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## FIDUCIARY DUTIES AND UNION POLITICAL EXPENDITURES—*McNAMARA V. JOHNSTON*

Traditionally, union members who objected to political contributions made by their labor union could seek either civil<sup>1</sup> or criminal<sup>2</sup> remedies

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1. For examples of private remedies which have been litigated in the past, see *Brotherhood of Ry. & S.S. Clerks v. Allen*, 373 U.S. 113 (1963), and *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961) (enforcement of union shop agreement violates members' First and Fifth Amendment rights where dues paid as a condition of employment are used for political contributions); *Reid v. McDonnell Douglas Corp.*, 443 F.2d 408 (10th Cir. 1971) (political contributions under agency shop agreement may be breach of duty of fair representation); *Seay v. McDonnell Douglas Corp.*, 427 F.2d 996 (9th Cir. 1970) (breach of duty of fair representation possible where agency shop agreement implies money will be used for collective bargaining and not for political contributions).

2. 18 U.S.C. §610 (1970). The Corrupt Practices Act provides:

It is unlawful for any national bank or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. . . .

For purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The following provision of the Federal Election Campaign Act of 1971, Pub. L. No. 92-225, tit. II, §205, 86 Stat. 10, was subsequently added:

As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: Provided, That it shall be unlawful for such a fund to

at law. Generally, however, judicial decisions<sup>3</sup> and amendments<sup>4</sup> limited the effectiveness of the criminal remedy. As a result, union members increasingly began to resort to private remedies.

In *McNamara v. Johnston*<sup>5</sup> members of Local 558 of the United Auto Workers (UAW) unsuccessfully sought a private remedy under section 501 of the Labor Management Reporting and Disclosure Act (LMRDA).<sup>6</sup>

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make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

3. In order to avoid the freedom of speech and association problems of the unamended Corrupt Practices Act, the courts interpreted the act narrowly. *See, e.g.,* United States v. CIO, 335 U.S. 106 (1948) (union endorsement of political candidate published at the expense of union is not a prohibited expenditure); United States v. Construction & General Laborers Local 264, 101 F. Supp. 869 (W.D. Mo. 1951) (use of union funds to pay campaign workers and repair campaign trailer not prohibited); United States v. Painters Local 481, 79 F. Supp. 516 (D. Conn. 1948) (political advertisements paid for by union are outside scope of Corrupt Practices Act). *But see* United States v. CIO, 335 U.S. 106, 129 (1948) (Rutledge, J., concurring) (criticizing the Court's narrow interpretation of the Corrupt Practices Act). *See generally* Comment, *Of Politics, Pipefitters, and Section 610: Union Political Contributions in Modern Context*, 51 TEXAS L. REV. 936 (1973).

4. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, tit. II, §205, 86 Stat. 10, amending 18 U.S.C. §610 (1970).

5. 522 F.2d 1157 (7th Cir. 1975), *cert. denied*, 96 S.Ct. 1506 (1976).

6. 29 U.S.C. §501(a) (1970) provides:

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

29 U.S.C. §501(b) (1970) provides in part:

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable

The plaintiffs, under a union shop agreement, were required to pay dues through their local to the UAW Community Action Program (CAP).<sup>7</sup> In May 1969, by a majority vote, Local 558 passed a resolution denying UAW and CAP officials the right to use their dues to support certain political causes.<sup>8</sup> The officials received notice of the resolution but continued to make the contributions.

Plaintiffs brought suit in federal court alleging that union officials breached their fiduciary duty under section 501(a) of the LMRDA<sup>9</sup> by failing to hold union funds for the benefit of the organization, continuing to make expenditures in violation of the Local's resolution, and making political contributions in violation of section 610 of the Corrupt Practices Act.<sup>10</sup> Further, the plaintiffs maintained that the authorizations of political expenditures in the union constitution were void as against public policy because they authorized violations of the Corrupt Practices Act.

The court held that there is no remedy under section 501 for breach

time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any state court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. . . .

7. CAP is an organization established by the UAW twenty-first constitutional convention to "engage in community, civic, welfare, educational, environmental, cultural, citizenship-legislative, consumer protection, community services and other activities designed to improve the economic and social conditions of UAW members and their families and to promote the general welfare and democratic way of life for all people.

Letter from International President, Walter Reuther, to all local unions on May 19, 1969, cited in *McNamara v. Johnston*, 522 F.2d 1157, 1159 n.1 (7th Cir. 1975).

8. Resolution—the membership of UAW Local 558, party to a union shop, deny use of all or part of their dues money in support of any political candidate, political organization, state or federal legislation, any organization or group engaged in violence, the illegal seizure or destruction of property, engaged in social disorder, promoting racial agitation, and any organization or group that preaches, promotes or identifies with Marxist or communist ideology. Furthermore, this membership does not authorize any person, organization or group to act as spokesman for UAW Local 558 on any political endorsement, legislative endorsement, social problem or movement of any kind unless or until the membership has clearly made such an endorsement by voting 68% in support by secret ballot using the dues check-off lists to verify voter's eligibility.

Some of the organizations which received political contributions from the UAW were: National Students Association, Students for a Democratic Society, Students Non-Violent Coordinating Committee, New Mobilization for Peace and Turn Toward Peace. *McNamara v. Johnston*, 522 F.2d 1157, 1159 n.2 (7th Cir. 1975).

9. 29 U.S.C. §501(a) (1970).

10. 18 U.S.C. §610 (1970).

of fiduciary duty where the political expenditure of union funds is authorized by the union's constitution.<sup>11</sup> Furthermore, the public policy of section 501(a) does not prohibit authorized<sup>12</sup> political contributions.<sup>13</sup> Therefore, the court held that it could not consider the issue of injunctive relief under section 501 of the LMRDA for future violations of the Corrupt Practices Act section 610.<sup>14</sup> The court went on to say that it lacks jurisdiction in cases alleging section 610 violations. Primary jurisdiction rests with the Federal Election Commission.<sup>15</sup>

This Note will analyze the court's interpretation of section 501 in *McNamara*. It also will discuss possible alternative remedies available

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11. The UAW's constitutional authorization prevails over the Local's resolution.

12. Had the political expenditures been unauthorized, there would have been a breach of the fiduciary duty to "manage, invest, and expend the (union funds) in accordance with (the union's) constitution, bylaws and . . . resolutions. . . ." 29 U.S.C. §501(a) (1970).

13. Citing the RESTATEMENT (SECOND) OF AGENCY §359A, §19, Comment a, §24, Comment g, §411, Comment e, and §412(2) (1957), the court also held that defendant union officials as agents cannot be held liable to the principal for unlawful conduct as long as the principal authorized that conduct. 522 F.2d at 1165-66. But in the case of labor unions, there are other circumstances to consider. The agent-union officials are in a better position to know the legality of their conduct than are the rank and file members. They also may be in such a powerful position that they can control the voting on union bylaws and constitutional amendments. If the court's holding is followed, it would be possible for union leaders to have their bylaws passed and be totally insulated from civil liability to the union rank and file if the leaders' acts turn out to be unlawful.

14. *Cort v. Ash*, 422 U.S. 66 (1975), held that the Federal Election Commission has primary jurisdiction in section 610 suits. *McNamara* went further than *Cort* on the issue of jurisdiction. *McNamara* held that primary jurisdiction extends to suits for injunctions alleging violations of section 610 which are brought under other statutes, such as section 501 of the LMRDA, 29 U.S.C. §501 (1970).

15. While *McNamara* was pending, the 1974 Federal Election Campaign Act Amendments were enacted into law. The Federal Election Commission was established, 2 U.S.C. §437c(a)(1) (Supp. V 1975) and was given "primary jurisdiction with respect to the civil enforcement," 2 U.S.C. §437c(b) (Supp. V 1975), of the Corrupt Practices Act. Therefore, the federal court could no longer deal with civil suits alleging violations of section 610. The only way a union member could enjoin political expenditures which violated the Corrupt Practices Act would be to follow the administrative procedure of the Federal Election Commission.

However, in *Buckley v. Valeo*, 424 U.S. 1 (1976), decided just a few months after *McNamara*, the Supreme Court held that the Federal Election Commission could not validly exercise the powers granted to it. These powers, granted under 2 U.S.C. §437c(b) (Supp. V 1975), could only be exercised by "Officers of the United States" appointed in accordance with article II, section 2, clause 2 of the Constitution.

Although the *Buckley* decision found the 1974 Federal Election Campaign Act unconstitutional and took jurisdiction away from the Federal Election Commission, the law was amended this year, Pub. L. No. 94-283, 90 Stat. 475 (May 11, 1976), giving the Federal Election Commission primary jurisdiction once again. Thus, civil suits alleging violations of section 610 may not be brought in federal court.

for protecting the rights of individual union members who disagree with the political causes supported by their union.

#### SECTION 501(a) LMRDA AS A PRIVATE REMEDY

The *McNamara* decision precluded a section 501 remedy on the grounds that the campaign expenditures were authorized<sup>16</sup> by the union's constitution. Such authorization could only be attacked if void as against public policy.<sup>17</sup> The court stated that the legislative history of section 501(a) must be examined to determine "public policy." Examining the legislative history of section 501(a), the court quoted Senator Morse from the Senate debates: "I have been assured that the fiduciary section will not prevent political contributions. I trust the courts will so interpret the language in the bill."<sup>18</sup> Thus, the court concluded "Congress did not intend section 501 to hamper authorized union financial contributions to community and political organizations."<sup>19</sup> This analysis barely scratched the surface of the legislative intent. A better interpretation would be that Congress did not want section 501(a) to be construed as a prohibition of all political expenditures. Legal political contributions were not intended to be prohibited under this section. However, Congress certainly could not have intended to exclude illegal political contributions from the coverage of section 501(a).

The *McNamara* approach to defining public policy solely through the legislative history of section 501 was contrary to an earlier Pennsylvania district court case, *Highway Truck Drivers Local 107 v. Cohen*.<sup>20</sup> That case was decided one year after the LMRDA went into effect and was the first case to interpret section 501(a). There, the court looked to the general purposes section of the LMRDA<sup>21</sup> in determining the relevant

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16. The court distinguished *Anderson v. Vestal*, 79 L.R.R.M. 2755 (M.D. Tenn. 1971), which held that there could be a section 501 remedy for unauthorized political expenditures in violation of the Corrupt Practices Act, section 610.

17. The court summarily denied the plaintiffs' contention that the constitutional provisions were exculpatory clauses rather than authorizations. 29 U.S.C. §501(a) (1970) provides that "a general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

18. *Id.* at 1165, quoting 105 CONG. REC. 17872 (1959) (remarks of Senator Morse). See also 105 CONG. REC. 6526 (1959) (remarks of Senator McClellan).

19. 522 F.2d at 1165.

20. 182 F. Supp. 608 (E.D. Pa. 1960), *aff'd*, 284 F.2d 162 (3d Cir. 1960), *cert. denied*, 365 U.S. 833 (1961).

21. The court indicated that its purview was not limited to the LMRDA. 182 F. Supp. at 617.

public policy. It reasoned that since section 501 defined fiduciary duties in the "broadest terms possible," Congress was giving the courts free rein to develop new case law.<sup>22</sup> Therefore, the court in *Highway Truck Drivers* stated that it could extend its interpretation of the relevant "public policy" of section 501 to include the overall policy of the LMRDA.<sup>23</sup>

Had *McNamara* looked to the "public policy" of the general purposes provision of the LMRDA rather than congressional intent behind only one section, the result would have been very different. One of the national labor policies expressed in the general purposes provision of the LMRDA is the elimination of corruption.<sup>24</sup> That policy is not furthered when union officials are permitted to make campaign contributions in violation of section 610. Such expenditures are not "for the benefit of the organization" under section 501(a).<sup>25</sup> The general purposes section of the LMRDA also provides for the protection of the rights of individual union members.<sup>26</sup> One of these rights would be the right to disagree with union political expenditures where the expenditure is alleged to be not "for the benefit of the organization."<sup>27</sup> The advantage of using this approach is that even in the absence of a section 610 violation, individual union members would have a civil remedy under section 501.

#### ANALYSIS

The *McNamara* decision narrows the scope of section 501.<sup>28</sup> It precludes the use of section 501 as a private remedy for individual union members who disagree with political causes supported by the union and who want to avoid union liability for violations of the Corrupt Practices Act. However, had the court given section 501 a broad interpretation, other substantial difficulties would have resulted.

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22. 182 F. Supp. at 617. The court used by analogy *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) (§301(a) of the Taft-Hartley Act, 29 U.S.C. §185(a) (1964), authorized courts to fashion a new body of substantive federal law derived from policy of national labor laws and state law).

23. In *Highway Truck Drivers Local 107 v. Cohen*, 182 F. Supp. 608, 617 (E.D. Pa. 1960), the court stated in dicta that consideration of public policy extended to the policy of national labor laws. This implies that the court could have gone beyond the policy of the LMRDA.

24. 29 U.S.C. §401(b) (1970).

25. 29 U.S.C. §501(a) (1970).

26. 29 U.S.C. §401(b) (1970). The LMRDA also contains a "Bill of Rights" for union members. 29 U.S.C. §411-15 (1970).

27. 29 U.S.C. §501(a) (1970).

28. For other cases which interpret section 501 narrowly, see *Yanity v. Benware*, 367 F.2d 197 (2d Cir. 1967); *Gurton v. Arons*, 339 F.2d 371 (2d Cir. 1964). But see *Johnson v. Nelson*, 325 F.2d 646 (8th Cir. 1963); and *Sabolsky v. Budzanoski*, 457 F.2d 1245 (3d Cir. 1972) (§501 broadly construed).

Extending the scope of section 501(a) could "open the floodgates" to litigation of internal union disputes. Union members could challenge any expenditure not directly related to collective bargaining and organizing as not "solely for the benefit of the organization and its members."<sup>29</sup> This leaves a wide range of cultural, educational, political and charitable activities that unions typically engage in as potential subjects of litigation. In addition, a wider range of litigable disputes might result in the abuse of courts as a forum for power plays by union factions.

Another consideration is that if section 501(a) is broadened to protect individual union members,<sup>30</sup> the whole concept of the union as a collectivity would be undermined. There is constant tension between individual and union interests. Unionism is based on the precept that individuals will subordinate their separate interests to the interests of the group and ultimately benefit from whatever the union achieves. Members are expected to abide by majority decisions so that the union has the support it needs to bargain with employers. Whenever individual members challenge the majority, as they would under a broad section 501, the ability of the union to function is impaired.

Two section 501(a) standards, that expenditures be made "for the benefit of the organization" and "in accordance with its constitution and bylaws"<sup>31</sup> may be the focal point for individual-union conflicts. Broad constitutional authorizations of political expenditures would allow union officials to make specific expenditures to candidates or organizations which some union members believe are not for the benefit of the organization. There is an argument that where this type of section 501 conflict exists, the wishes of the rank and file should prevail. However, this policy would be burdensome and unduly interfere with the ability of union officials to make day-to-day executive decisions. In addition, Senator Kennedy's statement that "Union officers would not be guilty of breach of trust under this section when their expenditures are [authorized]" indicates that general constitutional authorizations will prevail.

The final impact of a broadened section 501 would be to encourage forum-shopping. By complaining of violations of the fiduciary duty while avoiding any reference to section 610, it would be possible to circumvent the primary jurisdiction of the Federal Election Commission.<sup>32</sup> Thus the plaintiff could open the door to a trial *de novo* in federal court.

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29. 29 U.S.C. §501(a) (1970).

30. See text accompanying note 26 *supra*.

31. 29 U.S.C. §501(a) (1970).

32. See notes 14-15 *supra*.



*McNamara v. Johnston* effectively would eliminate a section 501(a) private remedy for union members who disagree with the authorized political expenditures of the union. If this decision is followed, union members will be left with two alternatives:<sup>33</sup> rebate procedures within the union and a private action for damages under section 610.

Rebate procedures were instituted by labor unions to satisfy the standards developed by case law and amendments to section 610.<sup>34</sup> In *McNamara*, the court deemed it significant that the UAW had a rebate procedure. They stated that the rebate procedure was an adequate remedy for protection of union dissidents' interests.<sup>35</sup> However, there are major problems with the rebate systems which render them inadequate for protecting the rights of union dissenters. Individuals who do not agree with the way their money is spent may not take the time and trouble to request a rebate. The individual union member may be burdened unduly in keeping himself informed of the union's political activities and in giving notice of his dissent in the proper instance.<sup>36</sup> In addition, there may be an underlying resistance to "making waves." As one commentator stated, "Something more than a patriotic desire to help selected political candidates must have been responsible for so many laborers choosing to donate up to two dollars per work day to a fund whose use lay in the sole discretion of others. . . ."<sup>37</sup> A rebate procedure requires the dissenter to notify his superiors of his dissent. This alone is enough to dissuade the individual union member from protesting. However, when coupled with the broad role of the union in the lives of its members, the union member is not likely to voice opposi-

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33. Union members may also complain to the Federal Election Commission of possible criminal violations of section 610. However, section 610 has been ineffective in the past. See note 3 *supra*. Also, a criminal suit will not help the union members who want returned that portion of their dues used for the political contribution.

34. The rebate systems were designed to comply with the requirement that money used for political contributions be obtained voluntarily. See, e.g., *United States v. UAW*, 352 U.S. 567 (1957); *Pipefitters Local 562 v. United States*, 407 U.S. 385 (1972). See also Federal Election Campaign Act of 1971, Pub. L. No. 92-225, tit. II, §205, 86 Stat. 10, which added the last paragraph to section 610, incorporating the standards previously used in the case law to interpret section 610. See note 2 *supra*. But see *United States v. Lewis Food Co.*, 336 F.2d 710 (9th Cir. 1966) (despite voluntary consent by corporate shareholders, political contributions violated section 610).

Courts have suggested that as long as there is a rebate procedure, the voluntariness requirement is satisfied. *Brotherhood of Ry. & S.S. Clerks v. Allen*, 373 U.S. 113 (1963); *International Ass'n of Machinists v. Street*, 367 U.S. 740 (1961); *McNamara v. Johnston*, 522 F.2d 1157 (7th Cir. 1975).

35. 522 F.2d at 1166-67.

36. See Comment, *supra* note 3.

37. *Id.* at 968.

tion to political expenditures on an individual basis.<sup>38</sup>

Even if union dissenters can get a rebate, they are still identified in political terms with the union and the causes which they as individuals oppose. Whether any individual union member contributes money to a political fund or not is immaterial; that member will always be associated with the union as a class. Thus, as long as labor unions are involved in the political process, dissidents will have their views subordinated to those of the majority and section 610 will not protect them. In a situation such as the one in *McNamara*, if the contribution does in fact violate section 610, the union could be criminally liable and each union member, including the dissenters, would have to bear the burden of litigation and of any fine imposed on the union. Even if the dissenters receive rebates, they still have to pay for the contributions indirectly through the extra litigation expenses incurred by the union and passed on to the members.

The second alternative for individuals who disagree with union political expenditures is a civil action for damages under section 610. *Cort v. Ash*<sup>39</sup> involved a shareholders' derivative suit against a corporation. In that case, the Supreme Court held that the Corrupt Practices Act, which is a criminal statute, does not necessarily imply a private remedy of damages.<sup>40</sup> However, in a footnote to the decision, the Supreme Court suggested that in the case of a union, other considerations might warrant a different result:

Congress did show concern, in permanently expanding section 610 to unions, for protecting union members from use of their funds for political purposes. This difference in emphasis may reflect a recognition that, while a stockholder acquires his stock voluntarily and is free to dispose of it, union membership and the payment of union dues is often involuntary because of union security and check-off provisions. It is therefore arguable that the federal interest in the relationship between members and their unions is much greater than the parallel interest in the relationship between stockholders and state-created corporations.<sup>41</sup>

*McNamara* was the first case after *Cort* involving the same criminal statute and a private suit for damages in the union context. The court mentioned the section 610 private action for damages problem,<sup>42</sup> but

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38. See generally Comment, *supra* note 3.

39. 422 U.S. 66 (1975).

40. There is precedent for the implication of civil remedies into criminal statutes. See, e.g., *Wyandotte Transp. Co. v. United States*, 389 U.S. 191 (1967); *J.I. Case Co. v. Borak*, 377 U.S. 426 (1964).

41. 422 U.S. at 81 n.13.

42. 522 F.2d at 1162, 1164-65.

since it was not directly at issue the question was never resolved. In fact, the plaintiff-appellants carefully avoided arguing a private remedy of damages under the Corrupt Practices Act,<sup>43</sup> fearing another *Cort* decision. Instead, they chose to argue a cause of action for damages under section 501 LMRDA for breach of the fiduciary duty by violating section 610. Thus, the question of whether there is a private action for damages under section 610 in the union context is left unresolved.

In *Cort*, four factors are listed as being relevant to the determination of whether a civil action for damages may be brought under a criminal statute such as the Corrupt Practices Act:

1. Do the plaintiffs belong to a class for whose benefit the statute was passed?
2. Is there legislative intent to create a private remedy?
3. Would it be consistent with the legislative purpose of the act?
4. Is it an area that is traditionally a question of state law where a federal cause of action would be inappropriate?"

The presence of any or all of these factors may be sufficient to find a civil cause of action.<sup>45</sup>

In the case of labor unions, the plaintiff union members may in fact belong to a class for whose benefit the statute was passed.<sup>46</sup> "The permanent expansion of section 610 to include labor unions are part of comprehensive labor legislation, the Taft-Hartley Act of 1947."<sup>47</sup> Part of the policy of the Taft-Hartley Act (LMRA), as stated in section 1, is "to protect the rights of individual employees in their relations with labor organizations."<sup>48</sup> The LMRA was to be the bill of rights for the worker,<sup>49</sup> therefore section 610 meets the first requirement.

While there is no indication in the legislative history of the Taft-Hartley Act that Congress intended to create a private remedy of damages when the coverage of the Corrupt Practices Act was extended to include labor unions, there is also no indication that Congress specifically rejected it. A private remedy would be consistent with the legisla-

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43. *Id.* at 1165 n.8.

44. 422 U.S. at 78.

45. *See id.* at 80.

46. *Id.* at 81 n.13.

47. *Id.*

48. 29 U.S.C. §141(b) (1970).

49. The purpose of the LMRA was ". . . to protect the rights of individual workers in their relations with labor organizations . . . . The bill was written as a bill of rights for the laboring man; to protect him from . . . encroachments on his individual rights. . . ." 93 CONG. REC. 3412 (1947) (remarks of Congressman Allen); *See also* 93 CONG. REC. 3513 (1947) (remarks of Congressman Kennedy); 93 CONG. REC. 3519 (1947) (remarks of Congressman Kersten).

tive purpose of the Corrupt Practices Act, section 610. One way of protecting the rights of union members<sup>50</sup> is to allow a civil action for damages when those rights are violated. In *McNamara* those rights were violated by using union dues for political contributions. It would be appropriate for the individual union members to vindicate their rights by getting back the amount of the contributions in the form of civil damages. Thus, the third factor favors a private remedy for violations of section 610. The last factor falls squarely in favor of a federal cause of action. Labor law<sup>51</sup> and control of federal elections are more appropriately federal causes of action than questions of state law.

For these reasons, a private action for damages for violating section 610 could be implied in the union context given the proper case. *McNamara* could have been the test case had the plaintiffs chosen to use the section 610 private remedy theory. However, due to the judicial practice in the past of interpreting section 610 narrowly, the success of a section 610 private remedy of damages is highly doubtful.<sup>52</sup> In addition, a civil remedy under section 610 assumes a violation of the statute. It would not help those who disagree with the union's legal political contributions.

With the foreclosure of section 501 as a remedy after *McNamara*, the right of individual union members to dissent from authorized union political contributions is impaired. The alternatives left after *McNamara* are unsatisfactory. Rebate procedures within the union are burdensome to the members. They do not allow the members to stop the union from making political expenditures which may be illegal. The section 610 criminal remedy is only available to stop illegal contributions. It does not help the member who disagrees with a legal expenditure or who wants a refund of union dues. The latter problem would be alleviated if, in the future, the Federal Election Commission would hold that there is a private remedy of damages for section 610 violations. For the present, however, the individual union member's right to disagree with union political expenditures will continue to be sacrificed to the interests of the union.

*Karen Berkowitz Brenner*

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50. See text accompanying notes 48-49 *supra*.

51. Labor law is one of the areas where there is a federal common law. See *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 457 (1957).

52. See cases discussed in note 3 *supra*. See also Comment, *supra* note 3.