first like to share with you a picture of my daughter, Becky. Becky is 21 years of age and lives with our family. As a result of a brain injury at birth, Becky has developmental disabilities, blindness, cerebral palsy and a seizure disorder. Due to Becky's multiple disabilities, she requires total care and support. Both my husband and I are committed to providing Becky with the love and care she needs throughout her life.

Since age 18, Becky has qualified to receive assistance through the Medicaid Personal Care program. This paid service can be provided by a family or non-family caregiver, qualified through the State of Washington. In 2009, I, along with thousands of other parents and family members, providing personal Medicaid Personal Care services to our adult children, or related family members, were forced to leave our agency employment and become an SEIU union member in the individual provider system. As a parent provider for Becky, I had no choice but to comply if I wanted to continue providing care for her.

I soon learned that because the State did not want to make all home care workers State employees, they set up a system where the recipient would be the employer and the caregiver the employee, with the Governor the employer for bargaining purposes only. This means that Becky was now my employer and I am considered her employee. This may work for the sake of unionization, but this is not a reality for Becky. This means that if she is my employer and I am her employee, as well as her guardian, then really I am the employer over myself.

Becky is in no position, nor does she have the understanding to be an employer or fulfill the functions of an employer or managing me as a caregiver. I feel that she and many in her situation are being exploited and used as pawns to make it possible for there to even be a bargaining relationship.

Our State has more than 42,000 unionized individual providers, of which about 65 to 70 percent are family members providing care for a loved one. Since being a forced union member, not only have I been subject to paying union dues, but as a parent provider, I have lost the ability to pay into the Social Security system due to the employment relationship that the State has set up for bargaining purposes.

In addition, I feel like a prisoner to the union and its causes when I find that my union dues are going to political purposes of which I greatly oppose. Most recently, I received a notice showing that my dues were being increased to support the union's Political Accountability Fund, to pay for a lawsuit and fund a campaign and initiative that would increase training for union caregivers at a price tag of \$80 million over 2 years. These types of unfunded initiatives directly impact the funding and direct services of the very population the individual provider system serves, which would include my daughter.

The union dues I am forced to pay fund political candidates I do not support. They fund campaigns that support initiatives that have drained the budget allocated for Becky and other Medicaid recipients. I am tired of being hounded by mailings telling me how to vote and what initiatives to support, as well as calls asking me to go to Olympia and rally for political causes that I believe to be false and misleading.

We are in a sad, sad state of affairs when as a parent, you are forced to be a union member and pay union dues to care for your own adult child with disabilities, especially knowing that your dues are going to political causes that are detrimental to the very funding that your adult child depends on. My hope would be, rather than divert millions of dollars in Medicaid funding for union dues each month, if I could ask you to try and put yourself in my situation as a parent. If Becky was your daughter and you were her voice, I am sure that you would feel the need to speak out against this kind of manipulation of Medicaid funds for the purpose of union gain. For families like ours, these funds are critical in making it possible for us to provide the long-term care that Becky needs.

Caring for my daughter is not a job that needs union intervention. This is my daughter, and this is our life circumstance. Thank you.

[The prepared statement of Ms. Coomer follows:]

Sally Coomer

Seattle, Washington Area Homecare Provider

Testimony before the Full Committee
U.S. House Committee on Oversight and Government Reform

8 February 2012

Chairman Issa and the members of the Committee, thank you for the time here today to expose part of the travesty that Service Employees International Union (SEIU) created with its control and power over Medicaid funded services and how the dues finance political causes in the State of Washington.

Let me begin by saying that were it not for the forced unionization of parents and family members who are merely caring for their loved ones, I would not be here today. Had SEIU not been able to use forced union dues for political causes that disrupt the delivery of Medicaid funded services, I would not be here today. In fact, thousands of parents would not be forced to pay union dues just to take care of their own children. But, please let me begin by giving you some background.

My name is Sally Coomer, and I live in Washington State near the Seattle area. My husband Tom and I have been married for 30 years and have been blessed with seven children.

In 1990, our third child, Becky, was born a normal, healthy baby. Shortly after birth, Becky became very ill with spinal meningitis. After many weeks of hospitalization, we were able to bring her home to be with her family.

The consequences of her illness caused Becky to sustain severe permanent disabilities both physically and developmentally. Although Becky is now an adult, her functional level ranges from a toddler to a very young child depending on the skill. Becky requires constant care and supervision; she needs us to perform all of her personal care such as toileting, feeding dressing and bathing. Becky is approaching the end of her school career, and, like many families, we will need to make some significant adjustments to the time we will need to spend caring for her throughout her lifetime.

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We, like thousands of other families, want to provide for our loved ones, and greatly appreciate the services available to make it possible. Our hope and plan is to care for Becky as long as we are able.

In 2004, due to my own experiences and connections with other families facing similar challenges, I had the opportunity to become a contracted Medicaid provider in the state of Washington. In addition to providing care for Becky, our agency helped other families who were in need of caregivers to provide personal care services. Since 2004, we have served thousands of families through the Medicaid Personal Care program. This experience has given me a broader understanding of the Washington State system, both through an agency perspective as well as through a personal caregiver's perspective.

In our State, when an individual of any age qualifies for Medicaid Personal Care Services, they are assessed by case management through the Department of Social and Health Services (DSHS) system. After the assessment, the recipient is allotted to receive a certain number of in-home care hours. DSHS pays a caregiver to provide tasks such as toileting, feeding, dressing, bathing, and all other personal care as assessed.

Currently we have two systems in which this care can be provided. One is the unionized Individual Provider (IP) system where the recipient is considered the employer and responsible for the hiring, supervising, managing and firing of the caregiver. The other is the agency models which are organizations contracted with the State of Washington to screen, hire, fire and supervise the homecare workers that they employ. Medicaid funding through the electronic SSPS (social service payment system) pays for both models.

Prior to 2002, individual providers were subcontracted with the state of Washington; the recipient of services was "clients" and not considered "employers." No employee relationship existed and there was no union bargaining agreement.

In 2002 the system changed. This was as a result of a SEIU supported initiative called the Washington In-Home Care Services 775.

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As a result of this initiative, the current Individual Provider system was created. The state proclaimed that the recipient of services is now the employer, and the individual caregiver is now the employee. The Governor of the State of Washington is deemed the employer, for bargaining purposes only.

This measure would establish a Washington State governmental agency called the Home Care Quality Authority (HCQA). This was originally set up to act as the public employer of the individual providers for purposes of collective bargaining.

In 2004 those duties of employer for bargaining purposes only was transferred from the HCQA to the Governor of the State of Washington. This is how the system remains today.

For the union to bargain, they had to set up an employer/employee relationship. Since the state did not want to make all home care workers state employees and provide the benefits that would come with that, they set up a system which names the recipient the employer and their Individual care provider their employee.

This paid service can be provided by a family or non-family caregiver qualified through the State of Washington. Prior to 2009, all providers had a choice as to whether they wanted to be in the unionized IP system or be employed by an agency. In 2009, there was legislation passed (HB 2361) that required all caregivers related to their clients to be forced to move over to the unionized individual provider system. Our state has now required that to provide care to any relative by blood or marriage you must be part of the union IP (Individual Provider) system.

(See the following image: Urgent notice from DSHS prohibiting family providers from working outside the unionized IP system.)

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PLEASE READ URGENT NOTICE

CAREGIVER CHANGES FOR CLIENTS RECEIVING PERSONAL CARE SERVICES OR DDD RESPITE SERVICES FROM A FAMILY MEMBER EMPLOYED BY A HOME CARE AGENCY

This notice only applies to you if you receive personal care or DDD respite services from a family member who works for a home care agency.

DSHS, Aging and Disability Services Administration (ADSA), will no longer pay a home care agency for in-home personal care or DDD respite services if the agency caregiver is your family member by blood, adoption, or marriage or registered domestic partnership. If the agency employee assigned to provide your care is a family member, you can either:

- Continue to receive services through the home care agency by an agency employee who is not your family member; or
- Continue to receive services from your family member by hiring him or her as an Individual Provider (IP). If you choose this option, you will be the IP's employer. You will decide what hours the IP will work, what tasks will be done, and you will supervise the IP while he or she is working. *(Client training on how to be an employer and work with an IP is available. If you are interested in this training, please contact your case manager.)*

Why is this change happening?

The changes are required by Substitute House Bill 2361, which was recently passed by the state legislature. As you probably already know, the 2009 Legislature made changes to many types of state services due to serious budgetary problems. Changes in your choice of caregiver need to be implemented by August 31, 2009.

Section 1 of Substitute House Bill 2361 states that "to the extent permitted under federal law" these new requirements do not apply if the "family member providing the care is older than the client." DSHS will not be applying this exception because it is prohibited by federal law, including age discrimination laws.

Will this change the number of personal care or respite hours I am eligible for?

The number of hours you are eligible to receive and the personal care/respite tasks that your caregiver provides are the same whether you receive services through a home care agency caregiver or an Individual Provider. As long as you are eligible, these services will continue during this change.

You do not have the right to appeal this service change because the change is required by the Legislature and it applies to the entire in-home care program.

If your agency caregiver is a family member, contact your home care agency and your case manager.

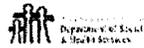
We understand that these changes may be difficult for you. Your case manager will be working with you to implement your choice of a home care agency or an Individual Provider. If you have questions or concerns, please contact your case manager.

Sincerely,

Kathy Lebeck, Assistant Secretary
 Aging and Disability Services Administration

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This Governmental Individual Provider fiction making my daughter, Becky, my employer did not change reality. Our situation, like many others, is that Becky does not have the developmental capacity to be an employer. More ridiculous is making my daughter her parent's employer while we remain her guardian is irresponsible, as well as illogical. (See image below: A DSHS Statement regarding my daughter's responsibility as employer.)



DIVISION OF DEVELOPMENTAL DISABILITIES (DDD)
**ACKNOWLEDGMENT OF MY RESPONSIBILITIES
 AS THE EMPLOYER OF MY INDIVIDUAL PROVIDERS**

I wish to receive services from an Individual provider paid by the Department of Social and Health Services (DSHS) through the Division of Developmental Disabilities.

I understand and acknowledge that I am primarily responsible for screening and hiring a qualified individual provider and that I am my provider's employer.

- I understand that I may terminate my provider's services at any time and choose a different provider.
- I understand that I am responsible for supervising the daily work and activities of the provider and for approving the hours the provider is billing DSHS for. Although my provider has a contract with DSHS, DSHS cannot supervise my provider's daily work and activities.
- I understand that I can contact my DSHS/DDD Case Resource Manager if I have any concerns about my service plan or about the quality of the care that I am receiving from my provider.
- I understand that DSHS is not responsible for withholding or paying income tax for any individual provider. However, as the source of payment, DSHS is responsible for the withholding and payment of Social Security and Medicare taxes (FICA) and for the payment of federal and state unemployment taxes (FUTA/SUTA) except for certain family members employed as individual providers.
- I understand that DSHS has a responsibility to ensure that providers are doing the work they are being paid for and that I must cooperate with DSHS in these efforts.
- I understand that I have a right to a Fair Hearing if DSHS terminates the Medicaid Personal Care contract of my individual provider.

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In reality, most of the recipients of these services are not in a position to be the "employer." This has raised many questions and has created the inherent conflicts when reality hits political fiction, even in Washington's Capitol where numerous state Representatives have questioned "who really is the employer?"

(See attachment: Representative Condotta's letter asking the attorney general "who is the employer")

STATE REPRESENTATIVE
1ST DISTRICT
CARY CONDOTTA

State of
Washington
House of
Representatives



COMMERCE & LABOR
RANKING MEMBER
FINANCE
TELEPHONE: 360-457-3200
& CLERK: 360-457-3200

July 9, 2009

The Honorable Rob McKenna
Washington State Attorney General
P.O. Box 40100
Olympia, WA 98504-0100

Re: Independent Providers (ch. 70.127 RCW)—Employment Laws

Dear Attorney General McKenna:

This is a request for a formal Attorney General's opinion. It concerns whether certain "individual providers" are State employees for the purposes of various employment laws.

Background

Chapter 70.127 RCW governs many aspects of home healthcare services. *See also* ch. 246-335 WAC (implementing statute). Some healthcare workers assist clients in their homes and other non-institutional settings; they are commonly referred to as "independent providers." *See* ch. 388-71-0500 - 05693 (governing independent providers). Many clients of independent providers are profoundly disabled children and adults either under guardianships or without legal capacity to enter into contracts. Profoundly disabled persons are often unable to direct many aspects of the care given to them by independent providers. Independent providers are paid by the State. The State provides W2s, withholds federal taxes, state unemployment taxes, and Industrial Insurance premiums. Many independent providers are covered by a collective bargaining agreement which recites that the Governor is the "employer." Please see the attachment.

However, the State claims that the employer of independent providers is the *client*, not the State. WAC 388-71-0503(2) (client "establishes employee/employer relationship with the [individual provider]"). The client, as previously noted, is often profoundly disabled and under a guardianship or lacking legal capacity to contract. In addition, a profoundly disabled client is often unable to direct the work of the independent provider. In contrast, the State pays the independent contractor, withholds his or her taxes, and the collective bargaining agreement considers the State to be the "employer." Yet the State claims the *client* is the employer.

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Page 2,
Independent Providers – Employment Laws

Questions Presented

1. Is the State of Washington or an agency thereof the "employer" of individual providers?
2. Is the State of Washington the "employer" or otherwise subject to the following laws regarding individual providers:
 - a. Wage and hour laws (federal Fair Labor Standards Act, chs. 49.46, 49.48, 49.52 or 49.56 RCW)
 - b. Social Security Act
 - c. State retirement and pension laws (title 41 RCW).
 - d. Americans with Disabilities Act
 - e. Family leave (federal Family and Medical Leave Act, Washington Family Leave Act ch. 49.78 RCW and family leave insurance ch. 49.86)
 - f. Immigration laws
 - g. Employment Security taxes
 - h. Industrial Insurance premiums
 - i. Washington Industrial Safety and Health Act ch. 49.17
 - j. Military leave
 - k. Domestic Violence Leave ch. 49.76
 - l. Employment discrimination laws (federal Title VII, Washington State Law Against Discrimination)
 - m. Civil rights laws (federal public accommodations law, 42 U.S.C. § 1983, ch. 9.91 RCW)

Best regards,


CARY CONDOTTA
12th District Representative

Because of the mandated move to the SEIU/ IP system, many providers were disheartened because they were forced to leave their agency employment that offered oversight and employment support. Many suffered real pay cuts, decreases and loss in benefits, and all

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parent providers were no longer able to contribute to the social security system per IRS tax law (publication 926 page 4) which was a result of HB 2361 in 2009.

(See image below: IRS tax law 926 prohibiting parents from paying into social security when not employed by an agency.)

pay state unemployment tax for your household employee. For the address and phone number, see the Appendix near the end of the publication. You should also determine if you need to pay or collect other state employment taxes or carry workers' compensation insurance.

If you pay the employee less than \$1,700 in cash wages in 2009, none of the wages you pay the employee are social security and Medicare wages and neither you nor your employee will owe social security or Medicare tax on those wages.

Social Security and Medicare Taxes

The social security tax pays for old-age, survivors, and disability benefits for workers and their families. The Medicare tax pays for hospital insurance.

Both you and your household employee may owe social security and Medicare taxes. Your share is 7.65% (6.2% for social security tax and 1.45% for Medicare tax) of the employee's social security and Medicare wages. Your employee's share is the same.

TIP You can use Table 3 on page 18 to figure the amount of social security and Medicare taxes to withhold from each wage payment.

You are responsible for payment of your employee's share of the taxes as well as your own. You can either withhold your employee's share from the employee's wages or pay it from your own funds. If you decide to pay the employee's share from your own funds, see *Not withholding the employee's share* on page 5. Pay the taxes as discussed under *How Do You Make Tax Payments?* on page 7. Also, see *What Forms Must You File?* on page 8.

Social security and Medicare wages. You figure social security and Medicare taxes on the social security and Medicare wages you pay your employee.

If you pay your household employee cash wages of \$1,700 or more in 2009, all cash wages you pay to that employee in 2009 (regardless of when the wages were earned) are social security and Medicare wages. However, any noncash wages you pay do not count as social security and Medicare wages.

Cash wages. Cash wages include wages you pay by check, money order, etc. Cash wages do not include the value of food, lodging, clothing, and other noncash items you give your household employee. However, cash you give your employee in place of these items is included in cash wages.

State disability payments treated as wages. Certain state disability plan payments that your household employee may receive are treated as social security and Medicare wages. For more information about these payments, see Instructions for Schedule H (Form 1040), Household Employers, and the notice issued by the state.

Wages not counted. Do not count wages you pay to any of the following individuals as social security and Medicare wages, even if these wages are \$1,700 or more during the year.

1. Your spouse.
2. Your child who is under the age of 21.
3. Your parent. *Exception:* Count these wages if both the following conditions apply.
 - a. Your parent cares for your child who is either of the following:
 - i. Under the age of 18, or
 - ii. Has a physical or mental condition that requires the personal care of an adult for at least 4 continuous weeks in a calendar quarter.

Table 2. Household Employer's Checklist

You may need to do the following things when you have a household employee.

When you hire a household employee:	<input type="checkbox"/> Find out if the person can legally work in the United States. <input type="checkbox"/> Find out if you need to pay state taxes.
When you pay your household employee:	<input type="checkbox"/> Withhold social security and Medicare taxes. <input type="checkbox"/> Withhold federal income tax. <input type="checkbox"/> Make advance payments of the earned income credit. <input type="checkbox"/> Decide how you will make tax payments. <input type="checkbox"/> Keep records.
By February 1, 2010:	<input type="checkbox"/> Get an employer identification number (EIN). <input type="checkbox"/> Give your employee Copies B, C, and 2 of Form W-2, Wage and Tax Statement.
By March 1, 2010 (March 31, 2010 if you file Form W-2 electronically):	<input type="checkbox"/> Send Copy A of Form W-2 to the Social Security Administration (SSA).
By April 15, 2010:	<input type="checkbox"/> File Schedule H (Form 1040), Household Employment Taxes, with your 2009 federal income tax return (Form 1040). If you do not have to file a return, use one of the other filing options, such as the option to file Schedule H by itself.

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(Below is an image of a parent's pay stubs without social security deduction.)

Wage and Tax Statement 2008		OMB No. 1545-0048	1. Wages, tips, other compensation: 18,741.21	2. Federal income tax withheld 1,084.06
3. Employer's Identification Number 91- XXXXXXXXXX	4. Employee's SSN 392189	5. Social Security Wages 0.00	6. Social Security tax withheld 0.00	
7. Employer's name, address and ZIP code C/O DEPT. SOCIAL & HEALTH SERVICES P.O. BOX 45346 OLYMPIA, WA 98504-5346		8. Medicare Wages and Tips 0.00	9. Medicare tax withheld 0.00	
		9. Advance EIC payment 0.00	10. Dependent Care 0.00	
8. Employer's name, address and ZIP code REDMOND WA 98052-5437		11. Nonqualified Plans 0.00	12. a 0.00	
		13. Savings Incentive Plan <input type="checkbox"/> Yes <input type="checkbox"/> No	12. b 0.00	
		14. Other	12. c	
			12. d	

Form W-2 Wage and Tax Statement
 Copy B File with employee's FEDERAL tax return

Department of the Treasury - Internal Revenue Service

In Washington State, we have thousands of family members who have chosen to be the "formal" paid caregivers for their family member. The State recognizes that this method is much less expensive by facilitating families to keep their loved ones at home rather than institutionalizing them. (It is estimated that 65% -75% of homecare workers in Washington State are family members.)

When my own daughter turned 18 and qualified for Medicaid services, I learned first-hand about the impacts of forced unionization. If I wanted to continue providing homecare for my daughter, Becky, through the Medicaid program managed by DSHS, I was forced to leave my nonunion agency employment and sign up as a SEIU unionized provider.

Prior to being forced to become an SEIU union member, I had better benefits, contributed to the social security system, and **was not forced** to pay union dues.

The consequence of having to move to the Individual Provider system was devastating for many. I know families who lost benefits for their child or spouse since the union insurance would not cover dependents. We had a family that had a dependent in the middle of cancer treatment who lost benefits due to the required move to the IP system. Many fought the move after learning the consequence of not being able to pay into the social security system, which

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would have long lasting consequences into the future. These changes came about merely because family members wanted to continue caring for their adult child.

To rub more salt on the wound, I frequently receive flyers and pamphlets promoting political causes that have negatively impacted the direct services Becky receives, and are polar opposites of my political beliefs. These views are against my moral values, and I obviously do not support them. Recently, SEIU increased my union dues to fund its "political accountability fund." I do not agree with their causes, and yet, I am forced to contribute.

(See image below: I was forced to contribute to this SEIU emergency political accountability fund.)



In a landslide vote, 85.4% to 14.6%, Washington Home Care Workers Voted to Establish an Emergency Fund to Fight Back against the Budget Cuts

(The votes were counted on July 9, at our office in Federal Way. The original announcement was sent out by automated call, email and posted on our website.)

The Emergency Fund will be used to pay for a lawsuit, a statewide public education campaign and an initiative to reinstate quality training.

The \$5 a month (for 5 months) will start coming out of your paycheck starting THIS month.

Up till now, if you contributed to our Political Accountability Fund, it was listed as "PAC." We will replace that line with "Vol Ded" (short for Voluntary Deduction).

For 5 months, your "Vol Ded" (Voluntary Deduction) will reflect both the amount of your authorized contribution to the Political Accountability Fund and the \$5 that will specifically go toward the Emergency Fund. The line on your notice will read "The Vol Ded amount includes the \$5 Emergency Fund fee."

After the 5 months are over, your "Vol Ded" (Voluntary Deduction) will go back to the authorized amount you are contributing to our Political Accountability Fund.

More information about the Emergency Fund can be found on our website at <http://ln.seiu775.org>. If you have specific questions, please contact our Member Resource Center toll-free at 1 (866) 371-3200 or via email at mrc@seiu775.org.

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Since 2004, SEIU has set up other organizations such as an SEIU Health Care Trust and a Training Trust. There are millions of dollars that flow through these two trusts for the expressed purposes of health benefits and training of union Individual Providers.

Most recently, the union financed an initiative which has increased state mandated SEIU caregiver training requirements. These training increases would more than double the average training requirements in comparison to the rest of the nation.

This created a controversy in our state due to the collapsing budget and the new ongoing cost of over \$80 million during the next two years alone.

Last year, SEIU poured millions into what many feel was a misleading informational advertising campaign to promote this unfunded initiative. Last year, our state, out of desperation, delayed implementation of the passed initiative due to a State budget crisis.

This year, SEIU ran the same campaigns promoting the passing of the training initiative again, with no fiscal note or funding source attached, and it passed. Now, the impacts from these campaigns are devastating the financial stability of the system. Many clients are losing services as a result of the absurd costs of implementing this initiative.

See excerpt out of an article from the Clark County *Columbian*:

No: I-1163 will require tax hikes or service cuts; only union benefits

Voters don't be fooled. I-1163 represents the wrong priorities. Mandatory caregiver training and criminal background checks are already required by law. For caregivers moving from another state, FBI fingerprint checks are already required by law. I-1163 costs \$80 million in the next two years and benefits just one interest group — Service Employees International Union.

This SEIU-sponsored measure claims to protect vulnerable adults. What it really does is force taxpayers to pay for the watered-down training of union members, with inexperienced and uneducated trainers managed by SEIU, eliminating the current training conducted by medical professionals and credentialed educators — who are licensed by the state.

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It is against my moral values for me to be required to finance these false SEIU political campaigns. My forced union dues are used for political purposes that oftentimes I oppose.

SEIU Healthcare 775NW Guide to 2011 Ballot Measures

I-1163 Restore Training for Home Care Workers, Protect Seniors

Thanks to long-term care workers like you, thousands of seniors in Washington receive care in the comfort and privacy of their own homes.

I-1163 requires more training, hours, certification, and increased background checks for in-home care workers to keep seniors healthy and safe. Washington voters already passed this measure in 2009 (I-1029), but the legislature delayed its implementation.

This initiative reinstates what the voters already made clear: our seniors deserve quality in-home care and workers deserve dignity, respect and a living wage.



I-1125 No Thanks, Tim Eyman

I-1125 is Tim Eyman's latest attempt to dominate Washington politics. It would channel funds from a gas tax at highway tolls to the chief for any other transportation agency, including critical light rail for bus services, or even highway maintenance. It would also be a massive distraction from the light rail funding initiative — that's already topped in 91% history. Washington needs sensible transportation options, not more profit for Tim Eyman.



I-1183 A Risky Plan to Deregulate Liquor Sales

Despite voters' explicit rejection last year of deregulation efforts, big businesses are at it again. I-1183 would deregulate state liquor sales, but only in high-traffic areas. And like the previous deregulation effort, it would not allow state services and employees to be affected by increased alcohol sales, but would allow them to be affected by increased alcohol sales.

I believe that it is wrong for SEIU via Washington State mandated powers to force parents like me who are caring for family members to pay union dues and then have them finance SEIU political purposes which I oppose.

Most family caregivers do not think of themselves as career homecare workers. They think of themselves as parents, brothers, sisters, or grandparents caring for someone they love. In our State, I am not considered an employee of the State, I am not considered a subcontracted worker; in addition, I am considered a union member and an employee of my daughter who has severe disabilities.

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I believe that SEIU has used my state mandated forced dues to manipulate a system for union officials' gains, not the caregivers' gain. To make it worse, it has been financed through a program that was supposedly created to help our most vulnerable citizens and their families.

Many, including me, oppose being forced to become SEIU members, but we have no choice. If we want to care for our children or any other family member, we must be union members and pay union dues. The state's bargaining agreement with SEIU states, "**any such individual provider home care worker who fails to satisfy this obligation (dues) within thirty days shall have his or her eligibility to receive payments from the state for providing services discontinued.**"

I love my daughter, and as her legal guardian, it is my responsibility to do the best I can to ensure that she is cared for and has an optimum quality of life. Without the Medicaid funding available to her, it would be difficult to continue caring for her in our home. I find it appalling that as her parent and Medicaid personal care provider I am forced to be a union member for the privilege of taking care of my daughter.

Some may argue that if you don't want to be a union member, then don't be a provider for your own daughter. This is ridiculous, don't you agree? Thousands of parents and family members are forced to be union members, just for the privilege of taking care of a loved one. Let me ask each of you, "Regardless of the negative impacts of being forced into unionization, wouldn't you feel the need to comply? However, I believe it is not right to force people to make that choice.

I have learned through experience that the SEIU union has great control and influence over these Federal Medicaid services and the delivery of them. My hope is that we will not lose sight as to why these services are in place, and who they are for. I am so grateful for the Medicaid personal care programs in place that make it possible for my daughter to receive the care she needs. Without Medicaid, it would be nearly impossible to continue providing for her care in our home.

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If you refer to the Centers for Medicare and Medicaid (CMS) website, you will see that the goal of these services is to facilitate independence and Community based living by offering the recipient flexibility, choice, and control over their services and the delivery of them. Right now, I feel like it is the SEIU union that has the greatest control and influence over these Federal Medicaid services. I cannot provide care for my own adult daughter unless I am a dues paying union member, I am prohibited from paying into the social security system because I am an IP union member, and I am forced to pay union dues that fund initiatives that are detrimental to Becky's services while also promoting politicians that I don't agree with.

Representative Issa and Rep. Cummings and all the other committee members, I greatly appreciate your interest in understanding the consequences forced unionization on tens of thousands of families: in particular, to those family members providing care through the Medicaid personal care program.

Most family members like me are only providing care out of love and circumstance. Families need all the support they can get in providing this long-term care. I believe that SEIU is taking advantage of our life circumstances and the services needed by those we care for. Worst of all, thousands of parents caring for their adult children will not be able draw on social security in their later years due to this forced unionization.

I am so grateful for the Federal Medicaid program which aids us in providing for Becky's care. My hope is that Government will really look at these social service systems and recognize the impacts of allowing unionization to infiltrate these systems and the long reaching consequences that follow.

Thank you so much for your time and consideration,

Sally Coomer

Chairman ISSA. Thank you.
Dr. Dau-Schmidt.

STATEMENT OF KENNETH G. DAU-SCHMIDT

Mr. DAU-SCHMIDT. Mr. Chairman, my name is Professor Dau-Schmidt of Indiana University. I am part of the 9 percent that still has a positive view of the House, and so I am very glad to be here today. [Laughter.]

But I haven't told anybody about it.

Chairman ISSA. Doctor, you are behind. It is well below 9 percent. [Laughter.]

Mr. DAU-SCHMIDT. I hope there is no record being made of my appearance here.

But anyway, I do want to thank you, I genuinely want to thank you for appearing here today and to get a seat at the main table with the other witnesses. We are here today to discuss a very important problem in a democratic society of balancing the free speech rights of organizations like corporations and unions with the free speech rights of individuals associated with those organization that might dissent.

The problem is how to allow corporations and unions to effectively communicate their legitimate concerns with their members and their constituents and with the public and engage in political activity without unfairly requiring dissenters within these organizations to pay a political support for views they oppose. This problem, of course, was brought to a head by the Supreme Court's surprising ruling in Citizens United that corporations are people, and as a result, they can spend all of their Corporate wealth on political campaigns, including supporting directly candidates.

This surprising holding by the Court made investment in a corporation a political act. And government programs that encourage or require such investment is basically, of course, political activity. Although we have extensive Federal law protecting the right of dissenting employees to opt out of supporting union political activity, we have no similar law to allow dissenting shareholders, including employees with pension plans, to opt out of supporting corporate political activity. This asymmetry and the treatment of employees who dissent from union activity, employees who dissent from corporate political activity, is not only unfair to people who dissent to corporate activity, but also it is a detriment to our democratic government.

As I have said, we already have an extensive body of Federal law to protect the rights of employees who want to dissent from union political activity. Under Federal law, no one can be required to join a union. No one can even be required to pay full union dues. Although in a State that allows the enforcement of union security agreements between unions and employers, an employee can be required to pay an agency fee to the union to cover the cost the union incurs in representing the employee.

In calculating agency fees under Federal law, unions are only allowed to charge employees for the costs of negotiating and administering the collective bargaining agreement and they are expressly prohibited from charging them for political activities such as the support of particular candidates. Unions are also required to give

dissenters a Hudson notice each year, containing information that adequately explains how the fee reduction for political activity was calculated along with an opportunity of at least 30 days to challenge the amount of the reduction.

And finally, no dues or fees can automatically be deducted from the employees pay check without the employee's affirmative agreement, regardless of what the union or the employer agree. Failure on the part of the union employer to follow these practices can result in prosecution by the National Labor Relations Board or a private suit by aggrieved employees in either Federal court or State court.

Some have argued, including some here today, I am sure, that we need more laws to protect the interests of employees who dissent from unions. But let me remind you of the words of Chief Justice Marshall in *McCullough v. Maryland*, "The power to regulate is the power to destroy." And I would argue that further limitations to requirements on union activities will undermine the ability of unions to function and also interfere with the right of union supporters to express themselves in a political discourse.

Some have argued for a Federal right to work law, that would prohibit union security agreements nationwide. But union security agreements are necessary under our Federal law to ensure that unions have the financial support they need to perform their duties. Under Federal law, not only can you not require someone to become a member, but unions have an obligation to fairly represent all people in the bargaining unit.

As a result, this creates a free rider problem, where the union is obligated to provide services but people are not obligated to pay. Union security agreements, where they are obligated to pay by the employer to pay the agency fee, solves this problem and gives the union the resources it needs to perform its functions. You can imagine the trouble in trying to run a business where you had the obligation to provide services but nobody had an obligation to pay. It would not work.

Some have argued in favor of paycheck protection laws that seek to hobble union activity and speech by requiring advance written authorization from all affected members and non-members of actions. Such laws elevate the minutest interests of dissenters over the interest of majority and violate the majority's First Amendment rights. And here I think the experience in Alabama is instructive in this regard. What we do need to do instead is to afford employees and other shareholders who dissent from Corporate political activity the same rights that are currently afforded to employees who dissent from union activity.

As an employee of Indiana University, the State of Indiana takes 10 percent of my salary and requires that I invest it in a limited number of mutual funds, none of which allow a political opt-out. I have no information on what these companies are doing with my money, although I know some of them are doing political activity that I do not agree with. And I have no opportunity to either know about it or to dissent.

I thank you for your time, and I look forward to your questions.
[The prepared statement of Mr. Dau-Schmidt follows:]

The Need to Give Workers Protection from Forced Political Contributions to Corporations *

Testimony before the House Committee on Oversight and Government Reform
Hearing Entitled:

"The Right to Choose: Protecting Union Workers from Forced Political Contributions"

February 8, 2012

Rayburn House Office Building Room 2154

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Willard and Margaret Carr
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Thanks for the invitation to speak today. I am pleased to get to testify on this important subject. As a lawyer and law professor, I have studied and taught labor and employment law for almost thirty years. Over the course of these thirty years I have been fortunate enough to teach labor and employment law not only in the U.S., but also in Germany, France, the U.K. and, most recently, China. As an economist, I have also studied the labor market and the impact of unions and collective bargaining on the distribution of wealth, the health of the middle class and the general health of the U.S. economy. I look forward to sharing what I have learned on these topics that is relevant to Committee's discussion.

I. Corporate and Union Expenditures on Political Activity After *Citizens United*

For more than half a century, federal campaign finance law bound unions and corporations to symmetrical restrictions on their ability to spend money on politics. Indeed, campaign finance legislation generally has spoken of corporations and labor organizations in parallel structure in the same provisions and sentences. The War Labor Disputes Act of 1943 made it unlawful for "any corporation whatever, or any labor organization" to contribute to candidates for federal office. 78 Cong. Ch. 144, June 25,

* This written testimony borrows heavily from Benjamin Sachs' excellent article on the subject *Unions, Corporations, and Political Opt-Out Rights after Citizens United*, Harvard Law School Public Law & Legal Theory Working Paper Series Paper No. 11-21 (2011) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924916. If this were a law review article it would contain numerous cites to and quotations from this work.

1943, 57 Stat. 163 at § 9. Similarly the Federal Election Campaign Act of 1971 (FECA) forbid “any corporation whatever, or any labor organization” to fund with general treasury monies expenditures that expressly advocated the election or defeat of a candidate. 2 U.S.C. § 441b(a). More recently, the Bipartisan Campaign Reform Act (BCRA) of 2002 extended this ban on corporate and union general treasury spending to include political advertisements that refer to a candidate in the weeks and months leading up to a federal election. 2 U.S.C. 441b(b)(2); 2 U.S.C. § 434(f)(3)(A). Many states have enacted similar restrictions with respect to union and corporate expenditures in state elections. To deal with these restrictions, unions and corporations who wanted to engage in the proscribed political activity set up political action committees and solicited voluntary contributions for these uses.

In *Citizens United v. FEC*, 130 S. Ct. 876 (2010), the Supreme Court overturned decades of legal precedent to strike down the provisions of campaign finance law prohibiting union and corporate electoral expenditures as unconstitutional. Although this ruling might at first seem even handed in its treatment of unions and corporations by allowing both to spend from their “general treasury” on elections, in fact it works to the detriment of unions and dissenting share-holders because federal law already contains significant provisions for allowing dissenting employees to “opt-out” of political spending by unions. The union’s “general treasury” consists of union dues and agency fees paid by members and represented employees covered by a union security agreement. However, federal law prohibits unions from spending any individual employees’ dues or fees on politics if those employees object to such use. *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963). See also *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998). In other words, employees already enjoy a federally protected right to control the way their dues are spent and to opt-out of funding union political activity. The corporation’s “general treasury” consists of profits that are generated from shareholders’ capital contributions and those capital contributions themselves. In contrast to the union context, corporations are free to spend these assets on politics even if individual shareholders object. Shareholders, including workers who have pension plan investments or stock options, enjoy no right to opt-out of financing corporate political activity.

II. Union Security Agreements and the Current Ability of Employees to “Opt-Out” of Union Political Spending

Union Security Agreements

Federal law creates a problem for unions in securing financial resources to support their activities in negotiating and enforcing collective bargaining agreements and representing employee interests in political debates. Although under federal law neither the union nor the employer can require an employee to join the union, *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), federal law also requires that the union must fairly represent all employees in the bargaining unit, whether the employee is a member of the union or not. *Abood v. Detroit Board of Education*, 431 U.S. 209, 221 (1977), quoting *International Assn. of Machinists v. Street*, 367 U.S. at 761. See also *Steele v. Louisville*

& Nashville R.R. Co., 323 U.S. 192, 204 (1944). Such fair representation can be quite expensive, perhaps even requiring the retaining of an attorney or other professionals, and the union can be sued by either the National Labor Relations Board or the aggrieved employee for failing to meet this duty. This state of affairs creates what economists refer to as a “free-rider” problem in that employees can enjoy the benefits of union representation without having to pay for them and thus “free-ride” on the union’s efforts. Imagine the problems if federal law required businesses to provide services to prospective customers without having to pay. To solve this problem, federal law allows unions to negotiate agreements with employers for “union security” that require each employee in the bargaining unit to either join the union, and pay full dues, or pay an “agency fee” to cover just the costs of representing the employee in the bargaining unit. As the Supreme Court has observed, a union security agreement “distribute[s] fairly the cost of these activities among those who benefit, and it counteracts the incentive that employees might otherwise have to become ‘free riders’—to refuse to contribute to the union while obtaining benefits of union representation that necessarily accrue to all employees.” *Abood*, 431 U.S. at 221-22.

“Right to Work,” or No Fair Share Laws

Section 14(b) of the National Labor Relations Act allows states to prohibit union security agreements. 29 U.S.C.A. § 164[b]. My own state of Indiana recently became the twenty-third state to pass such a law. These laws prohibiting union security agreements are sometimes called “Right to Work” laws, but this is really a misnomer because no one gains a job or has a right to work as a result of such laws. Such laws are really more appropriately called a “No Union Security” law or a “No Fair Share” law.

Proponents of No Fair Share laws argue that employees should not be required by their employers to pay the agency fees provided for in the union security agreement and that it infringes their rights to make them pay. Under our statutory system of exclusive representation and majority rule in representation elections there will always be some workers who voted against a union and are disappointed when it won, and others who voted for a union and are disappointed when it loses, but like our system of democratic government they are bound by the decision of the majority and have to pay for their responsibilities under the system. The Supreme Court has long held that the simple requirement that non-members pay their fair share of the cost of representation does not infringe their constitutional rights. *Railway Employees Dept. v. Hanson*, 351 U.S. 225, 238 (1956).

Proponents of No Fair Share laws also argue that these laws will increase economic growth in a state and attract new jobs, but there is no empirical support of these assertions. Separating out the impact of one condition or state policy from many is always difficult, but the best statistical analyses that control for numerous other variables show that there is no impact on the economic growth or job growth in a state with the passage of a No Fair Share act.¹ Even a simple analysis of state economic growth since

¹ Dale Belman, Richard Block, and Karen Roberts, *Economic Impact of State Differences in Labor Standards in the United States, 1998-2000*, 2001 www.employmentpolicy.org/topic/15/bllogeconomic

1977 shows that four out of the five fastest growing states allow the enforcement of union security agreements, including the two fastest—Massachusetts and Connecticut.² What is clear from the data is that a No Fair Share law lowers wages and benefits for both union and non-union employees in a state. Comparing average compensation for non-farm workers in 2011 one sees that average compensation is \$7,835 lower in No Fair Share states (\$57,732) than in states that enforce union security agreements (\$65,567).³ A more sophisticated analysis that controlled for many variables, including the cost of living, and which also looked at employee benefits, found that wages of both union and non-union workers in No Fair Share states were \$1,500 lower, while 2.6% less workers had health benefits and 4.8% less had a pension, than in states that enforce union security agreements.⁴

The Current Legal Right of Employees to “Opt-Out” of Union Political Spending

In cases arising out of states where union security agreements can be enforced, the Supreme Court has endeavored to “attain the appropriate reconciliation between majority and dissenting interests in the area of political expression,” in the enforcement of such agreements, recognizing that “the majority...has an interest in stating its views without being silenced by the dissenters.” *International Assn. of Machinists v. Street*, 367 U.S. at 773. Importantly, the Court stated at the outset of these cases that “dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee.” *Id.* at 774. Under the Court’s decisions, employees who choose to be non-member “agency fee payers,” as opposed to full union members, cannot be compelled to contribute toward a union’s partisan political activity or its ideological and other activities unrelated to collective bargaining and contract administration—even though these employees benefit from all of the union’s activities on their behalf.⁵ In fact, under the NLRA, workers who believe that a union is acting improperly in processing a Beck request may file a charge against the union with the NLRB; no lawyer is necessary to do so. If the NLRB finds merit in the charge, it will prosecute a complaint against the union—at no cost to the worker—and, if it prevails, secure for the worker an appropriate agency fee refund and a future fee reduction.

In addition to establishing this rule, the Court has also taken steps to delineate the appropriate remedial procedures through which a union must ensure that objectors’ dues

impact-state-differences-labor-standards-united-states-1998-2000, accessed 1/23/11; Lonnie K. Stevens, *The Effect of Endogenous Right-to-Work Laws on Business and Economic Conditions in the United States: A Multivariate Approach*, REV. OF LAW AND ECON. 5(1), 595-612, 2009.

² Gordon Lafer, *What’s Wrong With ‘Right to Work,’* Economic Policy Institute, Policy Memorandum #174 (February 28, 2011).

³ Marty Wolfson, *‘Right to Work’ Lowers Wages – And That’s a Fact!*, Higgins Labor Studies Program, University of Notre Dame Public Policy Commentary -- January 3, 2012, http://higginslabor.nd.edu/assets/56074/hlsp_commentary_jan_2012.pdf

⁴ Elise Gould and Heidi Shierholz, *The Compensation Penalty of ‘Right-to-Work’ Laws*, Economic Policy Institute Briefing Paper. February 17, 2011.

⁵ See generally *Abood*, supra, (public sector); *Ellis*, supra (Railway Labor Act); *Beck*, supra (National Labor Relations Act); *Air Line Pilots Assn. v. Miller*, 523 U.S. 866 (1998); *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991); *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

are, in fact, used only for permissible purposes.⁶ The jurisprudence that has developed to address these procedural questions is complex, but for present purposes, the key points are as follows. First, employees are entitled to object to the use of their dues for political purposes in general; they need not oppose the union's particular political stances – e.g., in favor of Democratic candidates or pro-labor legislation – and may refuse to have their dues spent on political activity of all types and valences. See *Abood*, 431 U.S. at 240-42. Second, although the Court's decisions are less specific on this point, employees' right to opt out of financing union political activity extends beyond electoral spending to include many types of lobbying.⁷ Third, employees who object to the political use of their dues must be provided by the union with an annual notice, known as a "Hudson notice," containing information that adequately explains how the fee reduction was calculated, along with an opportunity of at least 30 days to challenge the amount of the reduction. See *Ellis*, 435 U.S. at 443-444; *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 304-306.

Apart from the calculation of the agency fee that can be charged dissenters is the question of how those fees are collected. Although the NLRA permits unions and employers to negotiate payroll check-off authorization clauses, providing that employees—as a matter of their own convenience—may authorize the employer to deduct dues or fees from their paychecks and remit them directly to the union, no employee can be required to have money automatically withdrawn from his or her paycheck to finance any of the union's activities without the employee's permission. Without the employee's express authorization, such deductions from pay, and transfers of money from the employer to the union, are illegal. See 29 U.S.C. § 186(c)(4). A union member or other represented employee who declines to authorize a payroll deduction for membership dues or agency fee payments may fulfill his or her financial obligation to the union by other means of payment, such as mailing a check or paying at a monthly membership meeting.

As outlined above, current law already gives employees an extensive right to opt-out of union political activity and effective means to enforce that right. Even where unions negotiate an enforceable union security agreement with the employer, dissenting employees who choose to be non-member "agency fee payers" cannot be compelled to contribute toward a union's partisan political activity or its ideological and other activities

⁶ See, e.g., THE DEVELOPING LABOR LAW § 26 at 2106-2142, 2176-2184, 2198-2203 (JOHN E. HIGGINS, JR. ET AL., EDS., 5TH ED. 2006). In the NLRA context, the NLRB has held that the RLA and public sector cases do not determine the appropriate procedures for political objectors. As such, the Board has developed its own standards for union-shop provisions under NLRA, but the standards are much the same. See *California Saw & Knife Works*, 320 NLRB 224 (1995).

⁷ In *Lehnert v. Ferris Faculty Ass'n*, the Court concluded that public sector unions may charge dissenters only for lobbying related to the "legislative ratification of, or fiscal appropriations for, their collective bargaining agreement." 500 U.S. 507, 519 (1990); see also *Seidemann v. Bowen*, 584 F.3d 104, 114-15 (2d Cir. 2009) (only lobbying expenses "related to collective bargaining" are chargeable). This holding implies not only that public sector unions must allow employees to opt-out of most lobbying expenses, but that private sector unions – who need not seek legislative enactment or appropriations of their collective bargaining agreements – may not fund most types of lobbying with their general treasuries. The specific types of lobbying expenditures covered by the opt-out right, however, remains the subject of some dispute. See, e.g., *Seidemann*, 584 F.3d. at 114-15; *United Nurses & Allied Professionals (Kent Hospital)*, 2011

unrelated to collective bargaining and contract administration. Employees are entitled to object to the use of their dues for political purposes in general; they need not oppose the union's particular political stances. Once the employee identifies him or herself as an objector, the union has an obligation to provide an annual "Hudson notice," containing information that adequately explains how the fee reduction for political activity was calculated, along with an opportunity of at least 30 days to challenge the amount of the reduction. Finally, no dues or fees can be automatically deducted from the employee's paycheck without the employee's affirmative agreement, regardless of what the union and employer agree.

"Paycheck Protection," or Hobble Employee Speech Acts

Despite the already extensive protection of employees' right to opt-out of union political speech, some have proposed going further at the state or federal level by enacting so called "Paycheck Protection" acts. "Paycheck Protection", like "Right to Work", is an attractive name for proposals to render unions as impotent as possible. As a result I feel it is more appropriate to call them "Hobble Employee Speech" acts. These proposals vary a lot, but in general they seek to impose restrictions on union spending of its regular treasury funds to express employee interests by requiring advanced written authorization from all affected members or non-members for any actions or expressions that are "political." In these proposals what constitutes a "political" act or expression and thus a "political" expenditure is defined very broadly for the purpose of inhibiting collective employee speech. For example, in the Alabama Hobble Employee Speech act adopted in 2010, "political activity" was broadly defined to include: contributing to another entity that "engages in any form of political communication, including communications which mention the name of a political candidate"; "Contracting with" another entity that so engages; engaging in or paying for any such communication itself; engaging in or paying for any public opinion polling," irrespective of content; engaging in or paying for any "political advertising" (undefined) "in any medium"; "phone calling for any political literature" (undefined) "of any type"; and providing "in-kind" support for political candidate. The Alabama statute, Act 2010-761, codified at Alabama Code § 17-17-5. This statute has rightly been enjoined as trammeling employee free speech and a final adjudication of this question is in progress. *Alabama Education Association v. Bentley*, No. CV-11-S-761-NE (Memorandum Opinion)(affirmed 11th Cir). The Alabama experience is instructive because the Supreme Court has warned the congress and the state legislatures that regulation that unreasonably burdens corporate or union speech will be struck down as violating of the First Amendment. *Citizens United v. FEC*, 130 S. Ct. 876 (2010). Given the extensive right to opt-out of union expenditures for political activities that employees currently enjoy under federal law it is hard to justify further regulation.

III. The Need to Give Workers and Shareholders an Opportunity to “Opt-Out” of Corporate Political Spending

Although federal law currently contains an extensive right on the part of employees to opt-out of paying for union political expenditures, there is *no* corresponding legal right on the part of employees, or shareholders in general, to opt-out of paying for corporate political expenditures. This state of affairs is not only unfair to dissenting employees and shareholders, but also creates a systematic bias in our political system in favor of corporate political expenditures over union political expenditures that is inconsistent with past congressional policy and a healthy democracy.

The same arguments that have traditionally been made in favor of the employee opt-out from union political spending apply equally in favor of a shareholder opt-out from corporate political activity. Proponents have argued that employees should be able to opt-out of paying for union political activity because workers should have the opportunity to work wherever they want without having to pay for union political activities they oppose. Some have made this a constitutional claim, arguing that for the state to set up a system of exclusive representation in collective bargaining and allow union security agreements in which dissenters had to pay to support the union’s political activity would constitute forced political affiliation in violation of the First Amendment. The Supreme Court has accepted this argument for public sector employers where the state action argument is strongest, *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209, 235-36 (1977), but avoided this question in the private sector by interpreting the Railway Labor Act and National Labor Relations Act to only admit to union security agreements that allow dissenters to opt-out of paying for the union’s political activities. *International Association of Machinists v. Street*, 367 U.S. 740 (1961); *Communications Workers of America v. Beck*, 487 U.S. 735, 745 (1988). Similarly one can argue that shareholders should have the opportunity to invest wherever they want without having to support political activity they abhor. With respect to employees and particularly public employees, one can make a good constitutional argument. Through the tax code the federal government has promoted a system of employer based pensions in which a portion of the employee’s earnings is diverted into a limited number of possible equity investments or mutual funds where they can be used by corporations for political purposes without any opportunity for the employee to opt-out. In my own case, the State of Indiana takes 10% of my income and requires me to invest it in one or more of a limited number of mutual funds, none of which identify whether the companies in the fund will use my retirement savings for political purposes or allow me to opt-out of such use. Surely if it is unfair or unconstitutional for the state to encourage or require the diversion of employee income for union political purposes it is equally unfair for the state to encourage or require the diversion of employee income for corporate political purposes. By allowing investment in a company to become an act of political support, the Supreme Court’s opinion in *Citizens United* has resulted in new policy and constitutional implications for employee pensions and stock ownership plans.

The current state of the law provides corporations with a legally constructed advantage over unions when it comes to political spending by providing employees with

an opt-out procedure from union political expenditures but denying one to share-holder dissenters. This kind of legally conferred advantage is inconsistent with federal campaign finance law, and in particular, with that regime's insistence that unions and corporations be put "on exactly the same basis, insofar as their financial activities are concerned." *United States v. United Automobile Workers*, 352 U.S. 567, 579 (1957), quoting House Committee on Labor, Hearings on H. R. 804 and H. R. 1483, 78th Cong., 1st Sess. 1 (statement of Congressman Landis). In the post-*Citizens United* world, corporations undoubtedly will be the most well-funded speakers in the electoral arena. In the 2010 election cycle, for example, the leading non-party organization that engaged in political expenditures was the United States Chamber of Commerce. The Chamber, which is funded by corporate donations, spent more than \$32,000,000 on electioneering communications during this election season, approximately 94% of which was on behalf of Republican candidates.⁸ Moreover, of the top five highest spending non-party organizations, four supported conservative political candidates and issues similar to those that the Chamber supports.⁹ It is important to the functioning of our democracy that other views and interests be heard. The voice of employees as expressed through their collective representatives is an important counter weight to corporate interests in our democracy.

IV. CONCLUSION

The problem of balancing the interests of organizations to exercise their First Amendment rights and the right of members within those organizations to dissent and avoid paying for political activity is fundamental to the success of our democracy. This problem was recently brought to a head by the Supreme Court's ruling in *Citizen's United* that corporations were people with full First Amendment rights because it made the act of encouraged or compelled investment a compelled political activity. Although there are currently in existence extensive federal laws and legal doctrine upholding the right of employees to dissent from union political activity and not pay to support such activity, there is no corresponding current legal right for employees or shareholders in general to dissent and abstain from being forced to pay for corporate political activity. This state of the law is both unfair to dissenters from corporate political speech and harmful to the functioning of our pluralistic democracy.

⁸ See Michael Franz, *The Citizens United Election? Or Same As It Ever Was?*, 8 THE FORUM at 5 tbl 1.

⁹ See Center for Responsive Politics, 2010 Outside Spending, By Groups, available at <http://www.opensecrets.org/outsidespending/summ.php?disp=O>

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Chairman ISSA. Thank you, Doctor.
Mr. Bowman.

STATEMENT OF TERRY BOWMAN

Mr. BOWMAN. Chairman Issa, Ranking Member Cummings and members of this committee, first of all, thank you for giving me the privilege of testifying before you today regarding the wrongful use of union dues for political spending by labor union officials.

For over 15 years now, I have been a UAW member, and I have personally observed the intimidating political activities of my union. I am pro-union, but in the context of what unions were originally created to do, and that is to represent their employees in the realms of the workplace.

I am also the president and founder of a non-profit organization called Union Conservatives. The entire reason I felt the need to start this organization was because my union was using my union dues to push a political agenda that I oppose.

Now, since I started Union Conservatives, I have heard the stories of hundreds of union workers who are also tired and fed up with the political activities of their own unions. Up to 40 percent or more of union workers actually vote for Republicans. That means almost 6 million union workers in the United States alone feel harassed and persecuted because of the political activities of their union officials.

So to protect workers from the constant political abuses of their dues by their union officials, there really are only two options. The first option would be to require a combination of audits and Beck rights. A non-partisan third party would audit all spending by the unions, and all subjective educational spending or anything regarding any political activity must be omitted from the agency fee and make the Beck decision the default position for all union workers.

But the second choice is really the best and only clear way to ensure that the rights of all union workers are protected, and that is to pass a national right to work law. This would ensure that only those workers who agree with the political activities of their unions are paying for it, and those who find the far left political activities of their unions to be despicable would not be forced, as a condition of employment, to financially support those activities.

So let's take a look at the first option. The Supreme Court decision called the *Communication Workers of America v. Beck* acknowledged that unions do not have the right to use for political purposes the dues of workers or non-members who object to those political activities. However, union workers must first resign their membership and then they are frequently the victims of humiliation and harassment on the job for resigning their union membership. Because this fear stops the union member from exercising their rights.

Second, unions still use the agency fee as a means to spend money on political purposes. And it happens all the time.

The first option, making each worker a Beck rights worker as a default position, would be a step in the right direction. But the agency fee still contains many activities that are deemed extremely offensive by a large number of union workers. And those union workers fear the reprisal that comes with exercising those rights.

The only effective answer to this violation of workers' political freedom is to eliminate compulsory union language from the National Labor Relations Act and the Railway Labor Act. This would in essence establish a national right to work act. Only then will union officials be held answerable and accountable to the workers for their offensive and radical left-wing political actions. Only then will union bosses have to compete for a worker's loyalty. Competition instead of compulsion always makes an organization stronger.

I ask you to grant to the rest of the American workers what President John F. Kennedy granted to the Federal work force in Executive Order 10988, dated January 17, 1962: "Employees of the Federal Government shall have and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity."

I also ask you to grant to the millions of union workers their First Amendment right of freedom of association or conversely, the freedom to not associate. The U.S. Government has given labor unions the ability to trump an individual's First Amendment rights and force the seizure of an individual's personal property, their wages, for simply exercising their pursuit of happiness by applying for a job. Because forced solidarity is no solidarity at all. Even prisoners in a chain gang have solidarity. Forced solidarity is nothing more than being a prisoner in chains. Only through having a complete volunteer union is there real and true solidarity.

Finally, let me quote Founding Father Thomas Jefferson: "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." Thank you.

[The prepared statement of Mr. Bowman follows:]

Terry Bowman

UAW member and President of Union Conservatives, Inc.

Testimony before the Full Committee
U.S. House Committee on Oversight and Government Reform

8 February 2012

Chairman Issa and members of this Committee, thank you for giving me the privilege of testifying before you today regarding the wrongful use of dues and fees for political spending by labor unions.

This is one of those subjects where almost everyone acknowledges that it happens all the time. In preparation for this testimony, I casually asked union members I work with who represent both sides of the political aisle this question: "Do you think union officials use our regular dues on politics?" Every one without exception laughed and said, "Of course they do."

To protect workers from the constant political abuses of their dues by the union officials, there are really only two options:

1. Require a combination of Audits and Beck Rights. A non-partisan 3rd party would audit all spending by unions, and all subjective educational spending or anything regarding any political activity must be omitted from the agency fee (the minimum fee that union workers are required to pay in order to keep their jobs). And, make the "*Beck*" decision, (*The Communication Workers of America vs. Beck* 1988 Supreme Court decision) the default position for all union workers, and only those who wish to pay additional dues for political purposes can do so. This would remove the harassment, ridicule, and persecution workers receive who currently exercise their *Beck* rights. The Heritage Foundation's James Sherk estimated in 2006 that the nation's 10 largest unions expended, on average, only about 30 percent of dues on representing workers.¹

¹ <http://washingtonexaminer.com/opinion/columnists/2011/11/manhattan-moment-hands-my-union-dues#ixzz1I5oJOLw7>

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2. The best and only clear way to ensure that the rights of all union workers are protected is to pass a National Right to Work law. This would ensure that only those workers who agree with the political activities of their unions are paying for it, and those who, like myself, find the far-left political activities of their unions to be despicable, would not be forced, as a condition of employment, to financially support those activities.

My testimony will show that the first option, like most legislation that requires financial audits, would be extremely costly and burdensome to both union organizations and their members. Audits could never successfully ensure union officials do not infringe upon worker's rights. The 2nd option is the only clear and guaranteed way to ensure that workers will not be forced to support political candidates and issues against their will. For over 15 years now, I have been a UAW member, and I have personally observed the intimidating political activities of my union. I am pro-union: but, in the context of what unions were originally created to do, represent their workers in the realm of the workplace.

I am also the president and founder of a non-profit organization called Union Conservatives. The entire reason I felt the need to start this organization was because my union was using my regular union dues to push a political agenda that I opposed.

In December 2009, my UAW local (local 898) published their newsletter entitled "*Raw Facts*." In this issue, was a story which particularly enraged me entitled "**Health Care Reform: What Would Jesus Do?**" The article used incorrect theology to make the argument that Jesus was basically a socialist and would approve of the Patient Protection and Affordable Care Act.

I have some authority on this issue because I studied at Heritage College and Seminary, and I could easily tell that the author of this article incorrectly used Scripture in order to push a political agenda. It was finally at this moment where I stood up and said "ENOUGH! Somebody has to do something!" And of course, that "somebody" was me. I decided that the only way to

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fight back against the abusive actions that union officials engage in with my hard-earned dues was to start organizing conservatives within the unions.

Since I started Union Conservatives, I have heard the stories of hundreds of union workers who are also tired and fed up with the political activities of their own unions. These American citizens rightly believe that the unions have become quasi-political parties and socio-economic groups pushing a radical, left-wing ideology that many of their workers, including me, find offensive. Up to 40% of union workers vote Republican.² That means over 5 million union workers in the United States alone feel harassed, ridiculed and persecuted because of the political activities of their union bosses.

Last month, the Bureau of Labor Statistics released its 2011 information about Labor Union membership. There are 14.8 million working union members in the United States, or about 11.8% of the current workforce.³ Considering the Democrat bias of labor unions and that 40% of those union workers vote Republican, this means 5.9 million union members in the US are opposed to the political activities of their union officials.

To prove that this is true, I would like to cite for you some statistics:

1. A 2005-06 National Education Association survey found 45 percent of teachers under 30 classified themselves as conservative, and 63 percent of teachers age 40 to 49 classified themselves as conservative.⁴ Yet, the National Education Association continues to spend workers dues on far-left politics.
2. In a recent Harris Poll⁵, 72% of Americans agree that unions are too involved in politics, and even 60% of union households also agree.

² <http://www.manhattan-institute.org/html/miarticle.htm?id=7605>

³ <http://www.bls.gov/news.release/union2.nr0.htm>

⁴ <http://www.michiganapitolconfidential.com/14013>

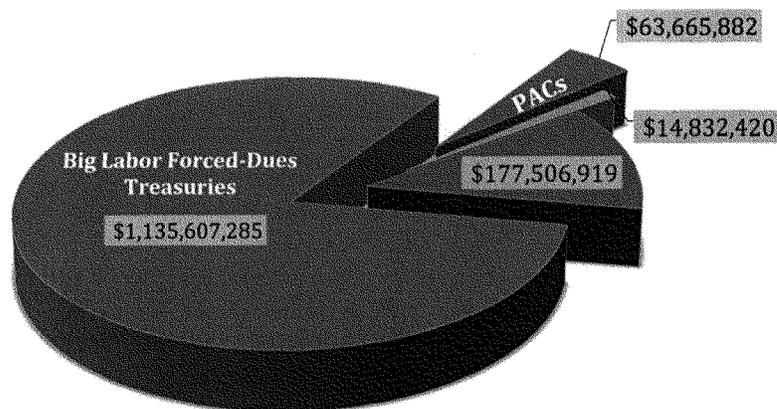
⁵

<http://www.harrisinteractive.com/NewsRoom/HarrisPolls/tabid/447/mid/1508/articleId/850/ctl/ReadCustom%20Default/Default.aspx>

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The amount of dues spent on politics by union officials is absolutely enormous. The National Institute for Labor Relations Research (NILRR) reports that Big Labor poured \$1.4 billion into the 2010 election cycle.⁶

BIG LABOR SPENT \$1.4 BILLION FOR POLITICS

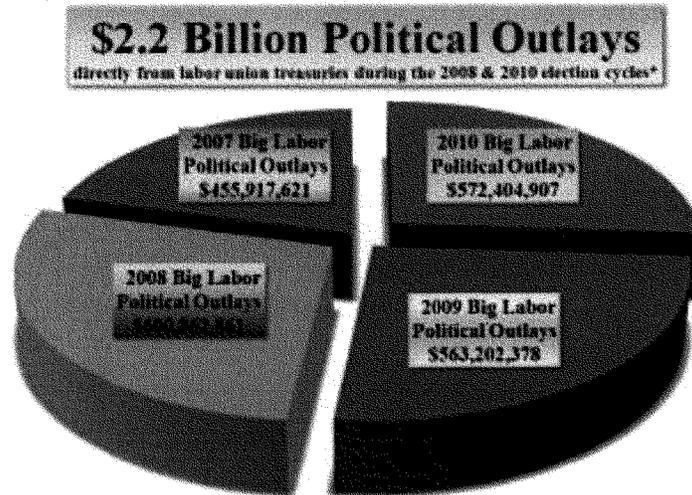


- Labor union spending from union treasuries as self-reported in U.S. Department of Labor union financial disclosure reports (LM-2)*
- Labor union spending from Political Action Committees (PACs) as reported to the Federal Election Commission (FEC)**
- Government union spending from union controlled "Federally Focused 527s" as reported to the Internal Revenue Service (IRS)***
- Government union spending from state campaign finance reports****

The NILRR report continues: "In 2009, Big Labor reported to the U. S. Department of Labor that it spent \$563.2 million on Political Activity, including lobbying. In 2010, Big Labor bosses reported spending another \$572.4 million on politics from forced-dues-funded union treasuries. Big Labor poured over \$1,135.6 million into political activity during the 2010 election cycle."

⁶ <http://www.nilrr.org/publications>

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*National Institute of Labor Relations Research study of USDOL LMR Reports for the Years 2007-2009

The amount of forced union dues spent on political activities which 40% or more of their members disagree, is staggering.

The Communications Workers of America vs. Beck, Supreme Court 1988

The Supreme Court decision called *The Communication Workers of America vs. Beck*, acknowledged that unions do not have the right to use, for political purposes, the dues of workers who object to the political activities of their union bosses. Union workers must first resign their membership, and then only afterward pay what is called the “agency fee,” which is supposed to be an accurate reflection of the unions costs associated with collective bargaining and grievance handling.

The *Beck* decision, while a step in the right direction, unfortunately falls far short in protecting the rights of **all** union workers against the abuse of union officials who use their dues for political purposes.

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Workers who exercise their *Beck* rights are frequently victims of humiliation, persecution and harassment on the job for resigning their union membership, and union officials do nothing to stop or even discourage this intimidating tactic. Because of this, fear stops many union members from exercising their rights.

Secondly, unions still use the “agency fee” as a means to spend money on political purposes – and it happens all the time. Why? Because there have been no consequences to the unions for doing so. They are self-governed, and *they* decide what is considered political, and what is not. This means that unions decide what can and cannot be included in the agency fee.

In December, I wrote an Op-ed for The Detroit News⁷ which lays out the fact that unions use regularly collected dues for political purposes all the time. In this article, I begin by showing an example of how unions use regular membership dues to push a political agenda:

The parking lot sign at my local union (UAW local 898) recently displayed the message: “Recall Gov. Snyder – Sign up here!” This very act turned the entire local office into a political propaganda machine. All the costs associated with the running of the property, building, and the salaries of the union officials who were responsible for displaying that message should have been removed from the “agency fee” that “Beck workers” are forced to pay as a condition of their employment.

But it doesn’t stop there...

Union officials use publications and magazines, websites and newsletters, and many other activities which they call “educational” to promote a political agenda.

For example: the UAW financially maintains their “Black Lake Facility”⁸ a retreat for where union members and staff go to be educated about things like “leadership development, union involvement, health and safety, political action, civil rights and many other topics.”

⁷ <http://www.detroitnews.com/article/20111206/OPINION01/112060316/1008/opinion01/Union-dues-still-spent-unfairly-for-some>

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Although I have worked there for over 15 years, I have never once been invited to go to Black Lake Resort. However, many UAW members get their wages paid to attend the 1 week seminars (wages paid by the local union), and the entire retreat is financially paid for with regular union dues - including food and lodging (all of which are right on the premises). Unfortunately, there seems to be a certain group of people who are invited time and time again (workers who are involved with far-left union activity), and the rest of us are never afforded the opportunity to go. I have been told that these "training sessions" are full of political propaganda, and they constantly disparage the Republican Party.

Secondly, the UAW's publications entitled *Solidarity*, local union newsletters, and retiree publications are all promoted by the union officials as educational publications, yet they are full of political propaganda. You will find attached to this testimony just a small random selection of articles which are very biased and are not an accurate representation of the political opinions of their membership.

"Forced Solidarity" is no solidarity at all. Even prisoners in a chain gang have solidarity. Forced solidarity is nothing more than being a prisoner in chains. Only through having a complete volunteer union is there real and true solidarity.

But it doesn't stop there...

In 2004, the citizens of Michigan approved a constitutional amendment called "The Marriage Protection Amendment" which defined marriage as between one man and one woman.

According to Gary Glenn, the president of The American Family Association of Michigan, 66% of union members voted in favor of the amendment, yet their own union officials used their members' dues to fight against it. The Detroit News mirrors this fact and stated in an article dated October 22, 2004 called "**Same-sex marriage ban likely to pass:**"

"Unions oppose the (Marriage Protection Amendment), saying it interferes with collective bargaining agreements, with many now including domestic partner

⁸ <http://www.uaw.org/page/black-lake>

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benefits. But the survey shows two-thirds of union households support Proposal 2, identical to the level of support in nonunion households."

But it doesn't stop there...

Union bosses fight against responsible government actions, and use member dues to recall Republican elected officials – many of whom union workers supported during the campaign. Union officials essentially force Republican workers to pay to nullify their own vote in the ballot box.

The violent protests and divisive actions we saw by a contingent of union activists in Wisconsin last year shows that union officials and their community organizing tactics are out of touch with the American people and with most union workers nationwide. None of the funds used for these activities, the salaries of the union officials who engage in them, or the costs associated with the facilities, are removed from the "agency fee" even though at heart, these are political actions. Even "Beck workers" still have to pay for the political actions of their officials.

But it doesn't stop there...

Union officials seem to have forgotten their original purpose, and instead now focus on changing the very core of American principles. Those principles of limited government, free-market economics and personal responsibility run anathema to the union message of big government (to ensure continued forced union dues from government employees), liberalism, and guaranteed reward without personal responsibility. They are now more known to the American public for their radical left-wing activism, violent protests, and their alignment liberal organizations.

The fact that unions are so closely tied with just one political party means that they cannot effectively see the truth of society and its needs.

In his groundbreaking and important book, *Liberating Labor*, Economics professor Charles W. Baird quotes Pope John Paul II. In *Laborem Exercens*, the highly respected pontiff says:

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“The role of unions is not to “play politics” in the sense that the expression is commonly understood today. Unions do not have the character of political parties struggling for power; they should not be subjected to the decision of political parties or have too close links with them. In fact, in such a situation they easily lose contact with their specific role, which is to secure the just right of workers within the framework of the common good...instead they become an instrument used for other purposes.”⁹

On October 2, 2010, union officials from around the country, along with the small percentage of union workers that they could get to attend, rallied in Washington DC. Called the One Nation Working Together Rally, union officials publicly attacked the Republican Party, the Tea Party, and anyone who did not agree with their big government agenda. The salaries paid to union officials who appeared at this rally, and all costs covered by the unions associated with the rally should be removed out of the “agency fee.”

Normally, this action is bad enough and an abusive use of regular union dues. But unfortunately, it got much worse...

Union officials rallied shoulder to shoulder with The Communist Party USA, The Socialist Party, and the Democratic Socialists of America.

It's important to understand that in none of the UAW flyers for this event, was this partnership mentioned to the members. It was only after seeing YouTube videos of the event the associations were exposed.¹⁰ When I reported this fact to union members, they were outraged that our union officials would join with these groups that want nothing less than the destruction of America as we know it. And yet, our regular union dues were used to pay the salaries of the union officials who attended and spoke. Our dues were used to promote this extremely offensive event.

But it doesn't end there...

⁹ *Liberating Labor*, Charles W. Baird. 2002 by The Acton Institute, Grand Rapids, MI.

¹⁰ <http://www.youtube.com/watch?v=p7X-0iA8L64>

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On Labor Day 2011, President Obama came to Detroit to speak at the Labor Day parade. Paid union officials from around Michigan came to rally for and cheer the President. During this event, Teamster's President James Hoffa made very incendiary remarks:

"We've got to keep an eye on the battle that we face -- a war on workers. And you see it everywhere. It is the Tea Party," he said. "And there's only one way to beat and win that war -- the one thing about working people is, we like a good fight. President Obama, this is your army, we are ready to march," Hoffa said. "But everybody here's got to vote. If we go back, and keep the eye on the prize, let's take these son-of-a-bitches out."¹¹

The disturbing thing about this speech is that Mr. Hoffa, when speaking about the Tea Party, is speaking about many people in his own union. He is calling many of his own members "sons-of-bitches." I know this because I have addressed many Tea Parties, and I have been encouraged to see many in attendance are union members, including Hoffa's own Teamsters. In essence, many in his own union that he called "sons-of-bitches" are paying Mr. Hoffa's \$368,000 salary and generous benefits. His speech is disturbing at best, downright abusive to his own members at worst.

But it doesn't end there....

Recently, a MEA (Michigan Education Association) manual was discovered. For more than two years since its printing, it has urged its members to use students as propaganda in contract negotiations, and lays out how to organize strikes, which are illegal in Michigan.¹²

This manual was not produced and printed using PAC funds. It was produced and printed using regular union dues, even though much of the information in this manual would be considered disturbing at best, downright repulsive and hateful at worst. Let's be clear, at its

¹¹ <http://nation.foxnews.com/teamsters/2011/09/05/teamsters-boss-declares-war-gop-lets-take-son-bitches-out>

¹² <http://www.michigancapitolconfidential.com/16353>

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heart, this is a manipulative and subversive use of its member's union dues, and at its heart, it is political in nature.¹³

But it doesn't stop there...

The SEIU "Contract Campaign Manual," encourages civil disobedience and breaking the law. In true militant and intimidating fashion, this manual recommends complete barbarianism tactics to intimidate employers into giving in to contract demands. Workplacechoice.org reports:

"SEIU's Contract Campaign Manual details the union's strategies for attacking an employer's reputation, its relationship with its customers and vendors, and even its managers personally."¹⁴

When evaluating the possible methods of attack, the manual offers different tactics that can cost the employer money. Suggestions include: disrupting income sources such as customers or investors, generating bad publicity to deter new customers, filing complaints with various regulators, and disrupting managers' careers.

The National Right To Work Committee provided me with an entire copy of SEIU's Contract Campaign Manual, and I have included it as addendum to my testimony.

These extreme and offensive tactics are disturbing to most union workers – especially the 40% or more of union workers who vote Republican. At its very heart, this is a manual of how to use political pressure.

But it doesn't stop there...

Richard Trumka, the extremely controversial president of the AFL-CIO, has publicly used his regular dues-paid position to go even further. Over the course of the last couple of years, Trumka has said:

¹³ <http://www.mea.org/bfcl/pdf/BFCL-CrisisPlanning.pdf>

¹⁴ <http://workplacechoice.org/2011/09/17/seiu-intimidation-manual-exposed/>

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1. *"We need to fundamentally restructure our economy and re-establish popular control over the private corporations which have distorted our economy and hijacked our government. That's a long-term job, but one we should start now."* This message is political in nature, many AFL-CIO workers rightly find this propaganda to be offensive.¹⁵
2. *"When U.S., corporations sit on more than \$800 billion without creating jobs, when banks hoard more than \$1 trillion in profits without lending to small businesses and consumers, and when health insurance companies with tens of billions in profits demand huge premium increases, there are only two words to describe such greed says,"* AFL-CIO President Richard Trumka: *"Economic treason!"*¹⁶ Not only is this offensive vitriol political in nature, but it is just not true.
3. At a roundtable in Detroit on the "Future of Unions," *Trumka said "forget about the law; this is about more than that."*¹⁷

With Trumka, however, the best was yet to come. In an interview on September 27, 2010, Trumka personally admitted that he is not interested in doing what his job is supposed to entail:

"... we're the last line of defense out there. I mean, I got into the labor movement — not because I wanted to negotiate wages. I got into the labor movement because I saw it as a vehicle to do massive social change to include the lots of people. That's why I got into the labor movement." (Emphasis added)¹⁸

In that bizarre admission, Trumka concedes that taking care of his employees holds no interest to him. Only the pushing of social change is what he is interested in. Of course the ability for him to continue to 'do mass social change' comes directly from the funding he receives from the regular dues (most of which are forced as a condition of employment) of AFL-CIO employees – many of whom find his words and actions extremely offensive.

¹⁵ <http://blog.aflcio.org/2010/09/27/trumka-working-class-anger-fueled-by-rights-deeply-dishonest-message/>

¹⁶ <http://blog.aflcio.org/2010/09/14/trumka-union-votes-can-beat-false-populism-and-economic-treason/>

¹⁷ <http://biggovernment.com/mvadum/2011/11/03/afl-cios-richard-trumka-is-a-thugs-thug/>

¹⁸ <http://www.thenewamerican.com/index.php/usnews/politics/5817-union-head-richard-trumka-sees-afl-cio-as-socialist-vehicle>

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But it doesn't end there...

Within the last 6 months, union officials have found another avenue to forcefully spend their workers hard-earned dues on offensive, political purposes. Partnering with the "occupy protesters;" union officials are supporting these groups with financial contributions and with public support.

For example, the UAW has committed to giving resources to the occupy crowd.¹⁹

The SEIU has reported that they have "showered the protesters with help -- tents, air mattresses, propane heaters and tons of food."²⁰ Interestingly, Mary Kay Henry, president of the SEIU, consistently says she speaks for the entire 2.1 million SEIU members when she engages in far-left political activity. That is a gross exaggeration of reality said in order to give her some credence.²¹

Both the NEA and the AFT are also engaged in the Occupy community organizing movement.²²

Finally, I must tell you my own personal story with the union fed activities of the Occupy Crowd. During the *Defending the American Dream* summit held by Americans for Prosperity at the Washington DC Convention Center in November, Occupy protesters surrounded the center in military fashion, committed acts of violence against peaceful attendees at the conference (an elderly Michigan woman was pushed down concrete stairs and injured – all while the protesters who caused her injury were chanting while she was laying there) and committed frequent acts of civil disobedience.

All of these occupy stories prove that unions are finding more and more avenues to spend the hard-earned regular union dues of their membership on offensive political issues, and they

¹⁹ <http://www.uaw.org/page/uaw-endorses-occupy-wall-street>

²⁰ http://mt-pub2.seiu.org/mt/mt-search.cgi?blog_id=33&tag=Occupy%20Wall%20Street&limit=20

²¹ <http://www.seiu.org/2011/10/seiu-supports-occupywallstreet.php>

²² <http://www.aateteachers.org/index.php/blog/573-nea-a-aft-ties-to-occupy-wall-street-protests>

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don't even subtract these activities from the "agency fee" which is supposed to be only a true reflection of the cost to represent those workers who exercise their "Beck rights."

Conclusion

Unions have shown us that they are incapable of fairly governing the spending of the billions in dues they extract from workers. Most of those dues are forced from workers as a condition of their employment.

As stated at the beginning of this testimony, there are only two ways to ensure that worker's rights are protected.

The first way, making each worker a "Beck Rights" worker as the default position, would be a step in the right direction, but as we have seen, the "agency fee" still contains many activities that are very political in nature, and deemed extremely offensive by a large number of union workers.

Even if the government required non-partisan, honest, and incorruptible 3rd party audits of union spending, unions will continue to abuse their ultimate power over the dues of their membership. The only effective answer to this violation of workers' political freedom is to eliminate all compulsory unionism language from the National Labor Relations Act and the Railway Labor Act. This would, in essence, establish a National Right to Work Act.

Then – and only then – will workers receive back some of that ultimate power that their union officials currently hold over the political use of their hard-earned dues.

Then – and only then – will unions be held answerable and accountable to the workers for their offensive and radical left-wing political actions.

Then – and only then – unions will have to – by necessity – perform harder for their members, and for the first time have to compete for members' loyalty. Competition, instead of a compulsion, always makes an organization better.

Terry Bowman
Testimony U.S. House Committee on Oversight and Government Reform
8 February 2012
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I ask you to grant to the rest of Americans what President John F. Kennedy granted to the federal workforce in executive order #10988, dated January 17, 1962:

Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity.

I ask you to grant to the millions of union workers who do not currently enjoy the Constitutional protections of the 1st Amendment right of Freedom of Association – or conversely – the Freedom NOT to Associate, the right to choose for themselves whether to financially support an outside 3rd party. The United States government has given labor unions the ability to trump individual's 1st amendment rights and force the seizure of an individual's personal property for simply exercising their "pursuit of happiness." Congress should end this extra-constitutional power.

Finally, let me quote founding father Thomas Jefferson:

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

Chairman ISSA. I thank the gentleman.
I will now recognize myself for 5 minutes. Mr. Bowman, you took away one of my lines with the Jefferson one.

Mr. BOWMAN. I apologize.

Chairman ISSA. No, it was well said.

Doctor, I am going to start with you, because I just want to understand one thing. If what you say is true in practicality as it is in law, then there should be a large difference between the agency amount taken from our witnesses if they are under that and union dues, presuming that a large amount is spent on, directly or indirectly, political activity. Is that correct, that there should be a large amount?

If a large amount of the union's activities is non-PAC activity, particularly, it is spent on political activities, including asking for more money, asking for people to go to rallies, all of that should be reduced by the amount that the free rider, if you want to use that term, pays to simply have the other negotiations. Is that correct? Very simply, the political activity money is to be only spent from union dues and not from the agency under the law. That's what you said in your opening statement. Do you stand by that?

Mr. DAU-SCHMIDT. Yes.

Chairman ISSA. Ms. Coomer, have you looked into the difference between what would happen if you asserted your Beck rights and simply, instead of paying full dues, only paid for the portion that was negotiated to help your employer, I guess it would be having your employer treat you more fairly, your daughter, right?

Ms. COOMER. Yes.

Chairman ISSA. Have you looked into that?

Ms. COOMER. I have.

Chairman ISSA. And by the way, I am assuming that your daughter is a good employer, even without the union.

Ms. COOMER. Very cooperative.

I have, and the reality is that according to the bargaining agreement, that the dues that I pay, the only way that I can not pay dues, actually the amount that I pay is the same. It is not like there is a reduced fee, I have to belong to a religious organization and prove that I belong to a religious organization that prohibits me. And then I am required, according to the bargaining agreement, to choose a non-religious organization and the union has to approve of that. And when I choose it, and if they approve, then that equal amount goes, I can then donate that to that organization. But it has to be upon the approval of the union.

So in the end, I am still paying the same amount of money. And then every quarter, I have to show that I have taken that money and done that.

Chairman ISSA. Okay, I am going to go to each of the witnesses for their experiences, before I go back to the Doctor.

So your experience is, it is the exact same amount of money, there is no reduction to you or, in this case, to the money you use to care for your daughter, there's no reduction if you try to opt out of the union, even though the Beck decision says there should be?

Ms. COOMER. This is what I have been informed of by the union.

Chairman ISSA. Ms. Waites, have you found something similar? What has been your experience?

Ms. WAITES. To opt out of the union?

Chairman ISSA. Yes, ma'am.

Ms. WAITES. You are not forced to become a member of the union in Alabama. But most teachers are members of the union, because that is the only place we can get liability insurance. Alabama is a right to work State, so we don't have collective bargaining power.

Chairman ISSA. So what you are saying is that you would save money in your particular case, if you opted out of the union. But one of the most important parts, what you need, the insurance, is only available in Alabama? Is that the reason you can't get out?

Ms. WAITES. The insurance comes from being a part of AEA and NEA, the liability insurance.

Chairman ISSA. And the State of Alabama doesn't have an alternate program, so that you can choose to not be a union member?

Ms. WAITES. Not yet. Not at this time.

Chairman ISSA. Okay, so in your case, it is not the dues, per se, it is something else that is essentially locked in by the union exclusivity?

Ms. WAITES. Yes, sir.

Chairman ISSA. Thank you. Mr. Bowman, what has been your experience? I went to school down in Adrian, so I look north and there you are. What has been your experience in the Ann Arbor-Ypsilanti area?

Mr. BOWMAN. Well, I have not exercised my Beck rights.

Chairman ISSA. You are a very proud union member, as I understand.

Mr. BOWMAN. Yes. I want to maintain my union membership and work within the union to get some of these what I would call offenses changed. So I don't know the exact percentage of what the, personally I don't know. I have been told by many members that the agency fee tends to be anywhere from 90 percent on up of what regular union dues are. I think that is a fair assessment.

Chairman ISSA. Thank you.

Doctor, my original assertion does not appear to fit at all with Mr. Bowman, who says it is 90 percent, and Ms. Coomer, who says it is identical, the total amount out of pocket, or the amount denied her ability to take care of her adult child is the same. How do you answer that in light of your answer in the Beck decision?

Mr. DAU-SCHMIDT. It would be hard to comment on particular situations.

Chairman ISSA. Well, let's do something. Let me close with a question and then you can have as much time as the ranking member will let us have. Shouldn't there be transparency so we can determine what the appropriate number would be? Shouldn't we know how much is being spent on politics versus other stuff in light of the Beck decision?

Mr. DAU-SCHMIDT. I think there should be transparency, and there is transparency. Actually there is a good study by Masters, Gibney and Zagenczyk, called Worker Pay Protection, Implications for Labor's Political Spending and Voice, published in Industrial Relations. And you can make this part of the record.

It is hard to respond to anecdotal arguments about particular cases. But at least, they looked at this across all labor organizations and across major international unions. What they found was

that for all labor organizations, political spending was only 4.27 percent of the money that was collected.

Chairman ISSA. Okay, but then you have given me an answer. And I am sure the ranking member would agree with you. But one of the problems we have is that it is hard for us to believe that it is in fact only 4 percent, with the experiences of how active they are.

But having said that, the ranking member, without objection, will be given an additional minute. The gentleman is recognized.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Professor, political action committees, with regard to unions, what role do they play? And with regard to funds.

Mr. DAU-SCHMIDT. Before Citizens United, neither unions nor corporations were allowed to spend general funds in support of particular political candidates. And as a result, they would set up private political action committees, or voluntary political action committees, where they would solicit funds from their members or from the public at large. And you see this, both corporations, you would see these political action committees where all the managers would donate the maximum amount, and you would see this in unions, where members would donate money toward political action.

Mr. CUMMINGS. Now, is that voluntary?

Mr. DAU-SCHMIDT. Yes, that is completely voluntary.

Mr. CUMMINGS. And is that separate, then, from what, as Chairman Issa was just talking about, as far as dues are concerned?

Mr. DAU-SCHMIDT. Yes.

Mr. CUMMINGS. Those are two separate things?

Mr. DAU-SCHMIDT. Yes.

Mr. CUMMINGS. All right. Go ahead.

Mr. DAU-SCHMIDT. Well, and they still, corporations and unions still maintain, even after Citizens United, where they are not actually required to any more, they still maintain these separate political action committees, because there is less regulation of them, right? You don't have to explain to dissenters what you spend the money on or how you spend it, because they are not covered by Beck rules. And since those are private, voluntary donations, it is not clear to me why they should be covered by Beck rules.

Mr. CUMMINGS. So isn't it true that in recent history, the vast majority of union political activity is funded by the voluntary PACs and not the union dues?

Mr. DAU-SCHMIDT. That is right, and that may explain some of the confusion here. In other words, if the other panel members are looking at political action committees and union spending there, that is really not part of what they would be charged for in either an association fee or union dues.

Mr. CUMMINGS. All right.

Now, you talked about, you had said there are laws that exist to protect union workers. And you were talking about protecting them from forced political contributions. So that is clear in the law, is that right?

Mr. DAU-SCHMIDT. That is very clear in the law. There is some variation. I think Ms. Coomer's case is probably governed by State law, from what I hear her describing. The Federal law is what I am most familiar with. But it sounds to me, actually, once again

I don't want to, she knows her situation better than I do. But it sounds to me, from hearing the description, that the State is her employer, not her daughter.

Mr. CUMMINGS. So corporations are not entitled, now, corporations are not entitled to spend any corporate assets on political activities, even if their shareholders object? Is that right? In other words, corporations are entitled to spend whatever they want to spend?

Mr. DAU-SCHMIDT. That is correct. The corporations that I invest my 26 years of 10 percent of my income in could take all of that and spend it on political purposes. I would never even know about it.

Mr. CUMMINGS. In fact, a 2012 paper by Harvard professor Benjamin Sachs explains it, and let me, I want you to listen to this quote: "The problem from this perspective is rather that the asymmetric rules of opt-out rights provides corporations a legally constructed advantage over unions when it comes to political spending. And this kind of legally conferred advantage is consistent with Federal campaign finance law. And in particular, with that regime's insistence that unions and corporations be put on exactly the same basis insofar as their financial activities are concerned. The result is problematic, too. From the broader perspective of democratic politics, corporations undoubtedly will be the most well-funded speakers in the electoral arena."

And corporations are using shareholder funds for political donations. A 2010 joint study by the Sustainable Investments Institute and the Investor Responsibility Research Center Institute found that "Nearly 60 percent of the largest U.S. companies spend shareholder money from the Corporate treasury on political activities." Now that corporations can give unlimited amounts of funds to political action committees, those PACs are estimating that they will inject more than \$200 million in the 2012 elections. The Wall Street Journal has observed that aside from the political candidates and the parties, these outside groups have become possibly the largest force in the 2012 campaign.

Professor, how does this disparity in the rules impact unions and those that impact corporations influence the democratic political process?

Mr. DAU-SCHMIDT. Well, I think as, first of all, I was glad to hear you have looked up Professor Sachs' article. It is an excellent article. I cited it in my own written testimony. And when you have a hearing on this in the future on the possibility of corporate dissenters, he would be an excellent witness to have.

I think as he outlines, it does make a systematic bias in favor of corporate funding. In other words, unions have all these obligations that they have to meet. And I think rightfully have to meet. But corporations have no obligations to meet. And we are talking about putting further obligations on unions. As a result, any time a union tries to do anything political, there is always the possibility that they could be sued or that they will have to file another form or whatever. And it hampers their collective action and their voice.

And when you look at the larger political perspective, as Professor Sachs demonstrates in his article, corporations already have the vast majority of spending on political activities. And they have

access to much more money for spending on political activities. And to hamper the weaker party in this debate, but not to require reasonable notice and reasonable chance to opt out from corporations is just not fair and it is not good for our democracy.

Mr. CUMMINGS. I see my time is expired. Mr. Chairman, I ask unanimous consent that a political article dated today, entitled AT&T Shareholders Demand Answers, I would ask that that be made a part of the record.

Mr. JORDAN [presiding]. Without objection.
[The information referred to follows:]

POLITICO



AT&T shareholders demand answers

By David Saleh Rauf
February 7, 2012 11:20 PM EST

Some AT&T shareholders want more than just dollars and cents from the board of directors in the aftermath of the company's aborted takeover of T-Mobile: They want to know how company money is being spent to influence politics.

A slew of corporate boards — including those of Apple, Ford and Pepsi — are being petitioned this proxy season by stockholders demanding an accounting of corporate funds being spent on campaigns, super PACs and political causes as corporate governance experts and members of Congress press for new federal rules.

"Companies like AT&T are not tracing where shareholder money goes, and there needs to be due diligence on every political contribution, because it could have a wide-ranging effect that could impact the reputation of the company," said Adam Kanzer, managing director and general counsel for Domini Social Investments, an AT&T shareholder group trying to get the company to disclose more of its political spending.

The investor movement for more transparency of corporate funds used for politicking was energized by the U.S. Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*, which opened the door for unlimited political spending by corporations and new avenues to mask the source of money.

This year, investor angst will focus on a range of industries, from defense to the auto sector, and a large number of tech stalwarts the likes of Google, IBM and Intel, according to Institutional Shareholder Services, the largest proxy advising consulting firm.

Apple's investors for the second time in the company's history have placed a political disclosure measure on the ballot to be considered later this month. Shareholder petitions on political spending are also expected at Comcast and CenturyLink.

"Shareholders are clamoring for this information," said Robert Jackson, an associate professor at Columbia Law School and one of 10 corporate governance experts petitioning the Securities and Exchange Commission to require companies to report all political spending to investors. "They want to make sure companies are spending that money in a way that is consistent with shareholder interests."

AT&T, which runs Washington's largest corporate PAC, will be pushed by investors to publish a semiannual report that tracks where every political dollar goes and what cause that money supports.

The divide over political disclosure at AT&T is nothing new — shareholder groups have been pressuring the company on the issue since 2004. Measures have repeatedly failed to gain a majority vote among AT&T investors, though last year's vote came close to garnering one-third of shareholder votes.

This year, however, AT&T investors are planning to put the measure up for vote again, and they'll have fresh ammunition on their side as the company is coming off a publicly bruising and politically expensive battle over its failed T-Mobile deal.

"AT&T's recent complete disaster in the Deutsche Telekom deal ... that's exactly the kind

of thing that will make the board and managers and shareholders think long and hard about disclosure of political activity," said John Coates, a corporate governance expert and professor at Harvard Law School.

In SEC filings, AT&T says it fully adheres to the letter of the law when it comes to disclosing federal and state contributions. Corporate PAC contributions are housed on the Federal Election Commission website, and state laws generally dictate how the company discloses money spent outside of federal elections.

That, however, is not what investors are worried about.

Shareholders want AT&T to come clean on how much money it gives trade associations and other tax-exempt organizations, like 501(c)(4) groups, that do not have to disclose donors. The *Citizens United* decision is creating new ways for groups to funnel money that make it nearly impossible for the public, and in some case companies, to trace.

"The notion that a major company might be funding an attack ad for a federal candidate, that's whoa — that's really risky behavior," added Kanzer.

But the company has repeatedly rejected those shareholder proposals in SEC filings.

In a statement to POLITICO, the company brushed aside the proposals on political disclosure as failed attempts that voice concerns of only a minority of shareholders.

"It's worth noting that while for six of the last seven years a political contributions disclosure proposal has been included in our proxy statement, in none of these years has the proposal received more than 32 percent of the votes cast," AT&T said, "which suggests that our stockholders are satisfied with our current level of disclosures."

The shareholder revolt on political disclosure is drawing attention.

Several corporate governance professors launched an SEC petition that has already attracted more than 21,000 comments urging the agency to adopt new rules for political disclosure.

The message has even reached some lawmakers. Rep. Michael Capuano (D-Mass.) has legislation pending dubbed the Shareholder Protection Act, which would not only require public companies to disclose all political spending, but it would also mandate an annual shareholder vote to approve a political spending budget.

Investors, however, aren't waiting for Congress or the SEC to act. They're taking a company-by-company approach to drive reform.

The proposals being put forth this proxy season by shareholders against a variety of companies are all nonbinding. The companies can adopt or ignore them, though they are widely regarded as expressions of investor sentiment.

The most popular seek to press companies to disclose all political spending and the policies behind those decisions. About 50 proposals of this sort, all sponsored by the Center for Political Accountability, are expected this proxy season, including the AT&T measure.

Some like the one facing CenturyLink are narrow and seek disclosure on direct and indirect lobbying expenditures.

And other shareholders are pushing proxy measures that would give them a direct say on how corporate money is spent on politics — that's the kind of measure expected to come to vote at Google and Intel.

In all, proxy advisory firm ISS is tracking about 100 political disclosure measures this year, a roughly 20 percent increase from last year.

And those shareholder petitions have been gaining momentum over the years: Since starting a campaign in 2004, 57 of the largest 100 U.S.-based firms have adopted some level of voluntary disclosure guidelines proposed by the CPA.

The average proxy vote on the issue now garners about a 33 percent vote, said Bruce Freed, president and founder of the CPA.

"That's the type of vote," he said, "that in many cases will lead a company to say, 'This is something we should adopt.'"

Take Verizon, for example. The company in 2006 bowed to shareholder concerns and started disclosing semiannual federal PAC and state corporate contributions on its website after investors lobbied the company for three years in a row and secured a vote in the 30 percent range.

And Sprint, which has traditionally opposed the political disclosure votes on the same grounds as AT&T, has also started posting data about state corporate contributions on its website.

That, however, is not good enough, some shareholders told POLITICO. A group of Sprint investors is planning to reintroduce a measure asking the company's managers to start disclosing all political spending.

"The phone companies are still very old and have been engaged in politics for ages, so some of them are still very resistant. But the companies that are resilient are the outliers," Freed said.

On the flip side, several tech companies are lauded as champions in this arena.

By all measures, IBM is the gold standard. It has a long-standing policy prohibiting the use of corporate money for political spending. The company also has no PAC and received a perfect score in a comprehensive report by the CPA published late last year.

Still, its investors this year want to know how much in dues the company pays to trade associations and "other organizations that can hide any contributions." And they want a comprehensive report on lobbying activities.

Intel, Dell, Hewlett-Packard and Microsoft round out the other tech heavyweights whose disclosure policies ranked highest in the CPA report. Pfizer, UPS and Wells Fargo represent several other corporations that have adopted some level of political disclosure.

And it doesn't always have to be the result of several years of tense negotiations, shareholders say. For example, American Express agreed several years ago to work with investors after an initial ballot measure was filed, said Kazner.

At Microsoft, shareholders also never had to endure a public cat fight with the company over its political disclosure policy. Management worked out an agreement with investors long before those concerns ever reached the ballot.

why before those concerns even reached the value.

"I can say since we have been disclosing the names of candidates, I have never received a challenge from an investor or from an advocacy group asking why we made this contribution or why we didn't make a certain contribution," said Dan Bross, Microsoft's senior director of corporate citizenship. "This fear that some companies have that if they disclose they will be inundated with questions ... it doesn't bear itself out in fact based on my experience."

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Mr. CUMMINGS. Thank you.

Mr. JORDAN. The gentleman from Arizona, Dr. Gosar, is recognized.

Dr. GOSAR. It has been interesting that we have been hearing the good doctor talk about all these checks and balances. But I want to ask Ms. Waites, Ms. Coomer and Mr. Bowman, application is another thing. I am a dentist impersonating a politician, so I like application and the beauties in the detail.

A Hudson notice, Ms. Waites, were you ever given a Hudson notice?

Ms. WAITES. I am not familiar with what that is.

Dr. GOSAR. Ms. Coomer, were you ever given a Hudson notice?

Ms. COOMER. No.

Dr. GOSAR. Mr. Bowman, how about a Hudson notice?

Mr. BOWMAN. No.

Dr. GOSAR. Were you made aware of a Hudson notice?

Mr. BOWMAN. Not to my knowledge, no.

Dr. GOSAR. Ms. Coomer.

Ms. COOMER. No.

Dr. GOSAR. Ms. Waites.

Ms. WAITES. No.

Dr. GOSAR. So when you actually, Ms. Waites, when you were told about the Children's Fund, and its name, and you found out it was very deceptive, how did your inquiry go? How were you satisfied from the union?

Ms. WAITES. To get my money back? I was told no, that it wasn't going to happen. And it did not happen.

Dr. GOSAR. You were not provided any grievance or a Hudson notice?

Ms. WAITES. No, sir.

Dr. GOSAR. Do you want to answer that, sir?

Mr. DAU-SCHMIDT. Yes, I do. It sounds to me like both of them are public employees, who would be governed by State law. And he is not a Beck objector, so he would not get a Hudson notice. If he was Beck objector, then he would get a Hudson notice.

Dr. GOSAR. So for all of you, when you are a part of this union, are you apprised of everything as far as your rights, as freedoms, that you are entitled to? Mr. Bowman.

Mr. BOWMAN. In the Solidarity Magazine that the UAW publishes, I do believe they have a small paragraph in the magazine. I don't know if it is in every issue, but maybe once a year they publish that you do have the right to rescind and exercise Beck rights.

Dr. GOSAR. Has anybody done that?

Mr. BOWMAN. I believe there are Beck rights objectors, yes.

Dr. GOSAR. Okay. And do you have a counselor that you can go to?

Mr. BOWMAN. I believe you do it on your own. It is, there is no counselor in the manufacturing facility that I work at that helps you with that process. And like I said, most people don't do it, because there is ridicule and harassment that goes with exercising your Beck rights.

Dr. GOSAR. Now, Ms. Coomer, when you are talking about what your risk is, are you familiar with what Mr. Dau-Schmidt had said, that you are mainly a State organization?

Ms. COOMER. I am not a State employee. I have been told that, I have asked that multiple times. And any of the paperwork I have received shows that I am the employee of the client, which would be my daughter. And I have contacted the union to ask them as well about that, and they have expressed the same thing, that I am the employee of the client, which is my daughter. I explained that her developmental level was that of a small child, and they were very confused by that.

So I don't get the same benefits as a State employee, I am not a subcontracted worker. I am, according to the State of Washington, an employee of my daughter with the Governor as the employer for bargaining purposes only.

Dr. GOSAR. Ms. Waites, your opportunities belonging to the union, if you don't belong to the union, what are the consequences?

Ms. WAITES. There are no consequences, but you are on your own as far as if you have an issue with a parent or you are being sued. You will have to put that out of your pocket.

We consider AEA, in Alabama in the beginning, more of a Professional organization and not a union, because we have no collective bargaining power. Most people, especially in my county, are members of AEA for that liability insurance. Without it, we would be on our own.

Dr. GOSAR. But they are also still spending money on political actions, are they not?

Ms. WAITES. Yes, sir. Out of our paycheck, we have what they call an A Vote taken out of our paycheck every month. And when you first join AEA, on the application form it, in the very bottom in the fine print it says, if you don't want this A Vote, you have to actually put it in writing to our county's payroll department. And I actually have checks with me from 1989 and 2008 where it is still being taken out.

Dr. GOSAR. So that is a donation to a PAC?

Ms. WAITES. It is a donation to a PAC, A Vote, and it is a PAC fund.

Dr. GOSAR. So have you inquired as to why there is only one opportunity for liability?

Ms. WAITES. I think the State of Alabama this last year, they were trying to come up with something different for teachers. And it got thrown out of the legislature, and nothing has become of it yet. But we definitely do need another option.

Dr. GOSAR. Have the teachers pursued that?

Ms. WAITES. On our own? No.

Dr. GOSAR. Why not?

Ms. WAITES. As far as to get a carrier to handle our liability, I have not pondered that. But you have given me food for thought. We have just never done it on our own.

Dr. GOSAR. Thank you. My time is up.

Mr. JORDAN. I recognize the gentlelady from the District of Columbia, Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman.

This hearing needs to be seen in its full context of what is happening in this country with respect to the right to organize. The right to organize collectively is seen the world over as one of the great human right protections. It is in every one of the great

human rights declarations and whether you are talking about a universal declaration of human rights, the U.N. Global Compacts 10 Principles has as principle number three, businesses should uphold the freedom of association and the effective, effective recognition of the right to collective bargaining.

But look at the trends we see throughout this country that come close to trying to extinguish this very right. Here in the Congress, Federal employees don't even have the right to bargain for pay, and yet they are harangued as if they were the cause of every problem facing the Federal Government. So the majority can entitle this hearing the right to choose and protecting union workers, but this majority will never be regarded as a champion, much less a protector, of workers in the long struggle for collective bargaining rights, when those rights were achieved.

We saw a trend that was very important, because that happened right out of the New Deal, as the recovery occurred. Because there were unions in place, management did not get all of the fruits of the recovery, because there were unions there to bargain for some of that, and America reached its highest point, its best economy, when these unions were strong. Today, a worker essentially in this country can, has to take what he can get and a huge income gap has opened up that is shameful and all of us understand it to be so.

And collective bargaining is not result-oriented. In a market economy, you have a right to bargain for your labor. Ever since the Taft-Hartley law, there have been a plethora of laws to protect the right not to join a union. No scarcity of legislation there. But today we see an effort almost to extinguish that right.

In Wisconsin, the right to collective bargaining, virtually all the rights for all Federal employees would have been extinguished but the Governor, Americans are fighting back, is now subject to recall, along with the State senators who voted, got twice as many signatures. Ohio repealed a similar law. Eight hundred bills in our country have been introduced essentially to do all but repeal the right to bargain collectively. We are seeing something that if it happened in virtually any other country, we would be criticizing and withdrawing funds, if we gave them any money.

I do want to set the record straight, because Ms. Waites, you testified at length about your complaint. But I do not see in your testimony that your complaint with the FEC about your contributions, I do not see in your testimony that the FEC threw out that complaint. Don't you think you should have also testified, or at least complained, maybe that's what you want to do, that this, that you complained about it before the FEC, were represented by counsel and yet it was not recognized and was thrown out?

Ms. WAITES. Yes, ma'am, I did file a complaint and it was thrown out.

Ms. NORTON. Thank you very much, I have very little time left. I just wanted to establish that for the record. I am not complaining that you filed.

Mr. Dau-Schmidt, I simply ask you to lay out just in clear form, so that we can understand, has the Supreme Court established procedural safeguards to protect a worker's right not to contribute to union political activities? Indeed, has it provided workers with the

right to challenge the union's calculation of agency fees? I would like you to spell that out. We need to know whether workers somehow are victims of unions or not.

Mr. DAU-SCHMIDT. Sure. I do want to clarify, and I have done this just a little bit, there are basically three different legal regimes here. There is the National Labor Relations Act, there is the Railway Labor Act and then there is public sector employees. And actually within public sector there are both Federal and State.

So there are three different legal regimes. But certainly in the Federal, which is what Congress is primarily, I am sorry, in the private sector, the National Labor Relations Act and the Railway Labor Act, that Congress is primarily concerned with, in the law and in its interpretations by the Supreme Court, we have a number of established rights. I gave those in my introduction.

No one can be required to join a union, no one can be required even to pay full dues, although if you are in a State that allows the enforcement of union situated agreements, you can be required to pay an agency fee. In calculating those agency fees, unions are not allowed to charge members for political activities. They are only allowed to charge them for the cost of actually negotiating and enforcing the contract in the bargaining unit.

Unions, if they have dissenters who don't want to be full members in the private sector under the National Labor Relations Act, unions are also required to give dissenters a Hudson notice every year where they give an accounting of their spending and they give the dissenter an opportunity to challenge the assessment of their agency fee. And also no dues or fees can automatically be deducted from the employee's paycheck without their consent.

Now, some States have emulated some of these provisions. So in some States, you would have laws similar to that. I am not familiar—

Ms. NORTON. This is the Congress, so it is the Federal law that I am interested in. Thank you very much.

Mr. JORDAN. I thank the gentlelady.

I would now recognize the doctor from Tennessee, Dr. DesJarlais.

Dr. DESJARLAIS. Thank you, Mr. Chairman, and thank you to all the panelists for attending here today.

Really, I am going to be fairly brief. I just have a couple of questions I am going to direct to Ms. Waites and Ms. Coomer, and the idea kind of came originally from your testimony.

First is kind of a question of policy. Second is more a question of curiosity. If I was an attorney, I probably wouldn't ask the second question, but I am a physician, so I will.

The first question would be, you both had testified to the fact that you were forced to pay union dues that were given to political campaigns against your will. Were you ever consulted by the unions as to what your choice would be for the candidate? Ms. Waites.

Ms. WAITES. No, and we had to make a political contribution for the Children's Fund, and we never had a voice or ballot or survey on who NEA would support with that money.

Dr. DESJARLAIS. Ms. Coomer.

Ms. COOMER. No. I was just informed that my union dues were going to be increased for, and then they listed the different causes.

Dr. DESJARLAIS. And then the second question, out of curiosity, I heard your testimony, was that the money in both your cases went to candidates you didn't support. If it had been the other way around and it was a candidate that you supported, would you have felt differently, or would you have preferred that you get to make those choices on your own?

Ms. WAITES. No, I wouldn't change my mind. They shouldn't make contributions in someone else's name, period, no matter which party or which affiliation.

Ms. COOMER. I agree with that. I just, for my situation, I don't think it is an appropriate use of the fund.

Dr. DESJARLAIS. Okay, thank you, and I yield the balance of my time to the chairman.

Mr. JORDAN. I thank the gentleman. I will be quick, too.

Mr. Bowman, in your testimony, you said, you asked your fellow union members, do you think union officials use your regular dues on politics. And your testimony reads, without exception, everyone laughed and said, of course they do.

Mr. BOWMAN. That is correct.

Mr. JORDAN. So it is commonly understood that what they are paying is being used for political activity.

Now, my concern is, do they know, do you think your fellow union members are adequately informed of their rights that they have that exist for them? And if so, how are they notified of those rights?

Mr. BOWMAN. Personally, I do not believe they are adequately notified. As I said—

Mr. JORDAN. You are, you have taken the time to research and figure it out. But you don't think most of them are?

Mr. BOWMAN. Well, this is a passion of mine, so yes, I am very well aware of my Beck rights and the other rights that come with it. But in a publication, by the way the publication of the UAW's magazine called Solidarity, is full, cover to cover, basically, of union propaganda, all paid for with regular, legitimate union dues. And I believe that should be omitted from the agency fee, because it is full of political propaganda.

But there is a blurb in there, I don't know how often it is in the magazine, that you are able to exercise your Beck rights if you so choose. So yes.

Mr. JORDAN. Ms. Waites, Ms. Coomer, would you say the same thing, that you think, would you say most of your colleagues, fellow union members, it would be your guess that they are not adequately informed or not well informed about their rights?

Ms. WAITES. Yes, definitely.

Ms. COOMER. I would have to say that that is the case. A lot of the folks that I associate with that are union members are parents like myself. And so no, they aren't informed.

Mr. JORDAN. And Doctor, you would think, part of, if you are going to join a union, and as we think about this area of the law, doesn't it make sense for people to fully understand what their rights and privileges and rights are?

Mr. DAU-SCHMIDT. The rights have changed recently, because Citizens United actually does allow, if you are a member, your dues can be paid, can be used for political purposes.

Mr. JORDAN. Let me ask you a specific question. In the first 2 weeks, and I understand it doesn't apply to the folks here, it is about Federal contractors, but I am just curious, when I go out and tour a facility in our district, one thing I notice is the employer is required to post all kinds of things, every OSHA standard, I have had guys, contractors tell me the things they have to post, the law requires them, for their employees to see, said in fact it is so much they don't even know if the employees just say, oh, forget it all. But they are required to post all this.

And yet this administration, in its first 2 weeks in office, Executive Order 13496, revoked the requirement that Federal contractors inform workers of their Beck rights in employment notices. Now, why would, if we want employees to know their full rights, if we want them to have the freedom to choose and know what their money is being spent on, the rights they have, why would this administration in the first 2 weeks on the job issue that kind of Executive order?

Mr. DAU-SCHMIDT. I think you should ask the administration. They might have thought it was too burdensome or ineffective.

Mr. JORDAN. Too burdensome to let—so your testimony is it is too burdensome to let Federal employees know their rights?

Mr. DAU-SCHMIDT. It is my testimony you should ask the administration why they did it. If you want me to speculate, I will speculate.

Mr. JORDAN. No. But you have said, before asking the administration, you said it—

Mr. DAU-SCHMIDT. No, I said it after—

Mr. JORDAN. You said, it may be too burdensome. Too burdensome to let people know what their rights are under the law?

Mr. DAU-SCHMIDT. They may have thought it was ineffective.

Mr. JORDAN. Ineffective. Okay. I appreciate that.

I now yield to my good friend from Ohio, Mr. Kucinich.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

I came back to my desk to find this copy of this book that the Chair of the committee gave to all of us, a book that was written 55 years ago called *The Enemy Within*. It talks about an investigation of the McClellan Committee.

We can't be fighting battles that are 55 years old. We can't be doing that. And I want to say for the record, my Dad was a teamster. He was a 35-year member of Local 407. He was a teamster during the time that Jimmy Hoffa was head of the teamsters, and he loved Jimmy Hoffa. There is a reason why Hoffa's picture, a portrait, is in the airport in Detroit, along with others, in a place of honor. And that is because he defended workers.

Now, do I endorse anything that Mr. Hoffa did that was not within the law? Of course not. But we have to stop fighting battles that are 55 years old, and let's get contemporary.

And I will say with respect to Robert Kennedy, his assassination left a vacuum in American politics that still hasn't been filled.

Let me tell you about ways in which unions have improved workers' lives. A constituent of mine just sent this to me, and I thought it was important enough to read it. Weekends, breaks at work, including lunch breaks, paid vacation, sick leave, Social Security, minimum wage, Civil Rights Act, Title VII, which prohibits em-

ployer discrimination, 8-hour workday, overtime pay, child labor laws, Occupational Safety and Health Act, 40-hour work week, workers compensation, unemployment insurance, pensions, workplace safety standards and regulations, employer health care insurance, collective bargaining rights for employees, wrongful termination laws, Age Discrimination in Employment Act of 1967, whistleblower protection laws, Employee Polygraph Protection Act, veterans employment and training services, compensation increases and evaluation raises, sexual harassment laws, Americans with Disabilities Act, holiday pay, employer dental, life and vision insurance, privacy rights, pregnancy and parental leave, military leave, the right to strike, public education for children, Equal Pay Acts of 1963 and 2011, laws ending sweatshops in the United States. This is just a partial list.

We are talking about a movement whose basis is social and economic justice. I don't understand what this attack is going on in this country, except it is about an effort, they call it right to work, it is about an effort to create right to work for less. Right to work for less. That is what this is all about. Right to less benefits.

Now, Americans might have different opinions about unions. But I want to quote from a Labor Day speech, "On this day, dedicated to American working men and women, may I tell you the vision I have of a new administration and a new Congress, filled with new Members dedicated to the values we honor today. Beginning in January, American workers will once again be heeded. Their needs and values will be acted upon in Washington. I will consult with representatives of organized labor on those matters concerning the welfare of working people of this Nation. As president of my union, the Screen Actors Guild, I spent many hour with the late George Meany, whose love of his country and belief in a strong defense against all totalitarians is one of labor's greatest legacies."

It goes on to say, "While I pledge to you in George Meany's memory that the voice of the American worker will once again be heeded in Washington, and that the climate of fear that he spoke of will no longer threaten workers and their families." I would like unanimous consent to submit into the record the words of President Ronald Wilson Reagan.

Mr. JORDAN. Without objection.

[The information referred to follows:]

Labor Day Speech at Liberty State Park, Jersey City, New Jersey

September 1, 1980

It is fitting that on Labor Day, we meet beside the waters of New York harbor, with the eyes of Miss Liberty on our gathering and in the words of the poet whose lines are inscribed at her feet, "The air bridged harbor that twin cities frame."

Through this "Golden Door," under the gaze of that "Mother of Exiles," have come millions of men and women, who first stepped foot on American soil right there, on Ellis Island, so close to the Statue of Liberty.

These families came here to work. They came to build. Others came to America in different ways, from other lands, under different, often harrowing conditions, but this place symbolizes what they all managed to build, no matter where they came from or how they came or how much they suffered.

They helped to build that magnificent city across the river. They spread across the land building other cities and towns and incredibly productive farms.

They came to make America work. They didn't ask what this country could do for them but what they could do to make this refuge the greatest home of freedom in history.

They brought with them courage, ambition and the values of family, neighborhood, work, peace and freedom. They came from different lands but they shared the same values, the same dream.

Today a President of the United States would have us believe that dream is over or at least in need of change.

Jimmy Carter's Administration tells us that the descendants of those who sacrificed to start again in this land of freedom may have to abandon the dream that drew their ancestors to a new life in a new land.

The Carter record is a litany of despair, of broken promises, of sacred trusts abandoned and forgotten.

Eight million out of work. Inflation running at 18 percent in the first quarter of 1980. Black unemployment at about 14 percent, higher than any single year since the government began keeping separate statistics. Four straight major deficits run up by Carter and his friends in

Congress. The highest interest rates since the Civil War--reaching at times close to 20 percent--lately down to more than 11 percent but now going up again--productivity falling for six straight quarters among the most productive people in history.

Through his inflation he has raised taxes on the American people by 30 percent--while their real income has risen only 20 percent. He promised he would not increase taxes for the low and middle-income people--the workers of America. Then he imposed on American families the largest single tax increase in history.

His answer to all of this misery? He tries to tell us that we are "only" in a recession, not a depression, as if definitions--words--relieve our suffering.

Let it show on the record that when the American people cried out for economic help, Jimmy Carter took refuge behind a dictionary. Well if it's a definition he wants, I'll give him one. A recession is when your neighbor loses his job. A depression is when you lose yours. Recovery is when Jimmy Carter loses his.

I have talked with unemployed workers all across this country. I have heard their views on what Jimmy Carter has done to them and their families.

They aren't interested in semantic quibbles. They are out of work and they know who put them out of work. And they know the difference between a recession and a depression.

Let Mr. Carter go to their homes, look their children in the eye and argue with them that in is "only" a recession that put dad or mom out of work.

Let him go to the unemployment lines and lecture those workers who have been betrayed on what is the proper definition for their widespread economic misery.

Human tragedy, human misery, the crushing of the human spirit. They do not need defining--they need action.

And it is action, in the form of jobs, lower taxes, and an expanded economy that -- as President -- I intend to provide.

Call this human tragedy whatever you want. Whatever it is, it is Jimmy Carter's. He caused it. He tolerates it. And he is going to answer to the American people for it.

Last week, more than three years after he became President, he finally came up with what he calls a new economic program. It is his 5th new economic program in 3 ½ years. He talks as if someone else has been in charge these past few years. With two months to go until the

election he rides to the rescue now with a crazy-quilt of obvious election-year promises which he'll ask Congress for--next year. After three years of neglect, the misery of unemployment, inflation, high taxes, dwindling earning power and inability to save--after all this, American workers have now been discovered by this administration. Well it won't work. It is cynical. It is political. And it is too late. The damage is done and every American family knows who did it.

In 1976 he said he would never use unemployment as an economic tool to fight inflation. In 1980 he called for an increase in unemployment--to fight inflation.

In 1976 he said he would bring unemployment and inflation down to 3 percent.

Who can believe him? Unemployment is now around 8 percent, inflation is 12 ½.

And most of us have begun to realize that so long as Carter policies are in effect, the next four years will be as dark as the last four.

But here, beside the torch that many times before in our nation's history has cast a golden light in times of gloom, I pledge to you I'll bring a new message of hope to all America.

I look forward to meeting Mr. Carter in debate, confronting him with the whole sorry record of his Administration--the record he prefers not to mention. If he ever finally agrees to the kind of first debate the American people want--which I'm beginning to doubt--he'll answer to them and to me.

This country needs a new administration, with a renewed dedication to the dream of America--an administration that will give that dream new life and make America great again!

Restoring and revitalizing that dream will take bold action.

On this day, dedicated to American working men and women, may I tell you the vision I have of a new administration and of a new Congress, filled with new members dedicated to the values we honor today?

Beginning in January of 1981, American workers will once again be heeded. Their needs and values will be acted upon in Washington. I will consult with representatives of organized labor on those matters concerning the welfare of the working people of this nation.

I happen to be the only president of a union ever to be a candidate for President of the United States.

2/8/12

9/1/1980 Speech

As president of my union -- the Screen Actors Guild -- I spent many hours with the late George Meany, whose love of this country and whose belief in a strong defense against all totalitarians is one of labor's greatest legacies. One year ago today on Labor Day George Meany told the American people:

"As American workers and their families return from their summer vacations they face growing unemployment and inflation, a climate of economic anxiety and uncertainty."

Well I pledge to you in his memory that the voice of the American worker will once again be heeded in Washington and that the climate of fear that he spoke of will no longer threaten workers and their families.

When we talk about tax reduction, when we talk about ending inflation by stopping it where it starts -- in Washington -- we are talking about a way to bring labor and management together for America. We are talking about jobs, and productivity and wages. We are talking about doing away with Jimmy Carter's view of a no-growth policy, and ever-shrinking economic pie with smaller pieces for each of us.

That's no answer. We can have a bigger pie with bigger slices for everyone. I believe that together you and I can bake that bigger pie. We can make that dream that brought so many of us or our parents and grandparents to this land live once more.

Let us work to protect the human right to acquire and own a home, and make sure that that right is extended to as many Americans as possible. A home is part of that dream.

I want to work in Washington to roll back the crushing burden of taxation that limits investment, production, and the generation of real wealth for our people. A job, and savings, and hope for our children is part of that dream.

I want to help Americans of every race, creed and heritage keep and build that sense of community which is at the heart of America, for a decent neighborhood is part of that dream.

We will work to strengthen the small business sector which creates most of the new jobs we need for our people. Small business needs relief from government paperwork, relief from over-regulation, relief from a host of governmentally-created problems that defeat the effort of creative men and women. A chance to invest, build and produce new wealth is part of the dream.

But restoring the American dream requires more than restoring a sound, productive economy, vitally important as that is. It requires a return to spiritual and moral values, values so deeply held by those who came here to build a new life. We need to restore those values in our daily life, in our neighborhoods and in our government's dealings with the other nations of

the world.

These are the values inspiring those brave workers in Poland. The values that have inspired other dissidents under Communist domination. They remind us that where free unions and collective bargaining are forbidden, freedom is lost. They remind us that freedom is never more than one generation away from extinction. You and I must protect and preserve freedom here or it will not be passed on to our children. Today the workers in Poland are showing a new generation not how high is the price of freedom but how much it is worth that price.

I want more than anything I've ever wanted, to have an administration that will, through its actions, at home and in the international arena, let millions of people know that Miss Liberty still "Lifts her lamp beside the golden door." Through our international broadcasting stations -- the Voice of America, Radio Free Europe, and the others -- let us send, loud and clear, the message that this generation of Americans intends to keep that lamp shining; that this dream, this last best hope of man on earth, this nation under God, shall not perish from the earth. We will instead carry on the building of an American economy that once again holds forth real opportunity for all, we shall continue to be a symbol of freedom and guardian of the eternal values that so inspired those who came to this port of entry.

Let us pledge to each other, with this Great Lady looking on, that we can, and so help us God, we will make America great again.

Mr. KUCINICH. Thank you.

Now, in the time that I have left, I just have a question of the Professor. We have Mr. Bowman and others stating that right to work laws make unions stronger, result in more businesses choosing to settle into right to work States. But robust studies take into account that other variables, such as cost of living differences and economic conditions directly contradict those assertions. In fact, studies you cited in your testimony show that right to work laws lower wages, lower wages, for both union and non-union workers by an average of \$1,500 per year. And those studies show that the rate of employer-sponsored health insurance is 2.6 percent lower.

Can you explain this, Professor, how this comes to be, and isn't in fact right to work destructive of the economic interests of working men and women?

Mr. DAU-SCHMIDT. Yes, Representative. As you may know, Indiana just recently passed a right to work law. So we have had this debate actively undertaken in our State. I have been asked to comment on this several times. So I am pretty well versed on this.

And there have been numerous studies done. The one that I gave you that I cited in there is the most conservative and probably the best done study to date on this. And you are right that it shows that workers, both union and non-union workers' wages are \$1,500 lower in right to work States, and also 3 percent, almost 3 percent have less, workers have less health benefits, and almost 5 percent less have pensions.

There actually are other studies, Marty Wilson in Notre Dame, because it of course, this concerned the State of Indiana, he went and compared just average compensation per non-farm worker between right to work States and non-right to work States. And he found that actually, in right to work States, workers are paid on average \$7,835 less.

Mr. KUCINICH. My time is expired. Thank you, Mr. Chairman. I just wanted to point out this is about right to work for less.

Mr. JORDAN. Well, I would just say in response to my good friend's time and comments, my dad was a union worker as well, 30 years, International Union of Electrical Workers, worked for General Motors and voted for Ronald Reagan. And if he were here, I would bet he would say the fact that his union dues were being used to help the guy who was running against Ronald Reagan was something he didn't appreciate. So that is what this is about. This is about employees, union members, not having their money taken from them and used against the very person they may want to see in office representing their interests, their families, their community and frankly, the community they work for. So it goes both ways, Mr. Kucinich.

Mr. KUCINICH. Would my friend yield?

Mr. JORDAN. I would be happy to.

Mr. KUCINICH. I would just like to say briefly, that I think the record would show that there were in fact some unions who supported Ronald Reagan's candidacy, proving my point. Thank you.

Mr. JORDAN. I now recognize the gentleman from Pennsylvania, Mr. Kelly.

Mr. KELLY. I thank the chairman.

Let's just have some agreement on a couple of things. First of all, today's hearing is about the right to choose, protecting union protecting union workers from forced political contributions. I don't think there is anybody on the panel that would disagree that every American has the right to say yes and the freedom to say no. Is there anybody that disagrees with that statement? All right.

Because then it calls to mind the fact that, and this keeps coming up, there is a term out there called hypocrisy. The behavior of people who do things that they tell other people not to do. So we say one thing and then we do another. So we kind of pick and choose the times that we feel what we say is appropriate for us and not appropriate for other people.

The fact that any worker, I don't care who it is, every worker in this country, every American has the right to his or her opinion and ability to say yes or no to where their money should go. I don't think anybody should ever be forced to donate to a political campaign or a candidate. You should have the right to say where your money goes. I don't think there is any question about that. And if anybody disagrees with that, I would like to have rebuttal on that, because I think that is what this goes to the core of.

This is about worker rights, it is about American rights, this is about what we do believe. So let me ask you, Mr. Bowman, in your testimony you began talking about union political spending because of a story you had read in your union's newspaper.

Mr. BOWMAN. Yes.

Mr. KELLY. Can you expand on that a little bit?

Mr. BOWMAN. Sure. Thank you for giving me that opportunity.

I have always been an open political conservative inside my union, which has led to a lot of harassment and persecution. But over 13 years or so, as a union member, we are told who to vote for. At our union meetings, our plant chairman points at all of us and says, you all better be voting for Democrats. So over 13 years, you get to the point where it really becomes quite burdensome.

In our local newsletter, called The Raw Facts, because of the plant I work at is the Rawsonville Plant, there was an article in there that said, Health Care Reform, What Would Jesus Do. Now, I have to put this in context, I have studied at seminary and am quite familiar with scripture. And in this article, it basically made Jesus appear as if, according to scripture, that he was, number one, a socialist, and number two, that he would approve of the Affordable Health Care Act that was in discussion at that point.

I knew from my own study that they completely took it out of context. So at that point, I stood up and I said, enough, I have to start doing something. That is when I started getting the idea of coming up with Union Conservatives and organizing conservatives in the union to fight back against that.

Mr. KELLY. So tell me about the group, Union Conservatives, that you founded. Tell me a little about that group and how that group feels and the feeling that you are getting and the number of people that are signing up on that.

Mr. BOWMAN. Well, the majority obviously are people who are of the conservative political nature. I do have some Democrats who are signed up that say they don't necessarily believe in my political affiliation; however, they do think that all union members should

have the right to speak their mind without fear of harassment and ridicule, which of course, on the assembly line, many people agree with what I agree with, but they keep their heads down because of the intimidation that goes into the union atmosphere.

Mr. KELLY. So when you are speaking about that, you are speaking about actually what you experience being part of the work force?

Mr. BOWMAN. That is absolutely correct.

Mr. KELLY. So this isn't anecdotal, this isn't something that you heard from someone else or something you think?

Mr. BOWMAN. No. This is my own story.

Mr. KELLY. This is what you see on the floor every day?

Mr. BOWMAN. This is my story.

Mr. KELLY. Okay, because my experience has been the same way. I am an automobile dealer, and have spent a lot of time in Lordstown with our UAW guys, in fact, we would go back and forth, we would go to Lordstown and watch them build cars, then they would come to the dealership to see how that relationship worked. Because as a result, it comes down to, listen, we need those guys to build great cars. I know you are a Ford guy and I know you didn't take the money in the bailout, so I am real happy for that.

Mr. BOWMAN. Thank you for that.

Mr. KELLY. But I also know that America's ability to build things has never been questioned. We build great products.

Mr. BOWMAN. I am a very proud automobile worker and as my testimony said, pro-union. But only in the context of what unions were created to do, and that is just to represent their employees in the realms of the workplace, not as a socioeconomic group or a quasi-political party.

Mr. KELLY. And I appreciate that. Because my experience has been exactly the same, as I said earlier. My dealership is located about a half a mile away from AK Steel. And those fellows belong to the UAW also. There is not a person I have ever talked to, and it is conclusive, on both sides of the aisle, we are so much in favor, we are all pro-worker people, we are all pro-labor, we want to see people back to work.

But we also want to make sure that we protect the constitutional rights that people have under the First Amendment. You can do and say what you want when you want to say it, and nobody can inhibit you from that. By the same token, nobody should ever force you to give money to a political candidate you do not want to give money to.

I thank you for your testimony, and I yield back my time, Mr. Chairman.

Chairman ISSA [presiding]. The gentleman yields back.

I believe—that is not yet a vote, right? Good. In that case, Mr. Clay, you get your full 5 minutes. The gentleman is recognized.

Mr. CLAY. Thank you, Mr. Chairman, six bells indicate that the House is in recess.

Let me ask Ms. Coomer, how did the State of Washington inform caregivers that you were going to join SEIU, that you were going to be in a union? How was that done?

Ms. COOMER. Actually, I wasn't notified that I was going to be joining the union. I was just notified that I needed to become an individual provider.

Mr. CLAY. Okay, and then how did the process come about that you joined SEIU?

Ms. COOMER. I did not know until I got my check and I saw that union dues were being deducted.

Mr. CLAY. Okay. Then of course you probably inquired about where your union dues were going?

Ms. COOMER. Yes.

Mr. CLAY. And you said in a statement that dues go to fund candidates that you would not normally support. Have you had any contact with union officials to say, well, here is a list of candidates that I would support?

Ms. COOMER. I contacted the union to find out about trying to divert my dues somewhere else, and had a really hard time getting any kind of a response. They would refer me back to the bargaining agreement, which I have tried to decipher for the last year, and have not gotten a response from the union.

Mr. CLAY. Do you think that the rank and file's opinions are really adhered to or listened to by union leadership as far as how they select candidates they support?

Ms. COOMER. You know, I am not sure. All I know is that the information and materials that I get don't just have information in regard to candidates, but it also has information and encourages us to vote for certain initiatives or not vote for other initiatives or laws that again I don't always agree with.

Mr. CLAY. Thank you for that response.

Dr. Schmidt, you had something to add?

Mr. DAU-SCHMIDT. Just to kind of try to clarify. Once again, Ms. Coomer knows her situation much better than I do, but I do know a little bit about the law and what has happened in organizing this situation. And what has happened nationwide, actually, in a variety of States, is home health care workers have, prior to the organization of State associations for them, they were independent contractors and they were actually prohibited from collective bargaining. So they would work and get compensated by the State and they were paid very poorly.

And unions thought this was a problem, and it started in California, it went on to Illinois, I believe it was in Washington, too. And what they said was, let's organize a State entity that actually employs these people. And as a result, they can be employees and then they can collectively bargain. And I believe that is what was done in Washington, so that when she became an independent home health care worker, she was actually, I think, an employee of the State.

Chairman ISSA. Doctor, I don't mean to interrupt, but please limit your hand motions. They are going out a long way.

Mr. DAU-SCHMIDT. The two clues to that are first of all, that the union negotiates with the Governor, not with her daughter. So I don't see how the daughter can actually be the employer. Also that she is exempted from Social Security. State employees, when I was a State employee in Ohio, I was also exempted from Social Secu-

rity. And that is not common for State employees, but it does happen for State employees.

Now, I did want to, the representative down here, I can't see his name—

Mr. CLAY. No, now, let's talk. Don't worry about what he said.

Isn't it true that when unions get involved in the political realm, they are giving a voice to millions of working Americans on the very activities that are important to the working families whom they represent, issue such as, for example, health care, education, labor standards, civil rights and workplace safety?

Mr. DAU-SCHMIDT. I believe that is true. And if you look historically, I mean, we could still have, child labor laws, we could still have 60-hour work weeks. I love that little bumper sticker that says, the weekend brought to you by the labor movement.

Mr. CLAY. Now, the primary responsibility of unions has been in managing the employment relationship between workers and management, correct?

Mr. DAU-SCHMIDT. Yes.

Mr. CLAY. And you stated that Federal law also requires that the union must fairly represent all employees in the bargaining unit, whether the employee is a member of the union or not?

Mr. DAU-SCHMIDT. Yes.

Mr. CLAY. Can you explain the importance of the fair representation principle in labor management relations?

Mr. DAU-SCHMIDT. Yes. It actually goes back to our system of exclusive representation. We have set up, under our Federal labor law, we have set up bargaining units like little electoral units. We are the only people in the world to do this, other people do it differently. But we have a bargaining unit, and over a bargaining unit we have an election. And if a majority vote for the union, everybody is represented by the union. And if a majority does not vote for the union, nobody is represented by a union.

As a result, you can always have people that are unhappy with the choice. It is a collective decision. And we did this because we advocate democracy worldwide. And in the 1930's, we have been, you have seen that most recently, we invaded Iraq in part to bring democracy there or whatever. We are very big on democracy.

And the idea was that if democracy was good for the government, it could also be good for the workplace. And so we had the idea of bringing industrial democracy to the workplace.

And that actually goes to the membership, too. The representative over here asked if people should ever have to support political causes that they don't believe in. And I agree in general that they should not.

But the one qualification I would make is, when you are a member of an organization, sometimes you are going to influence that organization and they will do what you want them to do, and sometimes somebody else will influence that organization and get them to do what they want you to do.

Chairman ISSA. Will the gentleman wrap up? We are about a minute overdue.

Mr. DAU-SCHMIDT. Okay, I am sorry. Mr. Bowman is concerned because the organization of which he is a member does not always do what he wants it to do. But if we said, organizations can't do

anything unless they get the agreement of everybody within the organization, they would never do anything. And as a result, he has the choice to either be a member, as he currently is, and sometimes not be happy, or to be a non-member, in which case they will not be able to charge him for that political activity.

Chairman ISSA. I thank the gentleman. We now go to the gentleman from Illinois, Mr. Walsh, for 5 minutes.

Mr. WALSH. Thank you, Mr. Chairman, and thank you to all the witnesses for coming.

Let me apologize if I am redundant at all. Mr. Bowman, help me connect some dots here. The Obama administration, as we know, has taken actions over the last few years to strengthen union control over workers. They have done this primarily by weakening reporting requirements for those unions. These actions have combined to basically give unions the ability to spend members' dues without rank and file members knowing where that spending is going.

We also know that unions put about \$1.4 billion into the 2010 elections. Silly stupid question, but let me ask it. Of that \$1.4 billion, how do you think that money went as far as split between Republicans and Democrats? Do we know?

Mr. BOWMAN. I do not have that figure, Representative, so I am not sure.

Mr. WALSH. What would you guess?

Mr. BOWMAN. My guesstimate would be, again, well over 90 percent of the contributions would go for one particular party over another, that is correct.

Mr. WALSH. And what party would that be?

Mr. BOWMAN. That would be the Democrat party.

Mr. WALSH. And I think that is probably a pretty safe guess.

Mr. BOWMAN. Yes.

Mr. WALSH. Why is that? And again, silly question number two, if over 90 percent of that \$1.4 billion is going to Democratic candidates and causes, are we to assume that 90 percent of union rank and file are Democrats?

Mr. BOWMAN. Well, I know that not to be true. I think that the unions now are becoming very prominent in the public sector, the government sector, as opposed to the private sector. The Bureau of Labor Statistics released their 2011 figures last month. The private sector was at only 6.9 percent, I believe, of employees were in the union membership. But it was much higher in the 30 percent range of union members, 36 percent range of union members.

So the relationship between the union and their Democrat officials in the State is a cycle of dependency that is fed with taxpayer dollars. So I believe that is where that comes from, all that money is coming from taxpayer dollars.

Mr. WALSH. So then it leads us to the next question, which is, again, if 90 percent of what union leadership is giving politically goes to Democrats, and we know that the union rank and file is not 90 percent Democrat, what is the, who is the Obama administration listening to, in your estimation? Union leadership or the rank and file?

Mr. BOWMAN. Well, of course it is the union leadership.

Mr. WALSH. Why would that be, though?

Mr. BOWMAN. Because they control the money and control the funds.

Mr. WALSH. So not necessarily the interests of the rank and file?

Mr. BOWMAN. That is correct. And we have talked about the difference between PAC funds and forced union dues in the difference. My written testimony has many examples in the agency fee that are very political activities but still included in that agency fee.

Mr. WALSH. One thing I have noticed a lot of the last year or so when I have been at home is union rank and file members, trade union guys, private sector union guys are pretty upset right now. They are not working. Many are struggling financially, they are losing their homes. They are upset with their leadership because their leadership really sort of foisted this administration on them. I am seeing a widening gulf.

Do you get any sense of, is there any groundswell among rank and file who are more willing to publicly express how upset they are with what their leadership is doing?

Mr. BOWMAN. Very much so. That is why my organization, Union Conservatives, was started, because there are so many people who are feeling left out of the activities of the union officials, and wanted to join an organization that actually mirrored their interests.

I can give you two examples recently. The Keystone Pipeline issue, many union members are extremely upset. In fact, a labors union, I believe, pulled out of the Blue Green Alliance because of that, because so many jobs, potential jobs, were killed by the decision. And then also, so many union members were upset after October 2, 2010, when union officials rallied in Washington, DC, called the One Nation Working Together Rally. And they found out only afterward that they also rallied with the Communist Party USA, the Socialist Party USA and the Democratic Socialists of American. When it was reported afterward, so many union Members on both sides of the aisle were very upset about it.

Mr. WALSH. Final question, Mr. Chairman. Is it safe to assume, Mr. Bowman, that you see a widening gulf between union rank and file and their leadership?

Mr. BOWMAN. Absolutely. I speak to a lot of groups. Even Tea Party groups have a lot of union members in the Tea Party groups as well.

Mr. WALSH. I will be dogged. Wow. Thank you, Mr. Bowman. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

We now go to the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

Just as a, I guess, general disclosure, I should disclose the fact that I am a 30-year member of the Iron Works Union in Boston.

Chairman ISSA. I ask unanimous consent the man be given an additional 30 seconds to explain his entire family lineage. [Laughter.]

Mr. LYNCH. Well, we will skip that. That is for another hearing.

But I am also a former union steward, former union president for the Iron Workers Union, actually worked at the UAW plant in Framingham, Massachusetts.

Mr. BOWMAN. Welcome, brother.

Mr. LYNCH. So Mr. Bowman, I certainly have some related experience with respect to your testimony.

And Ms. Coomer, the SEIU actually ran a candidate against me in the last election. So we certainly have some empathy going there, in spite of the fact that I had a very, very strong union voting record, as you might expect. Even when I was president of the Iron Workers Union, I still strapped on a pair of work boots every day and went out to the construction sites. So I wasn't a sit behind the desk president, I was an iron worker, working on the job, driving a pickup truck. And in a very dangerous industry, I might add.

And I was thankful every single day that I went to work that I had a union watching out for me. Because as a union steward and a union president, I had more than enough occasions to sit in an emergency room waiting for one of my co-workers to get patched up or unfortunately, I went to far too many wakes and funerals for my brothers and sisters who went out to work in the morning in a very dangerous industry and did not come home. And that is a strange, strange, it is bizarre, it is obscene in a way, that folks go to work every day sometimes in dangerous industries, and because of the lack of protections, they don't come home.

That is one of the greatest gifts, I think, that my union gave to me, was, they tried their best, in a very dangerous industry, to make that job safe for me, so I could come home every day to my family.

I just want to make a few observations. You would think from the discussion here today that maybe 50 percent, 60 percent, 70 percent of today's workers are unionized. But according to the Bureau of Labor Statistics, 88 percent of the workers who draw a salary or a wage in this country today are non-union. You have 11.8 percent of the workers, salaried workers and wage-earners in this country, 11.8 percent work under a collective bargaining agreement.

In fairness, this committee has really tilted toward going after union employees. This has not been an even-handed process.

I have before me a list of 16 hearings we have had here. We have had probably, out of the 16, we have had hearings on questioning the pay levels of Federal employees, looking at right-sizing the Federal work force, trying to get people out the door, questioning, we had a hearing questioning the official time whether union stewards in conducting their business, whether that was a good value for the taxpayer.

We had a hearing entitled Postal Infrastructure: How Much Can We Afford, Are Postal Work Force Costs Sustainable, because we wanted to cut the postal workers, union workers wages. We had a hearing on the Hatch Act, whether or not political action by public workers should be sustained.

Chairman ISSA. Would the gentleman yield?

Mr. LYNCH. Not at this point, no, I only have 5 minutes.

So we have had—and I don't believe, I honestly don't believe that the employers, the corporations, are going to be brought in here. I don't believe that. We have had 16 hearings on employees, and busting unions. And we have never had a hearing on, you know, don't hold your breath to see Goldman Sachs come through that door. Because in all the time I have been here, this House, the

whole House of Representatives, think about Goldman Sachs, and what role they played in this country's economic crisis. Never came through that door, not one hearing on Goldman Sachs. And yet we go after the unions on a weekly basis here.

The other thing is, the last thing I want to say is about Citizens United decision. Terrible decision, probably the worst decision in my lifetime in the Supreme Court. And they equate corporations with unions. The difference with corporations and unions is that even in your case, the union's ability to garner resources is limited to passing the hat. They pass the hat among the employees, sometimes willingly, sometimes unwillingly, getting contributions, individual contributions.

But if you look on the corporate side of things, you have ExxonMobil making \$30 billion, AT&T making \$20 billion, Chevron making \$20 billion, JP Morgan \$17 billion, Wal-Mart making \$16 billion, and they can take that money without shareholder approval, without disclosure to the shareholders, and use that money for political purposes. They can use the machinery of profit-making, these corporations, these massive corporations, with impunity. There are no questions being asked of them.

I appreciate your indulgence, Mr. Chairman, and I yield back.

Chairman ISSA. I thank the gentleman for yielding back his negative 50 seconds.

I might note for the record that Mr. Waxman was very good at holding Hatch Act hearings and you did forget to mention Governor Scott Walker, who is in fact an employer.

And with that, we go to the gentleman from South Carolina, once an employer, I guess, of many of the members of his district attorney's office, recognized for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

I couldn't help but think when Secretary Geithner from the Treasury came that we had a glimpse of Wall Street, so I don't know whether the gentleman is counting that as a Goldman Sachs visit or not.

Ms. Waites, you went through, and I tried to take notes, you went through an incident that happened with respect to the Children's Fund and what strikes me as tantamount to an involuntary contribution. Could you go back, just take 30 seconds and go back through that factual predicate for us one more time? What happened?

Ms. WAITES. In 2004, when I went to the delegate assembly, we were told right off that it was non-negotiable, we had to make a donation to the Children's Fund in two separate fund that amounted \$180. Which I finally did, and I procrastinated, because I couldn't figure out why it had to be two different payments, and I couldn't figure out why it wasn't tax-deductible. But the name is the Children's Fund, it is the fund for children in public education. So you assume it is for children in public education.

Mr. GOWDY. Who in the world could possibly be opposed to something called the Children's Fund?

Ms. WAITES. If you ask a teacher to give money, a teacher may have two dollars in her purse and if you ask for that two dollars, that teacher is going to give a child the money. That is just what we do.

Mr. GOWDY. Are you familiar with the work of the Children's Fund?

Ms. WAITES. I was not until the last day of the assembly, when they announced that the money that had been raised through the Children's Fund would go to the campaign. In 2004 it was John Kerry, in 2008 it was Obama. And that was the very last day.

Now, I found out what the nature of the Children's fund was in the women's bathroom on a break when two ladies from California told me. I asked them if they were required to give, because everyone, you were very pressured into donating. And they said no, it was a political fund, and that is how I originally found out about it, was from some other lady.

Mr. GOWDY. We may have a clip, Mr. Chairman, of an ad run by the Children's Fund. Let's see if we have one here.

[Video shown.]

Mr. GOWDY. Wow. I didn't see a word about children or education.

Ms. WAITES. Yes, if you are going to have a political fund, name it a political fund, especially when you are in an education field. People will give to children for any type of education purpose. I speculated, NEA gives teacher grants, and I originally thought, okay, maybe it will go to teacher grants. And then I thought, well, maybe it will go to underprivileged children or children in high poverty areas. And Children's Fund is a children's fund, it shouldn't be a political fund.

Mr. GOWDY. And you didn't know it was going to go for an attack ad in a partisan race?

Ms. WAITES. No, sir.

Mr. GOWDY. Now, something in your original opening statement led me to believe that there was not only a component of involuntariness to it, but that there was perhaps some shenanigans with travel money?

Ms. WAITES. They took dues from BCEA members and they included the amount of the donation in 2008 into our travel money. Because when I kept insisting to have the money back, I was told to stop insisting because the amount was included in my travel money that was separate from my travel money. Which infuriated me even more, they used our BCEA dues to contribute.

Mr. GOWDY. Professor Dau-Schmidt, I was just a country prosecutor, I never got into FEC law. Is that legal, what she just described?

Mr. DAU-SCHMIDT. I am a labor and employment law professor.

Mr. GOWDY. Oh, but you have an idea, don't you?

Mr. DAU-SCHMIDT. Well, I would give you my opinion that I find that disturbing, too, frankly.

Mr. GOWDY. I didn't ask whether you found it disturbing, I asked whether you found it legal or not.

Mr. DAU-SCHMIDT. That I don't have an opinion on. I don't know, I don't know that law. As I understand, she did file a complaint that was denied. She is a State employee, so she is governed by State law, so I can't tell you what the State law is on her objecting. But I think she has a legitimate complaint there, that if they put forward that fund in that way that she should expect it to go for, it should be clear whether it is for politics or not.

I suppose they could make the argument that this guy was against children somehow, and so therefore, this was the best way to use that money. But I think she has a legitimate complaint, and I would be interested to see why her complaint was dismissed.

Mr. GOWDY. I am afraid I am out of time, Mr. Chairman.

Chairman ISSA. The gentleman is correct, his time is expired.

We now go to the gentleman from Illinois, Mr. Davis, who is next for 5 minutes.

Mr. DAVIS. Thank you very much, Mr. Chairman.

While I can't say that my work was as dangerous as that of Mr. Lynch, I can say that I was a proud union delegate, member of the Chicago Teachers Union, chairman of the Professional Problems Committee during the early days of my life, when I was about 23 years old. And I enjoyed the work tremendously.

I think that those of us who are concerned with unions' political advocacy should also take a good look at corporate America. According to the Center for Responsive Politics, the Chamber of Commerce, which is funded by corporate America, is one of the top sources for political spending. Harvard law Professor Benjamin Sachs commented on the Chamber's spending in a 2012 paper. He noted that the Chamber, which is funded by corporate donations, spent more than \$32 million on electioneering communications during the 2010 election season, approximately 94 percent of which was on behalf of Republican candidates.

Professor Dau-Schmidt, now that corporations are free to use their general treasuries to fund political activities, would you agree that corporations have the financial capability to vastly outmatch that of individuals and unions?

Mr. DAU-SCHMIDT. I think that is true, and I think that is evident in the upcoming election. The statistics that you cited from Professor Sachs' article and the five highest spending non-priority organizations, including the Chamber of Commerce, \$32 million in the 2010 elections, four of the five all supported Republican candidates.

Mr. DAVIS. I have always believed that fair is fair. Unfortunately, it is difficult to get a handle on what the actual scope of corporate political influence really is. While there are a lot of checks on union political spending, there don't appear to be any real checks on corporate America.

Federal law requires unions to file a detailed report with the Department of Labor, disclosing all of their political spending. Professor, do have corporations any similar duty that you are aware of to disclose their spending for political purposes to their shareholders or to the public?

Mr. DAU-SCHMIDT. I know of no restraints like that, and they also don't have to let people opt out. And just think about how popular that would be. If you did allow an opt-out, they would have to refund a portion, a proportionate share of what they spend on politics to their shareholders. They would set up mutual funds that got these refunds, they would be dissenter mutual funds. Those mutual funds would earn more money than similarly situated mutual funds. They would be very popular.

So I think there is a real demand out there for dissenters not to have their money. My savings for my pension spent on political purposes that I oppose.

Mr. DAVIS. Thank you very much. And I think the Los Angeles Times article pretty much came to the same conclusion. And it said that "Despite mounting calls for greater transparency, only a few of the country's 75 leading energy, health care and financial services corporations fully disclose political spending. Groups such as the Chamber, some of which spend millions of dollars on elections, are not required to reveal their financial supporters. And companies are not required to report their donations to those groups."

"What information is publicly available suggests that substantial Corporate political spending remains in the dark, leading to an incomplete and at times misleading picture of companies' efforts to influence legislation and elections."

Professor, given the lack of transparency and disclosure policies and practices of some corporations, do we even know how corporations are spending shareholder funds to exercise political influence?

Mr. DAU-SCHMIDT. I don't believe we do.

Mr. DAVIS. Well, thank you very much. I think it is clear that there is great disparity between what unions and individuals are able to spend and what corporate America is able to spend to influence. I thank you, Mr. Chairman, and yield back the balance of my time.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Michigan, Mr. Walberg, who also hails from an area to the south of Ypsilanti. Do you include any part of Ann Arbor and Ypsilanti?

Mr. WALBERG. Well, we don't include Ann Arbor as Ypsilanti.

Chairman ISSA. I always look at them as the twin cities.

Mr. WALBERG. I have a quarter of Ann Arbor in my district.

Chairman ISSA. You do. Mr. Bowman would like to talk to you. The gentleman is recognized.

Mr. WALBERG. I have had the privilege of walking in the Saline Parade with Mr. Bowman, if I remember correctly.

Mr. BOWMAN. That is correct.

Mr. WALBERG. Who surprised me out of my socks, as it were, that you were a proud UAW member working for a Republican candidate.

Mr. BOWMAN. That is correct.

Mr. WALBERG. And it was a delight to talk with you, and I have tried to matriculate that information into my understanding since then.

Mr. BOWMAN. I would like to talk to you after this meeting.

Mr. WALBERG. Delighted to see you here and appreciate your testimony.

I apologize for not being here for all the other testimonies. I have had a chance during the intervening time to read them. Members of Congress are not unionized, so our work rules don't allow us necessarily to deal with being in two places at the same time and often we have that situation.

I was a United Steelworker for a while in my life at Number Two Electric Furnace, South Works, U.S. Steel, south side of Chicago, same place my dad was a union worker and helped organize the

union at that plant early in his career in the early 1940's. The opportunity that he proudly wore his union pin, those little pins they used to wear, attached to his lunch bucket as well as his hat and his coat, and would come home with those. By the time he finished his career as a machinist tool and diemaker, he no longer was a member of the union, worked for companies and shops that weren't unionized, because he felt it went away.

An example was given even in my first week at U.S. Steel South Works when I was told by the Union to stop working so hard, quit sweeping underneath the furnace so hard and find a box and crawl up and go to sleep. I understood that was not the work rules and the working condition that my dad worked for, to make sure that there was safety, that you did come home for a weekend of relaxation. I was interested to hear the statement, this weekend brought to you by the labor union.

Ms. Coomer, I am sure that they would not go along with a statement that could be made, you too can be a union caregiver for your child, like it or not. I am sure that would not be the situation that you would desire to see as an ad. I applaud you for what you are doing for your child. And sadly, some of that opportunity has been taken away from you as a result of a union.

But let me go back to Mr. Bowman. I have heard with some reverence talk about the Black Lake Facility. Describe that a little bit more. You mentioned it in your testimony, but describe that facility and why a lot of my union friends would talk with some reverence as to what goes on there. What does take place there?

Mr. BOWMAN. Well, the UAW has a facility called the Black Lake Facility in the upper Lower Peninsula of Michigan, almost to the Mackinaw Bridge, as a matter of fact.

Mr. WALBERG. Beautiful area.

Mr. BOWMAN. Beautiful grounds, it has an 18 hole golf course, quite highly rated, from what I understand, all owned by the union, all paid for with regular union dues. They did this as an investment and from what I understand, they have been trying to sell it but have chosen not to do that because of the deduction, or the loss of property value.

But at the Black Lake facility, it is supposed to be a facility for "education." And I use this quote mark because I have never been afforded, even after 15 years, of going to the Black Lake facility. Only those who are very involved in the union political side are invited to go to the Black Lake facility numerous times. And they have classes there, 1-week seminars on grievance handling and the history of unions and all these different kinds of classes that are available.

Mr. WALBERG. Upgrading your skills as an employee and all that?

Mr. BOWMAN. That is correct. But unfortunately, as I have been told numerous times, people come back and say that it really is an opportunity for the union to indoctrinate on the fact that the Republican party has been the party who has over time done everything against the middle class, against the working people.

Mr. WALBERG. They would actually say that?

Mr. BOWMAN. They would actually use those words, yes, absolutely.

Mr. WALBERG. With your dues dollars paying for that?

Mr. BOWMAN. Regular dues are paid for this facility. It is not subtracted from the agency fee, as is any of the publications or the salaries of the officials that engage in these activities.

Mr. WALBERG. Is there a publication that your dues help fund called Solidarity?

Mr. BOWMAN. Yes, there is.

Mr. WALBERG. Are there any political statements in Solidarity that you would have concerns with as a union employee?

Mr. BOWMAN. Extremely. Yes. Very often in every issue.

Mr. WALBERG. So your forced dues pay for Solidarity printing, against your viewpoints and a thousand others potentially that you have listed today?

Chairman ISSA. Time is expired, the gentleman may answer.

Mr. BOWMAN. Yes. And unfortunately Solidarity magazine, the publication and the wages for the union workers who put this together are not reduced from the agency fee. They consider that legitimate union purpose.

Chairman ISSA. I thank the gentleman.

The gentleman from Massachusetts, Mr. Tierney, is recognized for 5 minutes.

Mr. TIERNEY. Thank you.

Doctor, let me start here. I think in this hearing we want to make sure that individual union members are not being disadvantaged inappropriately, that their rights are being protected. So I want to just walk through, again, the National Labor Relations Act allows for people to organize, form a union and to collectively bargain, is that correct?

Mr. DAU-SCHMIDT. Yes.

Mr. TIERNEY. And then a later amendment, I think it was about 1947, indicated that States had the right to opt to be right to work States.

Mr. DAU-SCHMIDT. Right.

Mr. TIERNEY. Then there was case law that indicates if that occurs, and a contract provision is put in, people that do not want to be paying union dues can at least make sure that if they are obligated to pay those union dues, none of it goes toward political uses, is that correct?

Mr. DAU-SCHMIDT. That is true. The statement actually uses the term membership. It allows union security agreements that require membership. But the way the Supreme Court has interpreted that is that you can't actually require someone to join a union, and you can only require them to pay an agency fee.

Mr. TIERNEY. So if that law is in fact enforced, then I think that we have pretty much protected those individuals from what they would otherwise object. The question for some of these folks here might be whether or not it was enforced properly or applied properly in their position. I think that is a case by case. I do note on Ms. Waites that when her case went to the FEC, it sort of was resolved, because it seemed to be a misunderstanding between Ms. Waites, Ms. Fox and Ms. Hunter.

And you never did voluntarily, Ms. Waites, want your money to be used for the political purpose. You knew, I guess from the document that went out that day, you knew the NEA Fund for Children

in Public Education had those uses that it had, and you didn't want your money to go there, and somebody else put some travel money that you had toward it. So that is that issue, right? Okay.

So feeling fairly comfortable that the law allows for protection against what everybody here seems to want to complain about it, let me take it to a broader point, Doctor. I think most of us want a fair political system and we wouldn't want anybody to be over-advantaged against anybody else. When you look at the Citizens United case, and you understand the impact, I think it is Jacob Hacker, a friend from Yale, who said in this case, first, people with a lot of money, they had the advantage, they could hire lobbyists, then they could give a lot more in political contributions than the average citizen, regular family.

And now, and this is Citizens United, they are going to be able to buy attitude and spend all they want. Sometimes their shareholders might even in fact be pension funds or other organizations that are populated by people who, some of the policies the corporations espouse, they work against. Is that fair?

Mr. DAU-SCHMIDT. That is absolutely correct. And I have to admit, I am very concerned about it, for the future of our country and for my kids' future.

Mr. TIERNEY. I, in fair disclosure, everybody wants disclosure, I was the president of the chamber of commerce in my community. But we disassociated ourselves from the U.S. Chamber of Commerce that we regularly saw working against our interests, always championing tax loopholes and things that favor corporations, taking jobs overseas and on and on and on. And not doing things that we really thought in our local communities would be helpful, supporting education, supporting better roads and things of that nature.

And always generally saw union members and other people that were working non-management, and small businesses, have a lot in common on that basis. I think one thing they have in common is that Citizens United, the way it is crafted right now, could work greatly to their disadvantage on that.

Mr. DAU-SCHMIDT. I believe that is true.

Mr. TIERNEY. Do you believe it would be useful to have a law that allowed for the same kind of protections for shareholders that the law currently allows for union members or non-union members who have to pay an agency fee?

Mr. DAU-SCHMIDT. I think it would be very useful. As I said before, I think to opt out would be very popular with investors. I don't invest in a company because I want them to represent my political views. I invest in a company because I want a secure return in the future. And that is what people expect to get out of investment. So when the Supreme Court politicized that act through Citizens United, they created a huge problem. They created a problem not only in private relationships, where employers set up pensions, but especially in a relationship like mine, where the State sets up a pension and requires me to participate in it. Because there you have clear State compulsion for me to participate in what is basically political voice.

Mr. TIERNEY. Mr. Bowman, would you favor or oppose laws that applied the same protections to shareholders that are available to employees?

Mr. BOWMAN. I think it is comparing apples to oranges, because shareholders can choose not to invest in the company. Union workers have to as a condition of employment pay dues to the union.

Mr. TIERNEY. That is not true in a right to work State, is it?

Mr. BOWMAN. It is not true in a right to work State.

Mr. TIERNEY. They can voluntarily opt out.

Mr. BOWMAN. Yes, they can.

Mr. TIERNEY. So if you are a shareholder, you have money in a mutual fund, how likely do you think it is that you know exactly where those funds are being invested, and then what that corporation is doing with your money?

Mr. BOWMAN. I think it is due diligence. They need to find out exactly where, and then they can choose to invest elsewhere.

Mr. TIERNEY. As I guess you think Ms. Waites should have done.

Mr. BOWMAN. I don't know that situation.

Mr. TIERNEY. Yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Oklahoma, Mr. Lankford, for 5 minutes.

Mr. LANKFORD. Thank you, Mr. Chairman. This is an interesting series of conversations about the agency fees and opting out and such, and providing those types of protections. I understand the statement that we have laws on the books that handle this.

Of the individuals that are here, do you think these Beck rights, these opt-out provisions were enough for you in your specific situation? Were you able to opt out and to say, Ms. Waites, you can start and we can go across the panel.

Ms. WAITES. I was not able to opt out. When I asked that the money be returned, I was refused.

Mr. LANKFORD. Okay, so these specific opt-out provisions did not work for you?

Ms. WAITES. Right.

Mr. LANKFORD. Okay, thank you. Ms. Coomer.

Ms. COOMER. When I made the request, basically I was told that to be a "non-member union person" I still had to pay the equivalent fees, equal to the union dues. Then I had to go through this big, long process. It had to be a religious reason that I had to prove that I wanted to divert a certain portion to a non-profit or a different organization, that the union agreed to allow me to donate or divert that money to.

Mr. LANKFORD. So a fairly lengthy process to do that, fairly bulky process?

Ms. COOMER. Right.

Mr. LANKFORD. And you still had to pay the agency fee?

Ms. COOMER. Still had to pay, yes.

Mr. LANKFORD. So if you want to just personally donate to somebody else and say, I am not going to pay the agency dues, don't put any of my money down for political, I want to personally contribute to who I want to contribute to, that is not a possibility. So somewhere in your agency fees was going to be contributions directed through the union.

Ms. COOMER. Right. And then they want quarterly reports, showing, I had to prove to them that that portion I diverted was going to where they had agreed was an appropriate place for it to go to.

Mr. LANKFORD. Okay.

Mr. DAU-SCHMIDT. As I mentioned before, I believe both Ms. Waites and Ms. Coomer are public employees, and as a result, they would be governed by the law in their States. Actually the law, they would have an opt-out, they wouldn't be eligible for Beck rights. But they would be eligible for some kind of opt-out from the law in the States.

And Ms. Coomer, I am not familiar with Washington's law. But it sound very interesting where they allow them to opt out, but they have to give to a charity of their choice, so as not to encourage people to opt out. In other words, they still have to support the public wheel in some way. Now, Mr. Bowman—

Mr. LANKFORD. Wait. I am going to let Mr. Bowman answer.

Mr. DAU-SCHMIDT. Well, Mr. Bowman—

Mr. LANKFORD. Hold on.

Mr. DAU-SCHMIDT [continuing]. Is eligible but he has to—

Chairman ISSA. The gentleman controls his own time. Go ahead, Mr. Lankford.

Mr. LANKFORD. The statement that I am making is, were the Beck rights, did they apply. And your statement is, no, this is a State issue, so they don't apply on it. Mr. Bowman, you can answer the question.

Mr. DAU-SCHMIDT. For State employees, I am not eligible for Beck, either, because I am a State employee.

Ms. COOMER. I am not a State employee, according to the State of Washington.

Mr. LANKFORD. Mr. Bowman.

Mr. BOWMAN. Okay, thank you. First of all, I have not exercised my Beck rights, because I am trying to effect change while as a member, an active member of the union. And my testimony says there is a lot of fear that goes in with union members by exercising their Beck rights. Specifically because they have to resign their union membership first. And when you are on the shop floor and people know that you have exercised your rights, there is harassment, there is persecution, there is ridicule from your fellow workers, along with the union officials themselves.

Now, I think that alone speaks very highly of making the Beck decision the default position for all union workers up front, and then only those who want to pay over and above can choose to do so.

Mr. LANKFORD. Right. And there are individuals, yourself included, that want to stay involved in the union. I have some folks in Oklahoma City, in Oklahoma, we are a right to work State. There are some fantastic people that are union members, who are very engaged, whether they be firefighters or police officers or all kinds of different unions there, I have no issue with that, and for the collective bargaining, for the organization, and for what they want to be able to do, to be able to negotiate together. That is not the issue.

The issue comes down to the accountability side of it. An example of this would be the ICAP audits, to where audits are done by

the Federal Government, of going down to the communities, the local side. But as of 2012, according to the Obama administration, they are going to do zero audits for the international unions. Does that bother anyone, that the new decision is, if they are a small union in a local area, they are going to have transparency, but the larger the union is, the less transparency they are going to have?

Mr. BOWMAN. I think that is incredible. I had not heard that. I find it quite upsetting.

Mr. LANKFORD. That is from the Office of Labor Management Standards, just to say that for fiscal year 2012, the quote there is, if you get a chance to read it, there will be zero ICAP audits. So that office has been defunded and put down on it.

So the issue here is not whether you want to be union or non-union. That should be completely voluntary. But it should also be transparent. Everything should be open, everyone should be held to the same account. And there should be the opportunity for members of the union to also be engaged, and to not be excluded from that.

With that, I would yield back.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Connecticut, Mr. Murphy, for 5 minutes.

Mr. MURPHY. Thank you very much, Mr. Chairman.

In Mr. Bowman's testimony, he suggests that the political speech of unions is essentially equated to what he calls an offensive and radical left-wing political action. We are used to hyperbole here, but this is certainly parroted by much of the talk we hear about what unions are doing in the political context today. I think it stands behind a lot of the attacks we have seen on labor unions, this idea that labor unions are speaking in some radical way.

And Mr. Kucinich did a little bit of this, but I do think it is important to in some detailed way go back over the record of the political action of labor. I won't claim that labor has been responsible for every great social or workplace safety advancement in this Nation. But they have been a pretty integral part. There was a time when there were little kids working in factories throughout this country, there was a time when the average adult was working 61 hours a week. And in large part because of union political action, we passed the Fair Labor Standards Act. There was a time in this country where workers were getting paid cents on the hour, weren't getting paid enough to put a roof over their head or food on the table. And in large part because of labor political action, we got the minimum wage.

There was a time when if you got injured at work, you would lose your job, and the only way that you could recover any damages or any lost wages was by suing your employer and racking up expensive legal fees. In part because of labor political action, we got workers compensation law.

And a lot of people say, that is prior history, that is all about what happened 50 years ago, 75 years ago. Well, just about a decade ago, it wasn't foreign that if you had a newborn child or a sick relative, and you had to take some time off work, you couldn't get your job back. And in large part because of labor political action, we got the Family and Medical Leave Act.

You can disagree with all those things. You can say that we shouldn't have minimum wage, we shouldn't have the Family Medical Leave Act. But I don't think that any of those acts are considered radical today. I don't think that much of what labor is advocating for is considered extreme today. And I guess it leads me to a few simple questions to the professor. We have heard a lot about the free rider phenomenon, in the sense that if you are not paying dues in a right to work State, you still get the benefit of the contract that the labor union negotiated. And I think that is a real problem.

But what we don't talk a lot about is the free rider syndrome in which workers who aren't paying dues to a labor union also get the benefit of all of the social change, the very non-extreme advocacy that has led to these acts. And so Professor, my question is this. Do non-paying dues members in this country get the protections afforded to them under the Fair Labor Standards Act?

Mr. DAU-SCHMIDT. Yes, they do.

Mr. MURPHY. Do non-dues paying members in this country get the protections afforded to them by Federal minimum wage?

Mr. DAU-SCHMIDT. Yes.

Mr. MURPHY. How about workers compensation law?

Mr. DAU-SCHMIDT. Yes.

Mr. MURPHY. And the Family Medical Leave Act?

Mr. DAU-SCHMIDT. Yes.

Mr. MURPHY. Listen, we can disagree about the particular actions that labor unions engage in in the political context. That is why we have the protections that allow individual workers to opt out. I think folks on our side have done a pretty good job of explaining those protections. But the notion that there is some radical agenda that labor is perpetuating in the halls of Congress or in State legislatures I don't think is backed up by the facts. I think the idea that going back through the history of social change in this country that we haven't been benefited, workers haven't been benefited, whether you are a dues-paying member of a union or not, by fair labor standards, minimum wage, workers compensation, medical and family leave and dozens of other pieces of legislation is a rewrite of what has actually been happening when labor unions come and advocate on behalf of their Members in the U.S. Congress.

With that, I yield back my time.

Chairman ISSA. The gentleman yields back.

With that, we go to the gentleman from North Carolina, Mr. McHenry, for 5 minutes.

Mr. MCHENRY. I thank the chairman. And I know this is not about a question of right to work laws in individual States. This hearing is not about that. But I want to thank my colleagues on the other side of the aisle for their advocacy against right to work laws in their respective States. I want to thank them for that, because in North Carolina, as a right to work State, it helps us economically. I certainly appreciate their willingness to advocate for closed shops for unions. I certainly appreciate their willingness to advocate for laws that drive up the cost of doing business in their respective States, and I certainly appreciate their advocacy for that.

So I just want to take a moment to sincerely thank them, not just on my behalf, but on behalf of the folks in western North Carolina that want more jobs and want more economic growth.

Now, we did hear a lot of testimony about labor practices in the 1920's. We had a lot of questions and comments about that. And certainly, unions had their place and they had their time. But we also have international competitiveness issues. And we have unions that are negotiating to keep their dues and to keep their income stream going, while at the same time cutting employees, cutting pensions, raising the cost of health care for their union members. So their advocacy is, let's just say they are trying to keep their money flowing to them.

But that is neither here nor there. So one of my colleagues said that basically the unions pass the hat. They pass the hat to get union membership. Mr. Bowman, do you put your dues in a hat or is it deducted from your paycheck?

Mr. BOWMAN. It is deducted from my paycheck.

Mr. MCHENRY. Ms. Coomer.

Ms. COOMER. It is deducted from the paycheck.

Ms. WAITES. It is deducted from my paycheck.

Mr. MCHENRY. I just want to be clear about that.

Now, is there any question about how your dues are divided up? Do you have a vote on that, Ms. Waites?

Ms. WAITES. No, sir, we do not.

Ms. COOMER. No.

Mr. BOWMAN. No, sir.

Mr. MCHENRY. All right. This is interesting to me. Ms. Coomer, I appreciate your testimony, and for making the trip here. How old is your daughter?

Ms. COOMER. Twenty-one.

Mr. MCHENRY. In your testimony you outline the fact that you basically are being paid by the State to be, or you are paid by the State to take care of your daughter.

Ms. COOMER. Right.

Mr. MCHENRY. If you didn't do that, some other individual would do that?

Ms. COOMER. Would need to do that, yes.

Mr. MCHENRY. So you got a notice when this happened, I mean, this is a State regulation, a State law, in the construct of how you are taking care of your daughter?

Ms. COOMER. Actually, she got the notice.

Mr. MCHENRY. Oh, she got the notice.

Ms. COOMER. That her family provider could no longer provide care for her through an agency, that they had to transfer over to the unionized IP system if they wanted to continue providing care.

Mr. MCHENRY. Okay. And so could you have said, no thank you, I don't want to be a member of the union?

Ms. COOMER. I could have refused to sign up as an individual provider, yes, and then I would not have been able to continue providing for her Medicaid Personal Care.

Mr. MCHENRY. So you would not be able to take care of your daughter?

Ms. COOMER. Right.

Mr. MCHENRY. That is a horrible choice. And I am sorry.

Ms. COOMER. Exactly. And I don't know a parent who made the decision not to make that move, because of that very reason.

Mr. MCHENRY. So not only do you not have a choice about being a member of the union, you don't have a choice about where those dues even go?

Ms. COOMER. Correct.

Mr. MCHENRY. This is really the crux of this discussion today. You are being forced, money is being taken out of your pocket.

Now, there is a comparison to corporations. With a corporation, if you are an investor, you can simply not invest, right? I guess conceptually, you don't have to take care of your daughter.

Ms. COOMER. I suppose.

Mr. MCHENRY. But it is an illegitimate choice set here, a comparison between investing in a corporation and an individual providing care for their child.

Now, I just wanted to make that point here. My colleague from South Carolina always asks great questions. I know I only have a few additional seconds.

Chairman ISSA. Would the gentleman yield?

Mr. MCHENRY. I would be happy to yield to the chairman.

Chairman ISSA. Just one question. Did you get a pay increase when you were involuntarily converted in status and put into the union?

Ms. COOMER. No.

Chairman ISSA. Did you get a pay decrease by having the same amount of money but less of it net?

Ms. COOMER. Right. I got a pay decrease, decreased benefits, and I was no longer able to cover my children, my dependents, on the health insurance coverage.

Chairman ISSA. So because of the union's political activism, they able to take you from being out of the union, receiving X dollars to take care of your adult child, to put you into a union where you got less net dollars to do that service, but they got dues. That was the only change you saw?

Ms. COOMER. Correct, other than some of the decreases in benefits and not being able to cover my other children, dependents. They have no dependent coverage, which I had before, when I was not a union member.

Chairman ISSA. If I wasn't a Member of Congress, I would say you got you know what out of this. But I am not going to go there.

I thank the gentleman for yielding. I yield back.

And the gentleman's time is now expired. We now go to the former chairman of the full committee, the Honorable Edolphus Towns, for his insightful questions.

Mr. TOWNS. Thank you very much, Mr. Chairman. You sound like my mother. [Laughter.]

Chairman ISSA. God bless her for bringing you to us.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Let me begin by first of all, I have a statement for the record, I ask unanimous consent, of Mr. Robert Hahn, member of Local 514 of Wisconsin. I would like to ask permission to insert it into the record.

Chairman ISSA. Without objection, so ordered.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Let me say, just yesterday, less than 24 hour ago, this committee conducted a business meeting in which our objective was to take money out of the pockets of Federal workers to reduce the national deficit. There was no, let me emphasize, no efforts, no efforts whatsoever, to get corporations to shoulder the same burden.

Today, despite its title, this hearing again focuses on the worker, except that now we are looking to put further restrictions on the rights of those workers who are unionized and who are working hard to live the American dream. All over this country, and of course right here in the capital, we are witnessing a sustained campaign against American workers and the unions who represent them. These campaigns are aimed at silencing the voices of unions and giving more power to the big corporations over things like reasonable wages and benefits and safe working conditions.

Let me begin by saying to you, Mr. Bowman and of course, Ms. Waites, do you feel there is an attack on the unions? Do you feel there is an attack on unions?

Ms. WAITES. No, sir. I don't feel that this is an attack on unions.

Mr. TOWNS. But you don't feel there is an attack on unions in general, either?

Ms. WAITES. I think we are more in terms of unions making political contributions without any consult with their membership.

Mr. TOWNS. How about you, Mr. Bowman?

Mr. BOWMAN. I agree completely with what she is saying. This is not an attack on unions, on collective bargaining rights at all. It is a meeting to hear discussion on unions using our regular dues for political spending.

Mr. TOWNS. Professor, do you want to say something?

Mr. DAU-SCHMIDT. Living in one of the front line States, I would have to say there is a systematic attack on unions. My collective bargaining rights were taken away unilaterally by the Governor of Indiana in 2006, and then the Republicans in the State proceeded to limit collective bargaining rights for teachers, who were the only remaining public sector employees who have any collective bargaining rights at all. Once they were done with that, they moved on to right to work legislation, because that was the way they could weaken private sector unions.

And this is all part, I think, of a political act on their part. They are trying to undermine people who have been traditional political opponents of theirs and supporters of the Democratic party. So it does not surprise me at all that most union campaign contributions go to Democratic candidates.

In Indiana, I can guarantee you, the unions are very upset with the Republicans, because they have so tried to undermine union power. And in fact, there is an organization in Indiana called the Lunch Pail Republicans, who are conservative union members who generally do not support Democratic candidates, but they actively campaigned against the Governor and his position and right to work, and they are threatening to field candidates against all the Republicans who voted for right to work. And it looks like they are going to be fairly effective at it.

So there are conservative union activists out there who are very upset with the attack that has been made on unions.

Mr. TOWNS. Let me just say that I think you need to be careful. Because when you look at the improvements that have been made in the workplace, a lot of them came about because of unions. Even in situations where people were not even unionized, that based on the activity of the union that made the workplace safe.

I think we need to sort of analyze that and look at it. Even if there is one thing that you dislike, let's look at the 99 you should like. And of course, I can remember when people would work 60, 65 hours a week without any overtime. I am old enough to remember that. And of course, they just were paid by the hour and that was it, and paid very little.

So I look at what is happening in corporate America. I think that we need to be really careful, and I think some of my colleagues on this side mentioned the fact that in terms of what is going on with corporate America.

So I say to you, Mr. Bowman and Ms. Coomer and Ms. Waites, you need to be careful. You need to be careful. Because if not, you might come back a few years from now and start talking about how life is so miserable as a result of your not having that protection.

I yield back.

Chairman ISSA. The gentleman yields back.

I want to thank all our witnesses for being here today. This was the first of a series of hearings. As a result, you probably went through some of the growing pains that come with opening up a new subject. I would like to thank all four of you. I think you presented your positions extremely well.

Certainly, you can tell that we are divided here on the dais. I think the important thing here today is that the issues you brought before us and any additional comments you may want to bring to the committee, I would ask that you try to do it in the next few days, we will include in the record.

If there are no further comments by any of the panelists, I would ask unanimous consent that the committee majority staff report be placed in the record at this time. Without objection, so ordered.

[The information referred to follows:]

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
112th 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.¹ 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.² 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.³ In the New Deal era, the status of unions were memorialized by the enactment of various labor laws including the National Labor Relations Act

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

² *Id.*

³ *Id.*

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

In 1985, the Supreme Court declared that no worker can be forced to be a member of a union.⁵ However, the National Labor Relations Act (NLRA) does permit what is known as “union security agreements.”⁶ 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.⁷ 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.⁸ 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.⁹ 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.¹⁰ 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.¹¹

Twenty-seven states have not adopted right-to-work laws.¹² 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.

⁴ *Id.*

⁵ 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).

⁶ 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).

⁷ 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).

⁸ 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).

⁹ 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.”)

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

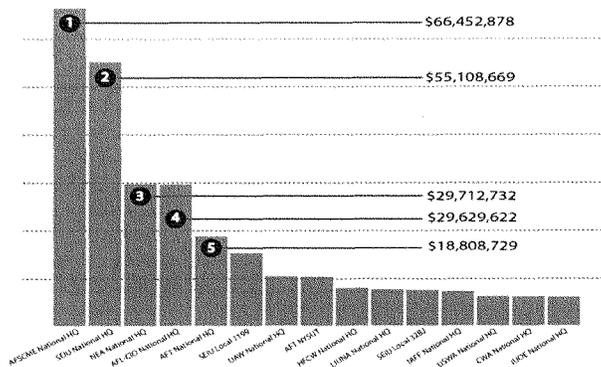
¹¹ Howard C. Hay, *Union Security and Freedom of Association in LABOR RELATIONS LAW IN THE PUBLIC SECTOR* 146-55 (Andria S. Knapp ed., 1977)

¹² 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.¹³ 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.¹⁴ 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.”¹⁵ 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.¹⁶ The chart below outlines the fifteen biggest spenders of union dues in the 2010 election cycle:

**2010 ELECTION CYCLE
UNION POLITICAL SPENDING**



Source: NLRB study of USDCLE LM-2 Reports for the Years 2007-2010

¹³ 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).

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

¹⁵ 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).

¹⁶ 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.¹⁷ 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.¹⁸ Historically, campaign finance laws did not permit unions to use union dues to support or oppose political candidates.¹⁹ Instead, unions did so through voluntary PAC contributions.²⁰ Dues, on the other hand, could be used to finance the indirect type of political spending mentioned above.²¹ 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.²²

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*,²³ 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.²⁴ Then, in 1988, in a more well-known case related to union political spending, *Communications Workers of America et al. v. Beck et al.*,²⁵ 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

¹⁷ 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.

¹⁸ 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).

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

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

²¹ 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))

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

²³ 367 U.S. 740 (1961).

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

²⁵ 487 U.S. 735 (1988).

Beck right by inaccurately categorizing almost all union expenditures as representational expenses.²⁶

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.²⁷ 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.²⁸ 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."²⁹

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 1993.³⁰ 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.³¹ 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."³²

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

²⁶ 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.")

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

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

²⁹ 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.

³⁰ 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).

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

³² 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.³³ Accordingly, *Beck* rights are enforced on a case-by-case basis only when challenged by workers.³⁴ 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.³⁵ 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.”³⁶

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.³⁷ As evidenced by the 67 percent of workers who are unaware of their *Beck* rights, these forms of notification are clearly ineffective.³⁸

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.³⁹ 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.⁴⁰ In addition to this roadblock, many unions

³³ 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.

³⁴ 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.

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

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

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

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

³⁹ 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.

⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³ 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.”⁴⁴ This disclosure is almost always a union member’s sole source of information on how his or her dues are being spent.⁴⁵

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.⁴⁶ 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

⁴¹ 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.

⁴² 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).

⁴³ 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).

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

⁴⁵ *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).

⁴⁶ 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.⁴⁷ It also completely eliminated Form T-1, which required unions to report the finances of trusts in which they were invested.⁴⁸ These trusts constitute a major repository of union funds, and Form T-1 closed a major loophole in reporting requirements.⁴⁹ 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."⁵⁰ 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."⁵¹ 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.⁵²

⁴⁷ 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).

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

⁴⁹ *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)

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² 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.⁵³

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.⁵⁴ 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."⁵⁵ 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.⁵⁶

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.⁵⁷ This facility is used for all-inclusive, week-long, "educational" retreats for union members. Only certain members are invited,⁵⁸ though, and the "training sessions" are reportedly not simply union-related, but are "full of political propaganda" and "constantly disparage the Republican party."⁵⁹ Regular dues also finance UAW's *Solidarity* publication, which Terry states is purported to be educational, but is actually full of propaganda.⁶⁰ Most recently, UAW has promised to "commit resources"⁶¹ 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.⁶² 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."⁶³ 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.⁶⁴

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Union Conservatives, "About Us," at http://www.unionconservatives.com/About_Us.html (accessed January 31, 2012).

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

⁵⁸ 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)).

⁵⁹ E-mail with Terry Bowman (January 31, 2012).

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

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

⁶² Union Conservatives, "About Us," at http://www.unionconservatives.com/About_Us.html (accessed January 31, 2012).

⁶³ *Id.*

⁶⁴ *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.⁶⁵

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.⁶⁶ 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.⁶⁷ 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.⁶⁸ 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."⁶⁹ 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.⁷⁰

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

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

⁶⁶ *Id.*

⁶⁷ *Id.*

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

⁶⁹ H.B. 2361, 61st Leg., Reg. Sess. (Wash. 2009).

⁷⁰ 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).

⁷¹ Telephone Interview with Sally Coomer, Duvall, WA (December 19, 2011).

⁷² Telephone Interview with Sally Coomer (February 2, 2012).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

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

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.⁷⁹ 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.⁸⁰ 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].”⁸¹

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.⁸² 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.⁸³ 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.⁸⁴

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.⁸⁵

Claire teaches science to 8th 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.⁸⁶

⁷⁷ Telephone Interview with Sally Coomer (December 19, 2011).

⁷⁸ *Id.*

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

⁸⁰ E-mail with Sally Coomer (January 31, 2012).

⁸¹ *Id.*

⁸² *Id.*

⁸³ Telephone Interview with Sally Coomer (December 19, 2011).

⁸⁴ E-mail with Sally Coomer (January 31, 2011).

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

⁸⁶ *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.⁸⁷ She later learned this fund was, in reality, a political action committee (PAC) used to contribute to democratic candidates.⁸⁸ Union leadership failed to inform the members about the true purpose of the fund.⁸⁹ 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.⁹⁰ 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.⁹¹ 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.⁹² 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.⁹³ Second, when seeking voluntary contributions, union officials must inform members of their right to refuse to contribute to this fund without any negative consequences.⁹⁴ Claire asserts that NEA and BCEA failed to provide any such information.⁹⁵ Third, federal law prohibits campaign contributions made in the name of another person.⁹⁶ 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.⁹⁷ 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.⁹⁸ 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

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

⁸⁸ Telephone Interview with Claire Waites (January 9, 2012).

⁸⁹ *Id.*

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

⁹¹ 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)).

⁹² Telephone Interview with Claire Waites (January 9, 2012).

⁹³ *Id.*

⁹⁴ 2 U.S.C. § 441b(b)(3)(C)(2002).

⁹⁵ Telephone Interview with Claire Waites (January 9, 2012).

⁹⁶ 2 U.S.C. 441f

⁹⁷ Telephone Interview with Claire Waites (January 9, 2012).

⁹⁸ 2 U.S.C. § 441b(b)(3)(A)(2002).

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

Phillip Knerr

Phillip 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.¹⁰¹

Phillip 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.¹⁰² 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.¹⁰³ A large portion of the membership opposes the union’s points of view, yet they are all forced to pay for it.¹⁰⁴

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.¹⁰⁵ 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.¹⁰⁶ According to Phillip, 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.¹⁰⁷

In addition to the significant dues and political agenda the union uses them to promote, Phillip also takes issue with the difficulty of exercising Beck rights to avoid contributing to it at all.¹⁰⁸ 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.”¹⁰⁹ According to Phillip, Beck rights do not provide an adequate remedy to what seems to amount to forced political spending.¹¹⁰

⁹⁹ Telephone Interview with Claire Waites (January 9, 2012).

¹⁰⁰ *Id.*

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

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *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.”¹¹¹

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.”¹¹² 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.¹¹³

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.¹¹⁴ “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.”¹¹⁵ To illustrate this, Chris shared that he has not received a raise in three years.¹¹⁶

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.¹¹⁷ According to Dustin, the “union doesn’t have a good reputation with employees.”¹¹⁸

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

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

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

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

¹¹⁸ *Id.*

¹¹⁹ *Id.*

key issue is how exactly unions spend dues money, and their failure to disclose records and information has only aroused more suspicion.¹²⁰ For instance, Dustin has requested from the union their financial plan, to which they responded that they did not have one.¹²¹ 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.¹²²

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.¹²³

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.¹²⁴

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.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

Chairman ISSA. And again, thank you very much. You are an important part of democracy, all of you. This is a process in which we are going to look, as a committee, at the law as it has changed under the Citizens United decision, to try to find the right way to get openness and transparency and ultimately come to grips with the fact that the law is what the Supreme Court says it is.

I want to thank you. We stand adjourned.

[Whereupon, at 12:35 p.m., the committee was adjourned.]

[The prepared statement of Hon. Edolphus Towns follows:]

**Statement of
Edolphus “Ed” Towns
Committee on Oversight and Government Reform
Hearing on February 8, 2012 at 10:00 a.m.
“The Right to Choose:
Protecting Union Workers from Forced Political Contributions”**

Yesterday, this Committee conducted a business meeting in which our objective was to take money out of the pockets of federal workers to reduce the national deficit. There was no similar effort to get corporations to shoulder the same burden. Today, despite its title, this hearing again focuses on the worker, except that now we are looking to put further restrictions on the rights of those workers who are unionized and who are working hard to live the American dream.

All over this country and of course right here in the Capitol, we are witnessing a sustained campaign against American workers, and the unions who represent them. These campaigns are aimed at silencing the voices of unions and giving more power to the big corporations over things like reasonable wages and benefits and safe working conditions.

In state after state, conservatives are pushing “right to work” legislation which they claim will create jobs if corporations don’t have to work with union employees. The reality is that “right to work” laws only result in lower wages for workers, lower living standards for working people and have a net negative economic impact on the states that have passed these laws. Worst of all, these laws

don't boost employment growth, they harm it—and all for the purpose of silencing unions which protect workers.

The parallels are the same with the issue we are looking at today. In 2010, a conservative Supreme Court gave corporations a windfall of power, by permitting them unprecedented freedom to use their corporate profits to influence federal elections. Corporations can use shareholder investments for political purposes whether or not the shareholder dissents from the corporation's position. Unions are not on the same footing. Unions cannot use member dues for political activity and, union workers are free to opt-out of funding union political activity if they wish. Again this is a clear demonstration of the posturing to increase corporations' powers over American workers.

Whether or not union members must make political contributions via their union dues is not a new question. The answer has been affirmative for years—they do not. There are ample federal laws that protect workers against their dues being used for political activity and there is no evidence that unions are engaged in concerted action to skirt these law. The impetus for this hearing is not to protect union workers. It is simply is another exercise in the well coordinated strategy by conservatives to destroy unions and the voices of American workers.

Mr. Chairman, I yield back.