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CONSTITUTIONAL LAW--STATUTORY INTERPRETATION UNDER LABOR-MANAGEMENT RELATIONS ACT--PROHIBITION OF UNION POLITICAL EXPENDITURES

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CONSTITUTIONAL LAW — STATUTORY INTERPRETATION UNDER LABOR-MANAGEMENT RELATIONS ACT—PROHIBITION OF UNION POLITICAL EXPENDITURES—The C.I.O., with the consent of its president, Philip Murray, made expenditures from the funds of the organization for the publication of an editorial in the "C.I.O. News," a regularly issued periodical, urging the members of the C.I.O. to vote for a particular candidate in a special Congressional election in Maryland. Additional funds were expended for the publication and transporta-

tion of one thousand extra copies. Both the C.I.O. and Mr. Murray were charged with violation of section 304 of the Labor-Management Relations Act[1] in the district court. Defendants moved to dismiss the indictment, alleging that the statute abridged rights guaranteed by the First Amendment and that it was too indefinite to satisfy the requirements of the Fifth and Sixth Amendments. The district court sustained the motion to dismiss on the ground that the statute was, on its face, an unconstitutional abridgement of freedom of speech, press, and assembly.[2] On direct appeal to the United States Supreme Court, *held*, affirmed. Four justices, concurring in an opinion by Justice Reed, believed that the publication did not violate the statute. Justice Frankfurter concurred, believing that, although the parties had failed properly to argue constructions of the statute which would avoid the question of constitutionality, such an interpretation should be made. In an opinion written by Justice Rutledge, four justices concurred in the result but declared that the statute was an unjustified invasion of the rights guaranteed by the First Amendment. *United States v. C.I.O.*, (U.S. 1948) 68 S.Ct. 1349.

Section 304 represents an extension of the Congressional policy to insure the purity of elections, beginning with the Corrupt Practices Act of 1907[3] which prohibited "money contributions" in connection with a federal election. The 1925 Act changed "money contributions" to "contributions,"[4] and in 1943, labor unions were included within the scope of the act for the duration of the war.[5] Section 304 of the L.M.R.A. amended the 1925 Act to include federal primaries, conventions and caucuses, and the application of the provisions to labor unions was made permanent. The interdict against "contributions" was extended to embrace "expenditures," since the previous ban on union "contributions" had been easily circumvented.[6] The term "expenditure" seems to be all inclusive on its face, but the legislative debates indicate that it is to be restricted to expenditures made from general union funds, as contrasted with revenue derived from subscriptions or sales of union newspapers or voluntary contributions by union members for political purposes.[7] Justice Reed, after considering the Congressional debates, first appeared to reach his conclusion by narrowly reading the indictment so that

[1] 61 Stat. L. 159, § 304 (1947), 2 U.S.C. (Supp. 1947) § 251. "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential or Vice Presidential electors or a Senator or Representative in, or 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. . . ."

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

[3] 34 Stat. L. 864 (1907), 2 U.S.C. (1946) § 251.

[4] 43 Stat. L. 1070 (1925), 2 U.S.C. (1946) § 241.

[5] 57 Stat. L. 167, § 9 (1943), 2 U.S.C. (1946) § 251.

[6] Unions had employed direct political action instead of contributing funds to candidates or political parties, and the activities of the C.I.O.-P.A.C. were not covered by the statute, since that organization was not considered to be a labor union.

[7] 93 CONG. REC. 6436-6440 (1947); 57 YALE L.J. 810 (1948).

no expenditure from the general union funds was charged. He also was unable to find that the indictment charged that free copies were distributed pursuant to Mr. Murray's direction.[8] This finding is considerably weakened when Justice Reed later observed in the opinion that the prohibition of a union or corporate periodical published in regular course[9] could not be attributed to Congress, for such a prohibition would raise the gravest doubts of its constitutionality; thus it would seem that his construction of the indictment was made to avoid the constitutional issue. Justice Rutledge, however, had little difficulty holding that a violation of the statute was charged. He concluded that section 304 was unconstitutional because the restrictions on the freedoms of speech, press and assembly, brought about by the prohibition of union expenditures, were not justified by the protection allegedly afforded the electoral process, and that in fact the purity of the electoral process suffered by the prohibition of expenditures through restriction of free public discussion. He reasoned that unions can act effectively today only by spending money; that the protection given by the statute to minority union members, against use of funds for purposes which they oppose, denies the principle of majority rule;[10] that there is no presumption of validity of statutes which invade the freedoms of the First Amendment;[11] and that the statute was not narrowly drawn to combat the evils that Congress intended to regulate.[12] It would appear that the source of the funds expended should determine whether there is a violation of section 304. Nowhere is the scope of the statute defined according to whether the publication is in regular course or in casual or occasional distribution, or whether distribution is limited substantially to those entitled to receive the publication, the test adopted in the Reed opinion. The result of the Court's decision is to leave the statute with little or no practical application, because any attempt to apply it would raise grave doubts as to its constitutionality.

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[8] But see 16 U.S. LAW WEEK 3328 (1948), where statements by government counsel indicate that these findings are questionable.

[9] See United States v. Painters Local No. 481, (D.C. Conn. 1948) 79 F. Supp. 516, where a violation of § 304 was found in expenditure of union funds for a radio broadcast and an advertisement in a commercial newspaper, advocating the defeat of certain candidates for federal office. The principal case was distinguished as being concerned with union expenditures incident to publishing and distributing an issue of a weekly union periodical to those regularly entitled to receive the same.

[10] See DeMille v. American Federation of Radio Artists, 31 Cal. (2d) 137, 187 P. (2d) 769 (1947), cert. den., 333 U.S. 876, 68 S.Ct. 906 (1948), where it was held that compulsory assessment by a labor union of its members to oppose an initiative measure on the ballot in a state election did not infringe the member's freedom of speech, press, and assembly, though the member personally favored the proposed initiative law.

[11] Thomas v. Collins, 323 U.S. 516 at 530, 65 S.Ct. 315 (1945); United States v. Carolene Products Co., 304 U.S. 144 at 152, note 4, 58 S.Ct. 778 (1938). See, generally, 40 COL. L. REV. 531 (1940).

[12] Lovell v. Griffin, 303 U.S. 444 at 451, 58 S.Ct. 666 (1938); Winters v. New York, 333 U.S. 507 at 509, 68 S.Ct. 665 (1948); Saia v. New York, 334 U.S. 558 at 560, 68 S.Ct. 1148 (1948), noted in 47 MICH. L. REV. 111 (1948).