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IMPRIMIS

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Government-Granted Coercive Power:

How Big Labor Blocks the Freedom Agenda

Reed E. Larson

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REED E. LARSON has become the nation's leading opponent of laws that require certain workers to pay dues to labor unions involuntarily. A 1947 graduate of Kansas State University and a veteran of the U.S. Army, Mr. Larson has held leadership positions in both the Kansas and U.S. Junior Chambers of Commerce, responsibilities that persuaded him to lead a successful drive for a Right to Work law in his home state. He went on to become executive vice president of the newly formed National Right to Work Committee and, in 1968, founded the National Right to Work Legal Defense Foundation, a nonprofit organization that provides free legal assistance to workers whose rights have been violated by union leaders or organizers. Mr. Larson has been honored with the International Platform Association's James J. Kilpatrick Award and an honorary degree from Campbell University.

Mr. Larson delivered the following remarks at Hillsdale College on September 15, 1999 as a part of the College's Center for Constructive Alternatives seminar, "The Rule of Law and the Permanent Campaign."

Twenty years ago, I could shock a college audience by saying that the National Labor Relations Act (NLRA) tramples, rather than protects, the rights of America's working people. Such an opinion was pure heresy. Fortunately, thanks to the efforts of members of the National Right to Work Committee, the National Right to Work Legal Defense Foundation, and many talented journalists and labor economists, this view is no longer considered shocking, even in the world of academia. But one thing has not changed: The billions of dollars collected through government-authorized compulsory unionism still provide the fuel that drives the liberal political machine. Without the disproportionate political muscle of union officials, gained through government-granted coercive power, all of our battles against the flood tide of tax-and-spend, big-government schemes could be won hands down.

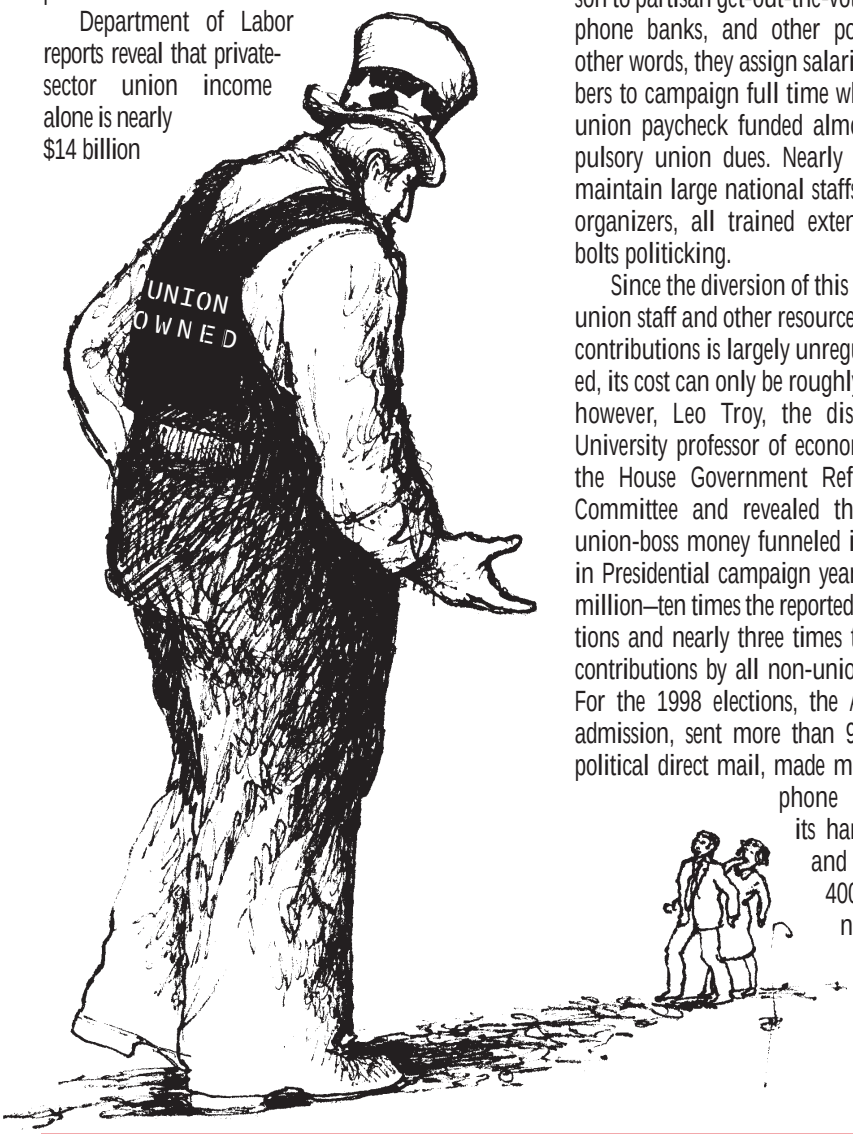
Right to Work proponents are, however, making some progress, both on Capitol Hill and in the court system, in cutting off the flow of forced-dues money with which union officials fund their attacks on our freedom. Support has greatly increased in Congress for the National Right to Work Act, which would repeal provisions in the NLRA and other federal labor laws that empower union bosses to force workers to pay dues or so-called "agency fees" in order to get a job. Just a few short years ago, even getting committee hearings on these proposals, much less securing passage in either chamber of Congress, was not taken seriously by inside-the-Beltway elitists. Now, however, nearly a third of House members are cosponsors, and dozens of other members have pledged to vote for the bill when it comes to the floor. And every year sees the addition of more and more cosponsors in the House and Senate. Congress is now heading, albeit grudgingly, where most citizens

have been for a long time. According to recent polling data, nearly 80 percent of Americans understand that it's just plain wrong to force someone to pay tribute to an unwanted union in order to get or keep a job. But few understand the far-reaching consequences of government-authorized forced unionism. It's an abusive system that affects the lives of every one of us.

Union Bosses Use Forced Dues to Subvert the Political Process

CONGRESS MADE organized labor into a political juggernaut by giving it the power to get workers fired for refusal to pay union dues. That allows union officials to draw in billions of dollars every year, which they use to bend the political system to their will. And elected officials in nearly half of the 50 states have compounded that mistake by extending union bosses' forced-dues privileges to state and local public employment, including most public schools.

Department of Labor reports reveal that private-sector union income alone is nearly $14 billion



per year. And that figure does not include income for such unions as the National Education Association, by far the nation's largest labor union, with annual dues income of well over $1 billion. More than 80 percent of all private-sector union contracts authorize union officials to force each worker to pay dues as a condition of employment. A great deal of attention has been devoted to the decline in private-sector union membership, much of which has occurred during a period in which public-sector union membership figures have been mushrooming. What you don't hear is that while private-sector union membership numbers are going down, total union income has been going up at a rate far exceeding inflation.

Private-sector union staff salaries alone exceed $2.4 billion per year. This $10-million-a-day payroll produces a highly politicized nationwide staff network made up of tens of thousands of full-time and part-time union officers and employees–a veritable political army whose attention turns primarily to politics for weeks, or even months, before each election. Union officials admit to devoting all or most of their staff resources during election season to partisan get-out-the-vote drives, boiler-room phone banks, and other political activities. In other words, they assign salaried union staff members to campaign full time while they still draw a union paycheck funded almost entirely by compulsory union dues. Nearly all national unions maintain large national staffs and armies of field organizers, all trained extensively in nuts-and-bolts politicking.

Since the diversion of this $2.4-billion-per-year union staff and other resources as in-kind political contributions is largely unregulated and unreported, its cost can only be roughly estimated. In 1996, however, Leo Troy, the distinguished Rutgers University professor of economics, testified before the House Government Reform and Oversight Committee and revealed that total unreported union-boss money funneled into federal elections in Presidential campaign years is as high as $500 million–ten times the reported union PAC contributions and nearly three times the reported political contributions by all non-union PACs put together. For the 1998 elections, the AFL-CIO, by its own admission, sent more than 9.5 million pieces of political direct mail, made more than 5.5 million phone calls on behalf of its handpicked candidates, and paid more than 400 full-time "coordinators" to work on behalf of partisan campaigns. All of this was funded with forced-dues money. And this effort by the

parent union was multiplied by those of the AFL-CIO's 84 affiliated national unions.

What are union officials buying with all that money? They are getting more tax-and-spend big government and more regulation of every facet of your life, paid for with your tax dollars. An examination of the AFL-CIO's legislative agenda confirms that union officials are profoundly hostile to the free-enterprise system. They have lobbied for, among other things, broad-based government price and wage fixing, the Clinton health-care scheme, and a panoply of tax increases for businesses and individuals. Gutting the successful wave of state and federal welfare reforms in the mid-'90s has been a top union objective as well. Additionally, union lobbyists are among the strongest backers of the array of business-harassing regulatory schemes that are smothering small businesses across America under mountains of federally imposed paperwork. The union political machine is the number-one reason that Washington, if it acts at all, will pass a tax cut devoid of fairness to American taxpayers or benefit to the economy, but shaped to blunt the furious opposition of the union political machine. The overall tax burden, as a percentage of income, is the highest it has ever been in peacetime. Federal tax receipts have jumped 49 percent since 1992. And it's no coincidence that the growth in government spending has accompanied a continuing expansion of union control over government workers. Today, 43 percent of government workers are subject to union monopoly-bargaining contracts–and many are compelled to pay dues as a condition of employment. Organized labor has a vested interest in seeing the government payroll expand: A larger payroll means more union dues. For the union boss, bigger government not only resonates with his own political instincts, but it means more actual money in his coffers. So bigger government is what we're getting.

The union political machine is also the number-one reason that most state legislatures are unable to implement significant education reforms. Reforms such as vouchers would diminish the number of union-dues-paying public school teachers. Even though overwhelming evidence shows that our under-performing, Big-Labor-controlled public schools are jeopardizing our children's future, teacher-union kingpins funnel millions into political campaigns so that they can maintain the status quo.

To take just one more example, the union political machine is the number-one reason that Washington is likely for the foreseeable future to continue imposing heavy disincentives that hinder Americans from shoring up their private savings for retirement and health care, even though Social Security and Medicare are headed for disaster. Big Labor officials demand that the American taxpayer be forced to pay more and more money into these huge government bureaucracies, which will nonetheless offer lower and lower benefits to future generations of workers. As long as federally imposed compulsory unionism remains in place, it will be extremely difficult, if not impossible, to achieve any substantial change for the better on these issues and many others.

It will come as no surprise to many that economist Friedrich von Hayek, the late Nobel Laureate, recognized the problem decades ago. He declared that unless there is a fundamental change in the policies that promote compulsory unionism, other needed governmental reforms will be eternally stymied. Hayek wrote, "Public policy concerning labor unions has, in little more than a century, moved from one extreme to the other. From a state in which little the unions could do was legal if they were not prohibited altogether, we have now reached a state where they have become uniquely privileged institutions to which the general rules of law do not apply." He was addressing the weakness that then afflicted Conservative politicians in Britain, but it certainly applies in this country today. Our own conservative elected officials often rail against the loss of personal freedoms and the growth of stifling government, but too many avoid facing up to the root problem of illicit union power. They still lack the wisdom or the intestinal fortitude to discern that this is a necessary step for achieving other reforms. Once we concede to union officials the power to cut off a working American's bread, we are conceding the power ultimately to control his or her life, while giving union officials the means by which to dictate public policy.

Congress Fails to Stand Up to Union Officials' Political Muscle

AS I noted above, most Americans, including a majority of union members, express themselves in public-opinion surveys as opposed to compulsory unionism. We have reputable surveys going back more than 50 years showing that solid majorities of Americans support the Right to Work principle, with the figure today reaching nearly 80 percent. But a union-intimidated Congress has, until very recently, refused even to consider legislation that would restore any employee rights. Up to now, it's been

union-boss political clout, not the wishes of the average voter, that has stricken fear into the hearts of too many weak-kneed members of Congress. Until a few years ago, union lobbyists could secure House passage of virtually any measure they could concoct to expand their coercive power over workers. Right to Work supporters often had to rely on a Senate filibuster or, at times, a Presidential veto to stem the tide of expanding union power. Congress showed its willingness to vote for the union hierarchy's legislative agenda on issue after issue, whether it was the so-called "motor voter" bill or government-mandated family leave.

Most of the successes of the Right to Work movement over the past 45 years have been measured in terms of defensive battles to defeat demands by union officials for more government-granted coercive power. These successful efforts have been numerous and often have received little or no help from the nominally pro-Right to Work Washington associations representing American business. Here are just a few of the benchmarks of Right to Work success on the defensive front:

- 1965-66, protecting the right of states to prohibit compulsory unionism, thereby shielding themselves from union coercion embedded in federal law;

- 1970, defeating the Nixon Administration's deal with George Meany to install forced dues in the Post Office, which would have paved the way for compulsory dues throughout the federal government;

- 1975, defeating the so-called common-situs picketing bill that would have returned total control of U.S. construction to the bosses of organized labor;

- 1978, defeating Jimmy Carter's so-called labor-law reform bill, actually designed to herd hundreds of thousands of additional workers into compulsory unionism;

- 1994, defeating the cleverly designed striker-replacement bill, which would have destroyed an employer's ability to resist compulsory unionism for his employees.

Today, 21 states have acted under the authority protected by Section 14(b) of the National Labor Relations Act–just 44 words in federal law–to protect their citizens from compulsory unionism imposed by federal law. These popular state laws have withstood furious repeal attempts by union officials pouring millions of forced-dues dollars into their efforts. These 21 states have, to a large extent, become the engine of prosperity driving the nation's economy. In 1970, just over 25 percent of private-sector employees worked in Right to Work states. By the beginning of this decade, job growth in Right to Work states raised this to nearly 35 percent, and at the turn of the millennium, it is close to 40 percent. People who live and work in Right to Work states have a special appreciation for the freedom those laws protect. The job-creating climate of Right to Work laws has acted as a magnet on the population, and as their share of the national population has increased, these states have become a formidable voting bloc. Section 14(b) and its protection of state Right to Work laws have provided an important limit to the damage done to our country by bad federal labor policy.

But states should not need to pass Right to Work laws to protect themselves from that bad policy. Furthermore, the reach of state Right to Work laws is limited. For example, they cannot protect employees in railroad or airline employment, covered by the Railway Labor Act; employees working on federal enclaves; or employees of the federal government. Neither can Right to Work laws address forced representation, the union's monopoly bargaining privilege.

The National Right to Work Committee's fight against forced unionism is a successful 45-year battle against the impact of bad federal labor policy. We have thwarted union officials in their various attempts to make a bad situation worse. We have mobilized that great universe of Americans who know inherently that it's wrong to fire an individual for refusing to pay dues to any private organization. But the really big job lies ahead. That job is to get at the root of the problem: the federal policy that institutionalizes union coercion. In fact, Robert Bork summarized the problem more than 30 years ago when he was a relatively obscure college professor: "Our labor law, and the ideology that supports and suffuses it, encourages the organization of employees into fighting groups, and lets the wage bargain depend on the outcome of the fight. The rhetoric of union organization and struggle is the rhetoric of war." No one has described it better. Our job now–yours and mine–is to attack that package of federal legal privileges that has crowned union bosses into political kingmakers. Attacking this entrenched status quo is going to be even more difficult than any previous achievement by Right to Work advocates.

We need to understand that existing federal labor policy was not designed to be evenhanded. It is based on the premise that the public interest is best served by collectivizing working people–by forcibly organizing them into unions. As a result, labor law is written to place the power of government on the side of the union organizer and

against the independent citizen. The assumption is that the government must give union organizers whatever coercive powers are necessary to ensure their success in herding employees into collective groups. Even with private-sector unions diminished from their peak *numerical* strength, today under federal law ten million employees are forced to accept a union as their sole bargaining agent, and eight million are forced to pay dues or fees totaling $6 billion a year into the coffers of union bosses. The abuse of this power goes beyond politics: A U.S. Labor Department investigation found that more than 400 labor organizations are associated with, or influenced or controlled by, organized crime.

NLRA Preamble: A Cynical Exercise in Legislative Deception

WHAT I'VE presented so far is a broad outline concerning government-granted union privileges and coercive power. I'd like next to take a closer look at some of the specific provisions of the National Labor Relations Act. To begin, let's examine the high-sounding preamble setting forth the act's supposed dedication to employee freedom and the right to refrain from any or all union activities. This preamble contains what must have been calculated to be some of the most misleading language human beings could assemble. Consider the opening portion of Section 7, titled, "Rights of Employees":

> Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities. . . ."

Now what could be fairer than that? The authors of this legislation wrote this passage with the goal of passing off the entire law as a Magna Carta of rights and freedoms of America's working people. That deception was one of the most successful in our nation's history. The quotation above is followed by 21 words, beginning with the word "except." Employees, the law says, shall have full freedom to enjoy all these rights, including the right to refrain, "except to the extent that such right may be affected by an agreement requiring union membership as a condition of employment. . . ." In other words, everyone has the absolute right to refrain, except when the union says he doesn't! That exception provides what has to be one of the most cynical exercises in legislative deception on record, perpetrated by politicians who piously proclaimed their devotion to civil liberties while callously kicking employee rights in the teeth. Under the NLRA, employees have full freedom of choice, except that they don't have any freedom at all where compulsory unionism is concerned. They will be fired from their jobs if they refuse to support an unwanted union. So much for freedom of choice!

One of the tactical problems we face today is that some of the supposedly "conservative" Republicans who have belatedly signed on to the fight against union abuse steadfastly refuse to attack this vital exception to employee freedom. They want to preserve the language stating that employee freedoms are subordinate to "agreements requiring union membership as a condition of employment." Instead, they are pushing regulatory schemes, often labeled "paycheck protection," designed to use bureaucratic rules to attack the very abuses that grow out of that simple exception. In other words, they want to keep compulsory unionism intact while trusting bureaucrats to regulate its consequences. The National Right to Work Committee is fighting tirelessly for legislation to repeal the handful of NLRA and Railway Labor Act provisions that authorize forced union dues and fees in the first place.

Right to Work Legal Defense Foundation Fights Compulsory Unionism Abuse

ANOTHER FRONT in the fight against forced unionism is in the courts. That battle is led by the Committee's sister organization, the National Right to Work Legal Defense Foundation. Since the formation of the Foundation in 1968, America's beleaguered workers whose rights have been violated by compulsory unionism have had an organization dedicated solely to providing them with free legal assistance. We have put together a top-notch legal staff recognized as the country's leading experts in litigation involving forced unionism. The Foundation is now one of the nation's largest legal-aid organizations and one of the bright spots in the struggle to maintain individual liberty in America. Today, a dozen full-time Foundation staff attorneys are representing tens of thousands of employees in almost 500 cases nationwide.

Although the nation's labor law remains heavily stacked in favor of the union organizer and against employees, the Foundation is making steady progress in the courts, restoring a measure of balance. Perhaps the best-known case fought by the Foundation was that of a telephone lineman named Harry Beck. Harry Beck and his Foundation attorneys labored for 12 years through lower courts and legal red tape to make one request of the U.S. Supreme Court: that his wages not be confiscated by union officials to be spent on political activities with which he disagreed. The High Court's decision in *Communications Workers of America v. Beck* was an important victory for worker freedom. In *Beck*, a 5-3 Court majority vindicated the right of working Americans to refuse to pay forced dues for politics, lobbying, public relations, extra-unit litigation, union organizing, and more. A special master appointed by the trial court found the union could only prove that 21 percent of Harry Beck's dues were used for purposes permitted under its reading of the law. This fact entitled Mr. Beck and his co-plaintiffs to a refund of the remaining 79 percent of the money that union bosses had illegally seized from their paychecks.

Even though the Supreme Court has spoken clearly on this issue, union bosses have instituted an array of schemes and machinations designed to skirt the *Beck* decision. In 1998, the Foundation triumphed again before the U.S. Supreme Court in *Air Line Pilots Association v. Miller*, a case aimed at closing one of the loopholes that unions had attempted to create in *Beck*. Union officials had established phony, union-orchestrated "arbitration" schemes to block the full impact of the *Beck* decision, requiring workers to go through a prohibitively expensive and time-consuming process to challenge the amount of the fees they are forced to pay. The Court ruled that union officials could no longer make such kangaroo-court proceedings a prerequisite to genuine court action.

The Foundation also prevailed last year against another union-boss scheme that demands annual worker objections to the use of their forced dues for politics. In *International Association of Machinists v. Shea*, a unanimous Fifth Circuit Court of Appeals in Texas ruled that union requirements for an annual renewal were "designed . . . only to further the illegitimate interest of the [union]."

Although the Foundation has established a number of important Supreme Court precedents protecting the rights of workers, organized labor's high command uses its political power to evade and defy these rulings to the fullest extent it can. That's why a regulatory, bureaucratic approach–like the enactment of good-sounding but toothless "paycheck protection" laws that have unsuccessfully attempted to solve the problem of forced-dues politicking–is doomed to fail.

The one way to break that power is to strike at its source: the outrageous privilege of forcing workers to pay union dues under threat of losing their jobs, their paychecks, their careers, and their dreams. That's why the Right to Work Committee is working tirelessly to enact a National Right to Work law to deny union officials the power to force any private-sector worker to pay union dues to keep a job. And that's why the Legal Defense Foundation is working toward a Supreme Court ruling that completely throws out compulsory unionism as unconstitutional.

Space will not permit even a cursory review of the range of the Foundation's work, but let me enumerate just a few of our other present and past cases:

- We're helping six union-abused workers from Virginia in a case in which union officials condoned and authorized brutal violence. In addition to the all-too-common window breaking, slashed tires, and death threats, one victim left her house one morning to find a severed, bloody cow's head on the hood of her car. A union militant, testifying on condition of immunity from prosecution, has spoken about union officials' complicity in plans to build a pipe bomb and other tools of violence.

- We're helping a painter in Ohio who was fined more than $32,000 by a local union, merely because he resigned his union membership.

- We defended three young ladies in California who, when they tried to get jobs as waitresses to earn money for college expenses, were told by the union agent they could not get jobs unless they also engaged in the prostitution business he ran on the side. Their harrowing experience was the subject of a *Reader's Digest* story.

- We're helping Florida UPS driver Rod Carter, who was brutally beaten and stabbed by Teamsters' goons for exercising his Right to Work during the nationwide Teamsters' strike in 1997. As Foundation attorneys move toward trial in their racketeering and civil conspiracy suit, they are uncovering more damning evidence that top union officials orchestrated and condoned the bloody attack against Carter, who was left bleeding on the pavement for committing the "crime" of going to work to feed his family.

- We successfully defended two Washington state teachers who were frivolously sued for having the audacity to inform their colleagues how to exercise their Foundation-won rights to refrain from subsidizing union political activities.

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Freedom of Choice Must Be Returned to America's Workers

UNLESS WE deal with this fundamental injustice, all of the valiant efforts to prevent our country from being engulfed in a flood tide of leftist social engineering are destined to fail. The special coercive privileges enjoyed by union officials under federal law have enabled them to amass a degree of political power behind their collectivist schemes that no other special interest comes close to matching. Their power to dictate public policy is out of all proportion to the number of persons whose views they truly represent. Whatever your concern, whether it be taxes, education, health care, the economy, or myriad other issues that need addressing, you can be assured that the propagation of the statist, anti-freedom position is being funded largely with union money, essentially seized at gunpoint from workers.

There is not much about which I and most Big-Labor bosses would concur, but the late AFL-CIO President Lane Kirkland once said this: "I have slowly come to the conviction that we might be better off if we deregulated labor legislation–just simply did away with the NLRB, did away with the Taft-Hartley Act, did away with all of it." In this instance, I couldn't agree with him more.

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