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## Participation of Labor Unions in Political Campaigns

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## RECENT CASES

## PARTICIPATION OF LABOR UNIONS IN POLITICAL CAMPAIGNS

The president of the Massachusetts State Federation of Labor and others brought action for mandamus to prevent the submission to popular vote of a proposed law which would include a "labor union or any person acting in behalf thereof" with corporations and other persons who were forbidden by statute to "give, pay, expend or contribute, any money or other valuable thing in order to aid, promote or antagonize the interests of any political party or to influence or affect the vote on any question submitted to the voters."<sup>1</sup> Mandamus was sought on the ground that the proposed law related to matters which were not to be the subject of an initiative petition—*viz.* any proposition inconsistent with the rights of the individual to freedom of press, speech, elections and the right of peaceable assembly.<sup>2</sup> Held, that the political activities of labor unions would be substantially destroyed and the rights of freedom of press and of peaceable assembly would be crippled by the proposed law, so that it cannot be subject to legislation by popular initiative. *Bowe v. Secretary of the Commonwealth*, 69 N.E. (2d) 115, 167 A. L. R. 1447 (Mass. 1946).

Although the court says it renders no decision as to constitutionality of the proposed law under either the United States Constitution or the Massachusetts Constitution,<sup>3</sup> the reasoning is applicable to such a decision. As such it raises conjecture as to the rights of labor unions to political discussion and to express their views regarding candidates for government office, as opposed to the power of the legislatures and Congress to prevent elections from being unduly propagandized. This is particularly interesting at the present time as the Labor Management Relations Act, 1947, section 304<sup>4</sup> contains a provision similar to the proposed Massachusetts Statute.

Decisions of the Supreme Court of the United States show a strong tendency to protect freedom of expression,<sup>5</sup> including free political discussion<sup>6</sup> regardless

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1. Gen. Laws, of Mass., Tercentenary Ed. (1932), c. 55, sec. 7. Redrafted, Mass. Laws 1943, c. 273, sec. 1.
  2. "No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly." Mass. Const. Amend. XLVIII, The Initiative II, sec. 2.
  3. "All elections ought to be free . . .", Mass. Const. Art. IX; "The liberty of the press is essential to the security of freedom in a state; it ought not, therefore, to be restrained in this commonwealth." Art. XVI; "The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good . . .", Art. XIX.
  4. "Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition (title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows: 'Sec. 313. It is unlawful for . . . 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 \* \* \*'."
  5. *Thomas v. Collins*, 323 U. S. 516, 65 Sup. Ct. 315, 89 L. Ed. 430 (1945); *Bridges v. California*, 314 U. S. 252, 62 Sup. Ct. 190, 86 L. Ed. 192, 159 A. L. R. 1346 (1941); *Thornhill v. Alabama*, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093 (1940); *Schneider v. New Jersey*, 308 U. S. 147, 60 Sup. Ct. 146, 84 L. Ed. 155 (1939); *Hague v. CIO*,

of the auspices under which the discussion is held.<sup>7</sup> The modern rule seems to be that only in cases in which there is shown a "clear and present danger" to the government is there justification for the abridging of freedom of speech, press or assembly.<sup>8</sup> That labor unions, as associations of individuals, are not excluded from those with a right of freedom of expression is now well determined.<sup>9</sup>

Because of the necessity of regulating elections and election practices, corrupt practice legislation has often been upheld.<sup>10</sup> These laws have generally confined themselves to regulating some or all of the following: giving and receiving bribes, paying for the conveyance of the voter to the polls, purchasing editorial support, contributing by corporations, expending funds by candidates and committees soliciting funds, limiting expenditures and filing reports of expenditures.<sup>11</sup> The legislation is designed to guard the elections and elective officers from corruption and the electorate from intimidation and undue influence.<sup>12</sup> In so far as it operates as a restriction upon freedom of expression, it is generally limited to the candidates, political committees and parties, corporations, and, in recent legislation, labor unions. These persons or organizations because of their important and close relation to elections or because of their ability to employ immense sums for propa-

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307 U. S. 496, 59 Sup. Ct. 954, 83 L. Ed. 1423 (1939); *Lovell v. City of Griffin*, 303 U. S. 444, 58 Sup. Ct. 666, 82 L. Ed. 949 (1938); *Herndon v. Lowry*, 301 U. S. 242, 57 Sup. Ct. 732, 81 L. Ed. 1066 (1937); *DeJonge v. Oregon*, 299 U. S. 353, 57 Sup. Ct. 255, 81 L. Ed. 278 (1937); *Grosjean v. American Press Co.*, 297 U. S. 233, 56 Sup. Ct. 444, 80 L. Ed. 660 (1936); *Schenck v. United States*, 249 U. S. 47, 39 Sup. Ct. 247, 63 L. Ed. 470 (1918).

6. The court upheld the right to explain to workmen the purposes of the National Labor Relations Act and the aid to be furnished by the CIO in deriving benefits from it. *Hague v. CIO*, cited supra note 5. The freedom of a speaker at a meeting held under the auspices of the communist party to discuss public issues was upheld. *DeJonge v. Oregon*, cited supra note 5. The court declared invalid a statute prohibiting the display of a flag as a sign, symbol or emblem of opposition to organized government. *Stromberg v. People of California*, 283 U. S. 359, 369, 51 Sup. Ct. 532, 75 L. Ed. 1117 (1930). The California court held invalid a requirement that applicants sign an affidavit as to their convictions and affiliations before being permitted to speak in a school building. *Danskin v. San Diego*, 28 Cal. (2d) 536, 171 P. (2d) 885 (1946).
7. *DeJonge v. Oregon*, cited supra note 5.
8. *Thomas v. Collins*, cited supra note 5; *Bridges v. California*, cited supra note 5; *Schenck v. United States*, cited supra note 5; *Danskin v. San Diego*, cited supra note 6; accord, *Thornhill v. Alabama*, cited supra note 5; *Herndon v. Lowry*, cited supra note 5.
9. Labor unions have a right to publicize the facts of a labor dispute. *A. F. of L. v. Swing*, 312 U. S. 321, 61 Sup. Ct. 568, 85 L. Ed. 855 (1940); *Thornhill v. Alabama*, cited supra note 5; *Senn v. Tile Layers Protective Union*, 301 U. S. 468, 478, 57 Sup. Ct. 857, 81 L. Ed. 1229 (1937). The union has a right to explain the purposes of the National Labor Relations Act and the aid to be furnished by the CIO in deriving benefits from it. *Hague v. CIO*, cited supra note 5. It is an unconstitutional denial of freedom of speech and assembly to make incorporation a prerequisite to the right to picket and assemble. *A. F. of L. v. Reilly*, 113 Colo. 90, 155 P. (2d) 145 (1944).
10. *United States v. Classic*, 313 U. S. 299, 61 Sup. Ct. 1031, 85 L. Ed. 1368 (1940); *Burroughs v. United States*, 290 U. S. 534, 54 Sup. Ct. 287, 78 L. Ed. 484 (1933); *Ex parte Yarbrough*, 110 U. S. 651, 4 Sup. Ct. 152, 28 L. Ed. 274 (1883); *Ex parte Siebold*, 100 U. S. 371, 25 L. Ed. 717 (1879); *United States v. United States Brewer's Assoc.*, 239 Fed. 163 (W. D. Pa. 1916); *United States v. Foote*, 42 F. Supp. 717 (D. Del. 1942); *Ex parte Hawthorne*, 116 Fla. 608, 156 So. 619 (1934); *Smith v. Higinbotham*, 48 A. (2d) 754 (Md. 1946); *State v. Regan*, 113 Mont. 343, 126 P. (2d) 818 (1942); *State v. Kohler*, 200 Wisc. 518, 228 N.W. 895, 69 A. L. R. 348 (1930).
11. *Sikes, Earl R., State and Federal Corrupt Practices Legislation*, Appendix, pp. 257-291.
12. *United States v. Classic*, cited supra note 10; *Burroughs v. United States*, cited supra note 10; *Ex parte Yarbrough*, cited supra note 10; *United States v. United States Brewer's Assoc.*, cited supra note 10; *Ex parte Hawthorne*, cited supra note 10; *Smith v. Higinbotham*, cited supra note 10.

ganda,<sup>13</sup> or otherwise influence elections, are particularly subject to the power of legislative bodies to regulate for the purpose of preserving the purity of elections.<sup>14</sup> The laws, although necessarily restricting to some extent the freedom of expression, are distinguished from the free speech cases in that they are said to be "regulatory rather than prohibitory" in nature.<sup>15</sup> Where the individual has sought to test the constitutionality upon grounds of an abridgment of freedom of expression, the test seems to have been whether there was a prohibition which prevented the person or organization from getting an effective message to the electorate.<sup>16</sup> Although the labor union is not so directly concerned with the elections as are the candidates and political parties, so that it is not directly within the field of regulation, it is susceptible to some control because of its ability to exert such a potent influence.<sup>17</sup> This control is applicable to it as an association of individuals and not to the individual members of the union since regulation of unions is

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13. The concerted use of money is one of the most effective ways of corrupting and debauching an election and influencing the voters. *Ex parte Yarbrough*, cited supra note 10; *United States v. United States Brewer's Assoc.*, cited supra note 10; accord, *Bowe v. Secretary of the Commonwealth*, 69 N.E. (2d) 115, 167 A. L. R. 1447 (Mass. 1946); see *United States v. Foote*, cited supra note 10; *James v. Bowman*, 190 U. S. 127, 142, 23 Sup. Ct. 678, 681, 47 L. Ed. 979 (1902).
  14. The power of Congress is derived from the Constitution. "The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators." U. S. Const. Art. I, sec. 4, cl. 1. "and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers \* \* \*." Art. I, sec. 8, cl. 18. *United States v. Classic*, cited supra note 10; *Burroughs v. United States*, cited supra note 10; *Ex parte Yarbrough*, cited supra note 10; *Ex parte Siebold*, cited supra note 10; *United States v. United States Brewer's Assoc.*, cited supra note 10; *United States v. Foote*, cited supra note 10.  
Some state constitutions give more specific grants of power. See for example: Wyo. Const. Art. VI, sec. 13, "The legislature shall pass laws to secure the purity of elections, and guard against abuses of the elective franchise." See also, *Ariz. Const. Art. VII, sec. 12*; *Calif. Const. Art. XX, sec. 11*; *Colo. Const. Art. VII, sec. 11*; *Del. Const. Art. V, sec. 1*; *N. Mex. Const. Art. VII, sec. 1*; *Ore. Const. Art. II, sec. 8*.
  15. *United States v. United States Brewer's Assoc.*, cited supra note 10; *Ex parte Hawthorne*, cited supra note 10; *Adams v. Lansdon*, 18 Ida. 483, 110 Pac. 280 (1910); *A. F. of L. v. Mann*, 188 S.W. (2d) 276, 282 (Tex. Civ. App. 1945); see *Danskin v. San Diego*, cited supra note 6.
  16. An act which resulted "in such such limited restraint of the activities of candidates for public office, and of their advocates, as may be deemed by the legislature to be necessary to promote fair play on the candidate's part, as well as to prevent the electorate from being unduly influenced by prejudicial matters \* \* \*" was constitutional. *Ex parte Hawthorne*, cited supra note 10. The Idaho court refused to declare unconstitutional a law limiting campaign expenditures to 15% of the yearly salary and said that the law did not attempt to prevent a candidate from freely speaking, writing, and publishing his views on all subjects. *Adams v. Lansdon*, cited supra note 15. An act which made it a corrupt practice to offer, if elected, to serve at less salary than that fixed by law was constitutional in Montana. Nothing in the act prevented a person from discussing his principles during a campaign. *Tipton v. Sands*, 103 Mont. 1, 60 P. (2d) 662 (1936). In Wisconsin an act limiting campaign expenditures to \$4,000 was constitutional. The court went so far as to say that even though the amount was so small as to prevent a proper appeal to the electorate the remedy lay with the legislature for the courts could not determine the reasonableness or unreasonableness of the act of the legislature. *State v. Kohler*, cited supra note 10. On the other hand, an act which prohibited a mere private citizen who was neither candidate nor committeeman from making any expenditures in counties other than his own was unconstitutional. *State v. Pierce*, 163 Wisc. 615, 158 N.W. 696 (1916). An act which prohibited political parties from endorsing or nominating candidates for judicial or educational offices was also unconstitutional. *State v. Junkin*, 85 Nebr. 1, 122 N.W. 473 (1909).
  17. See note 13 supra.

severable from the regulation of the individual.<sup>18</sup> A Texas court, in such a case, refused to apply the clear and present danger test applicable to the restrictions of the *individual* in freedom of expression.<sup>19</sup>

The Texas law restricted itself to a prohibition of contributions and did not include expenditures. As a result it did not prohibit the union from educating or informing its members of the merits or demerits of any candidate or political party. In the instant case, however, the law prohibited expenditures as well as contributions. Although it was acknowledged that the proposal would "tend to increase the freedom of elections by removing the influences upon the voter which the use of money can bring to bear,"<sup>20</sup> it was decided that there was imposed more than a reasonable regulation of elections. Instead, the proposed law amounted to a substantial destruction of the political activities of labor unions. The above cases would seem to be indicative of the boundaries within which the point of unconstitutionality will be found—somewhere between the prohibition of contributions and the proposed law in the instant case. As is the case where the candidate or political party is concerned, this point might be expressed as a prohibition which effectively prevents the union from getting its message to the electorate; however, where the line shall be drawn in the particular application will rest on the court's evaluation of how the freedom of expression will be affected by the specific restriction, the elections, by its absence.

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#### READING FROM RADIO SCRIPT AS LIBEL

In an action based on the defendant reading a defamatory statement concerning plaintiff from a printed script during a radio broadcast, the plaintiff did not allege special damages or that the defamatory remark was slander per se. The defendant appealed an order denying a motion to dismiss, based on an alleged failure to state a cause of action. *Held*, affirmed, reading a defamatory statement from a radio script is libel and thus is actionable without showing special damages. *Hartmann v. Winchell*, 296 N. Y. 296, 73 N.E. (2d) 30 (1947).

A distinction has prevailed throughout the centuries in the law of defamation between the tort of slander as that which is transitory and oral, and libel, as that which is permanent and visible.<sup>1</sup> In the eyes of the law, the importance of this distinction is that libel is actionable per se and no damages need be shown;<sup>2</sup> while slander requires the showing of special damages except in certain narrow cate-

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18. A. F. of L. v. Mann, cited supra note 15; cf. United States v. White, 322 U. S. 694, 64 Sup. Ct. 1248, 88 L. Ed. 1542, 152 A. L. R. 1202 (1944).

19. A. F. of L. v. Mann, cited supra note 15.

20. *Bowe v. Secretary of the Commonwealth*, cited supra note 13.

1. Prosser, Torts 793 (1941); Restatement, Torts sec. 568 (1938); Salmond, *The Law of Torts* 370 (10th ed. 1945).

2. Prosser, Torts 797 (1941); Restatement, Torts sec. 569 (1938); McCormick, *Damages* 422 (1935); Bauer, *Damages* sec. 210 (1919).