Utah’s Voluntary Contributions Act: Defunding the UEA

Mark E. Oblad

This article seeks to understand Utah’s current legal and political battle with its public employee unions. First, the article introduces the current situation and then provides the historical context of unions, which culminates in attempts in the recent years to apply Beck rights as well as to defund the unions’ political war chests. The article then presents in detail Utah’s efforts to enact paycheck protection legislation, the political situation surrounding those attempts, and the court battles that followed. Victor Brudney’s article in the William & Mary Bill of Rights Journal on volitional advocacy and association is then summarized and applied to Utah’s Voluntary Contributions Act and its Amendments. This article concludes that Utah’s paycheck protection legislation is consistent with the national movement to defund unions who tend to oppose conservative ideas, but has valid measures that would constitute sound policy if enacted in conjunction with commensurate measures for all associations.

INTRODUCTION

In the 2001 General Session, the Utah Legislature passed and Governor Leavitt signed H.B. 179: Voluntary Contributions Act, to restrict public employee unions from using membership dues for political purposes and from collecting political contributions through public payroll systems, which are also used for several other non-political purposes. The public employees’ unions filed suit in state court, and after a year and a half, the judge upheld portions of the legislation and struck other portions. The suit ended up costing the state close to one million dollars in legal fees. (Harrie 2003b). After the court ruled, the Legislature, in the 2003 General Session, passed similar legislation in response to the judge’s decision. Unions again filed suit in December of 2003, this time in federal court. Upon recommendation of the Utah Attorney General, the Legislature in the 2004 General Session, repealed parts of, and amended parts of the 2003 law to increase its chances of being upheld in court. The legal standoff currently persists. This article addresses the historical context of the current political and legal conflict and applies theory to the legislative measures to better understand the current conflict.

BRIEF HISTORY OF LABOR RELATIONS AND UNIONS

Prior to industrialization, individuals were generally employed as independent farmers, craftsmen, and artisans who sold their own products and used their own capital. At the onset of industrialization when entrepreneurs began accumulating means of production and utilizing complex divisions of labor, the single producer could no longer compete. The resulting labor situation became known as the “divorce of capital and labor”: one group of people managed labor operations and the other provided the labor (Kaufman and Hotchkiss 2000, 530).

Management and labor accordingly had different goals. Management sought to maximize profits and increase the size of the firm while labor desired maximum wages and favorable working conditions. This relationship entailed both elements of cooperation and conflict. In order to maximize profits, management must ensure that the laborers produce as much as possible at the lowest possible cost. The two sides cooperate to maintain happy and healthy workers. However, a happy and healthy workforce can be expensive, and when management minimizes labor costs the two sides conflict (Kaufman and Hotchkiss 2000, 529-530).

To counter the power of management, laborers bind together in unions to further their interests of satisfactory wages and working conditions (Kaufman and Hotchkiss 2000, 532). However, collective bargaining has not always had a conducive legal environment.

MAJOR GOVERNMENT INTERVENTION IN LABOR RELATIONS

During the early part of the twentieth century, employers in urban areas gained increased bargaining power because of a major influx of workers immigrating to the United States and moving in from rural areas. Laborers not willing to accept the wages and conditions management set were easily replaced by
others looking for jobs, consequently worsening labor conditions. Furthermore, World War I and the Great Depression exacerbated already poor job security and working conditions (Crampton, Hodge and Mishra 2002).

To rescue the laborer who was facing horrendous working conditions and inability to provide for his/her family, Congress passed the National Labor Relations Act (NLRA) of 1935, also known as the Wagner Act (Kauffman and Hotchkiss 2000, 570-572).

This new legal environment shifted sympathy away from unions, which had become, as some saw it, too powerful. After a wave of strikes in 1946, Congress again passed legislation to level industrial relations. The Taft-Hartley Act of 1947 weighed in on the employer side to ensure that the union practiced fair labor standards (Kauffman and Hotchkiss 2000, 575-574).

Despite the leveling measures of Taft-Hartley, unions continued to gain power and become corrupt. From 1957 to 1959, the McClellan committee held congressional hearings investigating corruption within several notable unions. Allegations included kickbacks, pension fraud, intimidation of dissident employees, and fraudulent officer elections. Congress responded with the Labor and Management Reporting and Disclosure Act of 1959 or the Landrum-Griffin Act. The act again shifted power away from union leadership (Kauffman and Hotchkiss 2000, 576-577). The major provisions of these three acts are found below.

An entire sector of the workforce was left out of these major pieces of legislation: government employees. After President Kennedy issued Executive Order 10988 in 1962 to allow federal employees to unionize and President Nixon issued Executive Order 11491 in 1969 to empower the Federal Relations Council to govern federal labor relations, Congress passed the Federal Service Labor-Management Relations Act of 1978 or the Civil Service Reform Act (CSRA). This act established similar practices to those codified under Wagner, Taft-Hartley, and Landrum-Griffin, but for federal employees (excepting certain agencies), and also created the Federal Labor Relations Authority (FLRA) to administer the law. Federal employees were, however, more restricted in their collective bargaining rights; namely, they were prohibited from striking. Finally, federal employee unions operate under the agency shop clause (Crampton, Hodge and Mishra 2002; Kaufman and Hotchkiss 2000, 577).

Correspondingly, many states passed legislation governing state, county, and municipal employees. Wisconsin came first in 1954. Although legislation varies as to the levels of government included, the right to strike, and the use of the agency shop, 40 states have public employee labor relations statutes (as of 2002). Thirty-nine states allow for collective bargaining (as of 1994), 23 states and D.C. have comprehensive public labor relations statutes, and 11 allow public employees to strike (Crampton, Hodge and Mishra 2002; Kaufman and Hotchkiss 2000, 577).

The rationale for the limited bargaining rights for government employees is that the government (federal and state) is sovereign and legally must be able to perform certain functions and services (Crampton, Hodge and Mishra 2002).

Reuel E. Shiller, Assistant Professor of Law at the University of California, Hastings College of Law, describes the shift from after the Wagner Act up to present in labor relations law as going from the belief that interest groups (including unions) provided the best form of democratic representation to the belief that interest groups often hindered representation. During the post-WWII era beginning in 1944 intellectuals advocated strengthening the power of groups at the expense of individual power. This provided the rationale for courts and Congress to strengthen the unions legally (Shiller 1999).

These empowered organizations, however, began to look more like elites separated from those they were supposed to represent. Intellectuals began seeing unions as corrupt and

### Wagner, Taft-Hartley, and Landrum-Griffin Acts

| National Labor Relations Act of 1935 (Wagner) | All workers except managers and workers in government, agriculture, domestic service, and industries under the RLA. Defined and prohibited unfair labor practices including interfering in union activities, discriminating against employees because of union activity, and failing to bargain in "good faith" with the designated union; Established the National Labor Relations Board (NLRB), which was charged with conducting representation elections, investigating unfair labor practices, and imposing cease and desist orders and fines on those in non-compliance. |
| Labor Management Relations Act (NLRA) of 1947 (Taft-Hartley) | Same as NLRA. Defined and prohibited unfair labor practices including refusing to bargain in "good faith" with management, engaging in a "secondary boycott," and coercing or discriminating against employees who chose not to be represented by the union under new security agreements; Outlawed the "closed shop" and allowed states the option to enact "right-to-work" laws. Enacted union decertification elections, U.S. District Court imposed 90-day back-to-work periods in national emergency disputes; Established the Federal mediation and Conciliation Service (FMCS). |
| Labor and Management Disclosure and Reporting Act of 1959 (Landrum-Griffin) | Same as NLRA. Guaranteed a Bill of Rights for union members; Mandated comprehensive union financial disclosures to the Secretary of Labor; Regulated union officers; Ensured open, regular, and democratic elections using secret ballots. |

(Sources: Crampton, Hodge and Mishra 2002; Kaufman and Hotchkiss 2000)
government interests as becoming aligned with the group elites rather than general populations. Both Congress and the courts again followed this thought in legislation, particularly the Bill of Rights in Landrum-Griffin, and in legal interpretations (Schiller 1999).

Consequently, Congress and the courts placed new emphasis on ensuring individual rights of union members. According to Schiller, "We appear now to be entering the phase of the struggle to reconcile the rights of individuals and minorities with the power of those who [control] collective bargaining" (Shiller 1999, I-2).

**Reconciling the Law: The Courts**

Congress's prescription of the security clause where an employee must pay dues and initiation fees to the union under a union shop or an agency shop represented the struggle to find a stable equilibrium in labor relations. The agency shop also represented a compromise where employers would not be required to join the union, but also could not "free ride" on the obligation of the union to provide fair representation to all within the bargaining unit (Burns 1999, 476-477).

Despite Congress's approval of the security clause, those individuals who differed from the union sued to try the law before the courts. In Railway Employees' Department v. Hanson, the U.S. Supreme Court upheld union shop security clauses for unions governed by the Railway Labor Act (RLA) as a valid congressional measure under the commerce clause of the Constitution, to maintain labor peace despite the limitation on individual First Amendment rights (Greg 2000, 1164; Kochkodin 2000, 812).

In 1961, the U.S. Supreme Court ruled for the first time in the case International Association of Machinists v. Street, that a union governed by the RLA could not use dues collected under a security clause for ideological or political causes. The Court extended similar reasoning to unions under the NLRA in 1963 in NLRB v. General Motors. Again in 1977, the U.S. Supreme Court reaffirmed in Abood v. Detroit Board of Education that employees—public employees this time—would not be required to fund ideological and political causes with which they did not agree. The Courts reasoned that the government's interest in labor peace was as important in the public sector as it was in the private sector (Crampton, Hodge and Mishra 2002; Greg 2000, 1164-1166; Kochkodin 2000, 812-816).

After several other decisions fleshing out what monies could and could not be required under a security clause and then be spent on non-collective bargaining activities, prohibiting the rebate method for accommodating objectors, labeling the rebate an involuntary loan, and mandating that unions provide objectors with financial information regarding both representation and political expenditures, the U.S. Supreme Court decided Communications Workers of America v. Beck in 1988 (Kochkodin 2000, 819). The Beck decision extended to the political objector governed under the NLRA the right to opt-out of dues to be used for activities other than the "financial core" (Kochkodin 2000, 819). The "financial core" consisted of "[activities] germane to collective bargaining, contract administration, and grievance adjustment" (Burns 1999, 479-480; Crampton, Hodge and Mishra 2002; Greg 2000, 1167; Hutchison 2000, 462-464; Knollenberg 1998, 352-353; Kochkodin 2000, 818-819).

The Beck decision also further set the precedent that NLRA and RLA would be interpreted similarly. Comparing the legislative history behind the relevant sections of the two acts, the Court determined that they were "in all material aspects identical" (Kochkodin 2000, 819). This relationship allowed the Court to invoke the decisions under the RLA, specifically the Street decision, the Abood decision, and Ellis v. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, which forbade the "involuntary loan" (Kochkodin 2000, 817-820). Indeed, the Court quoted directly from Ellis: that dues under a security clause could only be charged in the amount "necessary to performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues" (Kochkodin 2000, 819).

**Paycheck Protection Legislation: The Political Response to the Failure of Beck**

Actual implementation of the right of employees under union security clauses to object to nonrepresentational dues, and to receive a reduction for such, has been slow coming. Originally, the National Labor Relations Board issued, immediately after Beck, an advisory memorandum on the notice requirements to be imposed on unions, to its Regional Directors, Officers-in-Charge, and Resident Officers (Burns 1999, note 44).

Further actualizing awareness of Beck, rights, President George HW Bush issued in 1992 Executive Order 12,800, "Notification of Employee Rights Concerning Payment of Union Dues or Fees." The Order required employers to post notice in the workplace that employees could object to nonrepresentational dues and receive a reduction for such. Employers that failed to post the notices could lose government contracts (Burns 1999, 481-482).

As President Clinton took office in 1993, he promptly rescinded President Bush's Executive Order. His stated purpose was to restore balance in the workplace (Burns 1999, 482).

The National Labor Relations Board's first important ruling on the Beck decision, California Saw & Knife Works (1995), provided some specifics, but also a "wide range of reasonableness" in informing employees of their rights (Burns 1999, 484). The NLRB ruled that the burden to notify employees should fall on the union in its duty to fairly represent all employees within the unit. However, the Board limited notification mandates to a few specifics. A union using a security clause must apprise nonmember employees, but not current union members, only once of their rights and at the
time of enforcement of the security clause. The notification must include the information that the employee is not required to become a member of the union; that the employee may object to, and receive a reduction in, dues used for nonrepresentational activities; that the employee is entitled to enough information to make an intelligent membership decision; and that the union has specific, prescribed procedures for recognizing objectors. It must also state "the percentage of the reduction [in dues], the basis for the calculation, and [that the employee has] the right to challenge these figures" (Burns 1999, 485). Furthermore, notification in a newsletter that did not list the notification on the cover, issued to all covered employees, was sufficient (Burns 1999, 483-485).

Next, the NLRB heard United Paperworkers International Union (Weyerhaeuser Paper Company), also in 1995. In this case, the Board extended the union's one-time notification obligation to current union members as well. The union must further notify these union members of the statutory limitations on the security clause. The Board also stated that it did not mandate a particular form of notification (Burns 1999, 485-486).

In 1997, the NLRB specified in Rochester Manufacturing Co., a remedy for a union that violated its notification obligation. The measures amounted to requiring the union to notify those who had not received notification, to give the same employees the right to object for the relevant past dues, and to reimburse corresponding nonrepresentational dues. One should note that the remedy applied no punitive measure, and thus no incentive for a union to not risk violating its obligation (Burns 1999, 486-487).

**Federal Paycheck Protection Legislation**

Making employees knowledgeable of their right to object to dues for political causes has never fully occurred. According to a poll conducted in 1996 by Americans for a Balanced Budget, 78 percent of union workers did not know that they had the right to object to dues used for political causes and to pay a correspondingly reduced amount (Burns 1999, 488-489, note 102; Knollenberg 1998, 354-356). Furthermore, intimidation and coercion has continued to exist in some unions, as witnesses testified in committee hearings (Knollenberg 1998, 361-365).

Consequently, Congress members have attempted to rectify the situation with "Paycheck Protection" legislation that would "give life to [dues objectors'] Beck rights" and "proactively" ensure that union members do not contribute involuntarily to union political spending (Hutchison 2000, 466; Knight 1997). These pieces of legislation to deal with the problem have included various measures to require unions and/or national banks and corporations to obtain from their members written authorization for political spending (as an "opt-in" rather than "opt-out" approach implied for unions in the Beck decision), to require employers to post Beck rights in the workplace, to allow employees paying reduced fees to retain certain union privileges pertaining to collective bargaining, to provide punitive sanctions on violators, to require unions to produce financial reports with spending classifications, and to repeal law allowing for security clauses (Burns 1999, 487-489; Knollenberg 1998, 353-361).

Although proponents of paycheck protection legislation argue from basic principles that they believe compel their conclusion, the measures are complicated by politics, and such reform has been "partisan and logjam-generating" (Kochkodin 2000, 821-823; Weiler 2001, 179). Part of the original problem, some hold, stems from the "sclerotic"/"egregiously slow [moving], "Clinton-appointed" NLRB, which has limited the ability to enforce Beck rights by performing "interpretive gymnastics" (Hutchison 2000, 466; Burns 1999, 504). The head of the Board, Chairman Gould, has publicly disagreed with the U.S. Supreme Court over whether employees should be able to become nonmembers and over whether employees should be able to pay reduced fees (Burns 1999, 492).

In 1996, AFL-CIO President John Sweeney launched a campaign to spend $35 million dollars to "take back the Congress and take back our country" (Knollenberg 1998, 350). To collect $25 million of the $35 million, the union planned to raise dues by $1.80. The campaign was not simply to choose individual supportive candidates, but rather to empower the Democratic Party in the U.S. House of Representatives; the campaign aimed to reclaim the seats of 75 vulnerable Republicans (Knollenberg 1998, 350). Again in 1999, Sweeney announced a $26 million campaign to elect Democratic nominee Al Gore to the presidency and to reclaim a majority in the Congress (Nehring 1999). Despite the fact that unions favor the Democratic Party, nearly 30 percent of union members identify themselves as Republicans, and 10 percent as independents (Kochkodin 2000, 823-824). One AFL-CIO member complained that "I have joined a craft union ... I have not joined the Democratic Party" (Knollenberg 1998, 358).

In all, unions spend an estimated $300 to $500 million on politics each election cycle (Norquist 1998a). For those that receive campaign contributions and help, this amount represents a huge vested interest. For those whose opponents receive campaign contributions, this represents a negative vested interest.

Democrats have criticized and opposed Republican paycheck protection legislation as a measure to restrict union's involvement in politics. When President Bush issued Executive Order 12,800 in 1992, unions were expected to lose $2.4 billion annually (Knollenberg 1998, 349). Others have criticized paycheck protection measures as "poison pills" to sweeping campaign reform legislation, which bans soft money campaigns (Cillizza and Earle 2001; Rauch 2001; Steel and Posner 2001).

Clearly, the issue has been political. In the arguments of both proponents and opponents, there appears to some measure of truth. Grover Norquist, chairman of the
California Campaign Reform Initiative (campaign for paycheck protection ballot initiative) and president of Americans for Tax Reform, has confirmed the conservative motivation behind such legislation, as a combination of both principle and opportunism.

[Paycheck protection legislation] permits GOP congressmen, state legislators, and governors not only to stand on principle on behalf of citizens who don't want to have their money taken away and spent against their interests, but also to side with union members against the union bosses. Incidentally, there's an added bonus: it also defunds the GOP's best-financed and most implacable opponents—the labor union bosses who have taken over the Democratic Party (Norquist 1998a).

Norquist further explained his political criteria for picking the paycheck protection issue:

There are four rules in picking a priority. It unites your side. It divides their side. It's worth the resources. And you gain, even if you don't win. So everybody on the right gets this. It divides labor union members from labor bosses. If you win, unions have to pay more heed to what members want and, say, stop supporting candidates who are gun controllers. And by just having this debate, even if you lose, you let union members know the union bosses are taking their money and there's something they can do about it (Corn 1998).

STATE PAYCHECK PROTECTION LEGISLATION AND INITIATIVES

Much of the paycheck protection legislation in response to Beck has occurred on the state level, particularly in relation to public employee unions not covered by Beck. In 1992, Washington State voters approved a paycheck protection ballot initiative by 73 percent that required a union to obtain annual authorization from its members to spend their money on political causes (Archer 1998; Crampton, Hodge and Mishra 2002; Knollenberg 1998, 373-374; Kochkodin 2000, 824; Lynch 1998; Norquist 1998a). Michigan followed in 1994, Ohio in 1995 (with other major changes in its campaign finance law), Idaho in 1997, and Wyoming in 1998. Also in 1998, California defeated its widely publicized Proposition 226, Oregon defeated its initiative, Nevada's was withdrawn from the ballot after a state court ruled that it was in violation of the U.S. Constitution, and Colorado agitators removed its initiative from the ballot in fear that it would draw more Democratic voters to the polls and affect other races (Crampton, Hodge and Mishra 2002; Jacobsen 2000; Knollenberg 1998, 373-374; Lynch 1998; Nehring 1999; Norquist 1998b; Strom and Baxter 2001, 299-301). Paycheck protection proponents have boasted that some sort of effort is being or has been made in every state. Grover Norquist of Americans for Tax Reform indicated that in 1998 similar legislation would be introduced in 26 states, and in 1999, 40 states would be voting on such measures (Norquist 1999b). However, the activity slowed down toward the end of the decade (Strom and Baxter 2001, 300-301).

The initiatives and bills put forth several important measures to limit union political activity. These include requiring unions to obtain written authorization to use political contributions, disallowing the use of state payroll systems for political contributions, mandating additional postings and notifications of workers' rights, restricting the uses of dues, and requiring detailed financial reports (Nehring 1999).

In California, the state initiative took more of a national flavor and represented a range of political issues. Out-of-state political agitators came in and national union affiliates pumped in money. Grover Norquist, whose organization is based in D.C., agreed to serve as the chairperson for the California Campaign Reform Initiative, which headed up Proposition 226 (Norquist 1998a). On the other side, the AFL-CIO and the NEA persuaded a number of unions to contribute $35 million to the "No on 226" campaign, compared to proponents' $6 million (Nehring 1999). According to a writer for the left-of-center New Republic, Proposition 226 opponents went to the extent of running a "demagogic campaign designed to frighten voters" (Cohn 1998; see also Campaigns & Elections 1998).

The person who actually started the initiative in California was an individual named Mark Bucher, who was irked after having run-ins with teachers' unions on issues like "back-to-basics, parents' rights, and local control" and after a conservative incumbent on the local school board was defeated by a union-backed candidate (Corn 1998). Bucher was also a member of an organization called the Education Alliance that was involved in an earlier state initiative to establish school vouchers. The Education Alliance also advocated teaching creationism in public schools (Corn 1998). Although Bucher individually started the important California campaign after learning of Washington State's paycheck protection measure, the proposition quickly became tied in with a network of conservative organizations.

NEA Today reported that the backers of Proposition 226 were the same backers of the 1993 California Proposition 174 to establish vouchers. These backers included the National Taxpayers Union, Citizens for a Sound Economy, the Claremont Institute, and the Alexis de Tocqueville Institution (NEA Today 1998b). Other conservative organizations backing Proposition 226 included the National Right to Work Legal Defense Foundation, Americans for Tax Reform, and the American Legislative Exchange Council, which drafted and endorsed sample paycheck protection legislation for other states (NEA Today 1998a). The American Legislative Exchange Council is well connected to state capitals as it is an organization of 300 conservative lawmakers (Norquist 1998a). Norquist also listed as backers Former Golden Rule Insurance Company CEO Pat Rooney and Newt Gingrich's GO PAC, which had taken aim at the "Republican Eleven," the states with Republican governors and majorities in both legislative houses, to pass paycheck protection legislation (Norquist 1998a).

Besides vouchers, paycheck protection may be connect-
ed to other issues, including the makeup of the congressional majority. According to Kelly Candaele, a labor organizer and a trustee of the Los Angeles Community College Board, and Peter Dreier, a professor of politics and director of the Public Policy Program at Occidental College in Los Angeles,

For Republicans, Proposition 226 is more than a vehicle to undercut union influence. They view Proposition 226 as a linchpin of their long-term strategy, for without labor's political influence, Democrats will be hard-pressed to maintain their control of the California legislature, or elect a Democrat governor this fall. Furthermore, whatever party has control of California politics will oversee the next congressional reapportionment following the 2000 census. For the national GOP, orchestrating the redistricting of California's likely fifty-five congressional seats is a prerequisite to controlling the [U.S.] House (Candaele 1998).

Whether all paycheck protection proponents are motivated by the desire for a congressional majority is questionable. Given that the conservative groups are pushing similar legislation in as many states as possible, regardless of the existence or non-existence of union security clauses, paycheck protection legislation does, however, appear to have more political significance than simply extending Beck rights.

UTAH'S PAYCHECK PROTECTION LEGISLATION: VOLUNTARY CONTRIBUTIONS ACT

Paycheck protection legislation made its first appearance in Utah in 1997, before the major publicity of California's Proposition 226 and the initiatives in Oregon, Nevada, and Colorado. Senator Howard Stephenson introduced S.B. 58 to complicate the process for unions to receive political contributions (Utah State Legislature 1997a; Stephenson 2001, 151-153). Senator Stephenson, who was also president of the Utah Taxpayers Association, maintained connections with the conservative network that actively pursued paycheck protection legislation in California and other states; this included attending conferences for conservative legislators and bringing Ron Nehring of Americans for Tax Reform to speak to the Senate Republican Caucus in support of Stephenson's 1999 paycheck protection legislation (Bernick 1999; Stephenson 2001, 101-102). Stephenson's 1997 bill did not pass, but Stephenson and other legislators continued introducing similar legislation until they were successful.

In all, nine relevant bills were introduced from the 1997 General Session through the 2004 General Session. These bills contained various limitations on how public employee unions not governed by the NLRA and the RLA could participate in politics. Of the nine bills, the first three from 1997 through 1999, failed, along with two boxcar bills that never advanced beyond receiving a number and a title, one sponsored by Senator Stephenson in 1999 and the other by Representative J. Morgan Philpot in 2002 (Utah State Legislature 1997a, 1997b, 1998, 1999a, 1999b, 2002b). Senator Terry R. Spencer's S.B. 188 in 2002 also failed (Utah State Legislature 2002a). In 2001, Representative Chad E. Bennion sponsored H.B. 179: Voluntary Contributions Act (VCA), which was the first bill to pass and be signed by the governor (Utah State Legislature 2001). In 2003 after H.B. 179 had been restricted in court, Representative Bennion introduced H.B. 159 to correct legal flaws in the law revealed in the ruling (Harrie 2003a; Utah State Legislature 2003). And in 2004, Representative Michael R. Styler introduced H.B. 302 to increase the likelihood that the law would be upheld in court, upon the recommendation of Utah Attorney General Mark Shurtleff (Bernick and Spangler 2004; Deseret Morning News 2004; Utah State Legislature 2004).

Representative Bennion's H.B. 179 contained measures to restrict the use of dues for political purposes and to limit the union's separate political action committee (PAC) in its political involvement. H.B. 179 first details that dues are not used for political purposes and requires that unions wishing to maintain political involvement must set up a separate PAC. The bill then restricts the PAC in that funds cannot be mingled between the accounts, and also limits how and from whom the union can solicit funds for the PAC. Finally, the bill prohibits public payroll systems to be used to deduct monies to be directed toward any PAC (Utah State Legislature 2001).

Relevant details to the bills (excluding the two boxcar bills) are listed below.

THE UTAH EDUCATION ASSOCIATION STRIKES; THE BILL PASSES

After Senator Stephenson and Representative Olsen had both unsuccessfully tried to pass their bills, Representative Chad Bennion introduced a bill in the House that was successful. It appears that Representative Bennion's timing was much more opportune. According to the Utah Education Association (UEA), legislators wanted to provide tax relief but were unable to because of education demands (Salt Lake Tribune 2001). In February of 2000, the Granite Education Association made a stir by performing a walkout. Again in December of 2000 the statewide UEA performed a similar "job-action," closing about three-fourths of the districts in Utah (Toomer-Cook 2001). The UEA's one-day strike came after an education funding task force had completed its work and had decided on a $30 million appropriation for textbooks as well as additional matching funds for local tax hikes (Toomer-Cook 2001).

According to Kaufman and Hotchkiss in their labor economics text, strikes are "the single most important source of bargaining power for the union" (Kaufman and Hotchkiss 2000, 558). In the normal sense of production, strikes impose costs on both the employer and the employee by halting production as well as employee wages. "The relative bargaining power of the firm vis-à-vis the union hinges on whether the costs of a strike fall more heavily on the firm or the workers" (Kaufman and Hotchkiss 2000, 558). Furthermore, "Strikes
## Important Paycheck Protection Bills in the Utah State Legislature, 1997-2004

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<tr>
<th>Year</th>
<th>S.B. 58</th>
<th>S.B. 182</th>
<th>H.B. 104</th>
<th>H.B. 179</th>
<th>S.B. 188</th>
<th>H.B. 159</th>
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<td>1998</td>
<td>Howard A. Stephenson</td>
<td>Howard A. Stephenson</td>
<td>Evan L. Olsen</td>
<td>Chad E. Bernson</td>
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<td>Michael R. Styler</td>
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<td>Yes or Political Issues Committee</td>
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<td>Requires Union to Separate PAC Fund from Dues</td>
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<td>Requires Union to Inform of Political Purpose Verbally and in Writing</td>
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<tr>
<td>Requires Union to Only Accept PAC Contributions from Members or Members' Families</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Class A Misdemeanor for Violation</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibits Union from Using Dues to Influence Vote Directly or Indirectly</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prohibits Union from Requiring Contributions to Other Political Groups for Membership</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Authorizes AG to Take Action</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>Includes Severability Clause</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
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<tr>
<td>Satisfies Contracts Clause</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Requires Municipalities, Counties, and Special Districts to Comply</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Limits Voluntary Contributions Act to Collective Bargaining Employees</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amends VEA to Allow Unions to Use Dues to Influence Initiative Proposition</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Amends VEA to Allow Unions to Communicate with Its Members about Political Candidates and Issues</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amends VEA to Allow Unions to Use Dues in Soliciting for PAC</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
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</tbody>
</table>

Remaining Provisions after 2004 General Session

are among the most visible and well-publicized aspects of collective bargaining” (Kaufman and Hotchkiss 2000, 563). In the case of teachers, there is no measured production that, if interrupted for one day as in a strike or even a snow day, would impose monetary costs on the state. However, the visibility of a one-day strike would impose the political cost on the state in the form of a negative message about policy makers.

The UEA's job action had the effect of drawing more attention to the relationship between the public union and the state. According to then Speaker of the House Marty Stephens, “[P]erhaps [recent union actions] have focused
more people's attention on "[proposed paycheck protection legislation]" (Toomer-Cook 2001). He explained, "I don't care about the strike. I care about the general pervasive attitude and feeling in this state that legislators don't care about schools" (Toomer-Cook 2001). As well as being "infuriated" by the strike, legislators did not take well to letters from schoolchildren that stated, "our schools would be better if you cared," coupled with UEA's slogan, "Utah Students Deserve More" (Burton 2001b; Toomer-Cook 2001).

Besides negative publicity, some legislators came head to head with the union at election time. In the 2000 elections, the UEA raised $198,875, spent $170,921, and had an account balance of $503,383 at the end of the year (Toomer-Cook 2001). The UEA's PAC was only individually outspent by Governor Leavitt's Special Projects PAC at $1.5 million and Leavitt's Western Republican PAC at $215,248. Utah's Republican Senate Campaign Committee came in after the UEA's, at $120,455 (Burton 2001a). In the 2002 election cycle the UEA spent $415,458 (Harrie 2003b).

Dan Harrie and Greg Burton of the Salt Lake Tribune reported that in Utah State Legislature races Democrats (including those defeated) were between four and five times more likely to receive substantial donations from the UEA than Republicans in the 1998 and 2000 elections (Harrie 2001b; Harrie and Burton 2001). Senate Majority Leader Steve Poulton, who sponsored Bennion's H.B. 179 on the Senate side, commented on not receiving contributions from the UEA and other public employee unions, "I wouldn't say that they've made enemies... But, he allows, 'that doesn't win friends.'" (Harrie 2001b). Speakers Stephens also said that teachers felt slighted by the UEA (Toomer-Cook 2001). Adding up UEA contributions for legislators reveals that those who voted for H.B. 179 had received on average $406.03, while those who voted against the bill had received on average of $2,462.44—roughly six times the average of those who voted for H.B. 179 (Harrie 2001b; Harrie and Burton 2001). One Democrat voted for the bill, and only a handful of Republicans voted against it. Given that the Utah State Legislature is heavily Republican, H.B. 179 passed.

Logically, those who received contributions would be equally motivated to oppose the legislation, as is clear from the numbers.

Teacher's unions have gained the reputation nationally as being powerful political players and "among the most highly organized groups in the country" (Strom and Baxter 2001, 301). According to Tom Loftus, Speaker of the Wisconsin Assembly from 1983 to 1991,

In almost every state legislature the teachers' union is the most powerful interest group. Teachers are spread out around a state much like legislators—according to population. Each legislative district has close to the same number of people in it. This means that there will be a similar number of school age kids in each district, and this means there will be close to the same number of public school teachers in each district. This even distribution, along with teachers' tight organization and sophisticated campaign techniques, brings a natural political clout.

The focus of any teachers' union is the state legislature, which controls the money to fund public education and has sole authority over teachers' bread-and-butter issues, such as pensions... [This powerful interest group is organized for maximum political influence in lobbying and elections. Through independent expenditure campaigns, the teachers' union skillfully uses money, polls, focus groups, and phone banks to help elect its friends and defeat the not so friendly (Loftus 1994, 129).]

Further, "[teachers' unions] certainly comprise the biggest group of college-educated people in most legislative districts" (Loftus 1994, 134). Finally, political scientists and interest group specialists, Clive S. Thomas and Ronald J. Hrebenar found in their 2002 study of interest groups in the American states that schoolteachers' organizations were the second most influential—just behind general business organizations. School teachers' organizations ranked first in their earlier 1985 study (Thomas and Hrebenar 2004, 119). Given their huge political sway, teachers' unions, teachers, and education employees often take the blame for failing schools (Strom and Baxter 2001, 275).

Despite compelling testimony and numbers, key Utah legislators who supported H.B. 179, stated that they based their vote on principle. Although he acknowledged that the UEA had slighted him in his last election, Representative

### UEA Political Contributions for Legislators' Last Election (1998, 2000) and H.B. 179 Roll Call

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>House</strong></td>
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<td></td>
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</tr>
<tr>
<td>Republics</td>
<td>41</td>
<td>$13,309</td>
<td>$316.86</td>
<td>10</td>
<td>$74,369</td>
<td>$2,253.61</td>
</tr>
<tr>
<td>Democrats</td>
<td>1</td>
<td></td>
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<tr>
<td>Total</td>
<td>42</td>
<td></td>
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<tr>
<td>Senate</td>
<td></td>
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</tr>
<tr>
<td>Republics</td>
<td>17</td>
<td>$10,648</td>
<td>$626.35</td>
<td>3</td>
<td>$36,641</td>
<td>$3,036.75</td>
</tr>
<tr>
<td>Democrats</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Combined</td>
<td>56</td>
<td>$23,956</td>
<td>$406.03</td>
<td>13</td>
<td>$110,610</td>
<td>$2,462.44</td>
</tr>
<tr>
<td>Republics</td>
<td>59</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Democrats</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td></td>
<td></td>
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</tbody>
</table>

(Sources: Harrie 2001a, 2001b; Harrie and Burton 2001).
Bennion defended his sponsorship: “We are on solid ground. There are times when you've got to stand up and do something you think is right.... I don't think it's appropriate for government to collect these political contributions” (Harrie 2001a, 2001c). Also, “change is hard even if it is the right thing to do” (Romboy 2001). Senator Poulton stated, “It's just an issue of whether or not government should enable a PAC... to collect money,” and “This is not intended to get back at anyone.... It's the Legislature's duty to move forward with what it feels is appropriate and right” (Harrie 2001a, 2001d). Another representative stated that she viewed H.B. 179 as campaign finance reform and, “If we're going to clean it up, you've got to start somewhere” (Harrie 2001b).

The Salt Lake Tribune supported the bill even though it still held that legislators were not simply motivated by principle.

The Utah Education Association is probably right that the Legislature was out to punish the union when it passed the so-called Paycheck Protection Act last session. But the fact that legislators might have derived some extra satisfaction from the measure's punitive nature does not make it bad (Salt Lake Tribune 2001).

**Voluntary Contributions Act's Day in Court**

In the end despite the controversy, H.B. 179, though amended, passed both houses, and Governor Leavitt signed it. In April of 2001, public employee unions filed suit in state court. Plaintiffs argued 1) that the provisions in the bill to require a separate PAC and to disclose what the PAC is and that the PAC is voluntary were unconstitutional; 2) that the provisions to require the union to inform employees in writing that the PAC was voluntary and to keep on file such written statements, were unconstitutional; 3) that the limitations on the use of public payroll systems violated the first amendment; and 4) that the act should be struck down in entirety if any portion were struck down, because the act contained no severability clause (UPEA, UEA, et. al. v. Gov. Leavitt et. al. 2002, 3-14).

Judge Henroid entered his ruling on H.B. 179, on December 9, 2002. He upheld the provisions to require a separate PAC and to disclose what the PAC was and that the PAC was voluntary, and that the act was severable notwithstanding that it did not have a severability clause. On the other side, Judge Henroid declared the provisions for written disclosure unconstitutional(UPEA, UEA, et. al. v. Gov. Leavitt et. al. 2002, 14). He wrote,

> Applying strict scrutiny, this Court concludes that Utah's written disclosure requirements are neither necessary nor narrowly tailored to achieve the State of Utah's interest in ensuring voluntary political contributions. To the contrary, the written disclosure requirements create an immense obstacle to political fund-raising that, taken to its logical extension, precludes a labor organization official from ending his speech to members with a call to drop a dollar in the bucket to help the union PAC fund.” Instead, labor officials would need to issue written disclaimers before requesting any PAC donations (UPEA, UEA, et. al. v. Gov. Leavitt et. al. 2002, 8).

Finally, the court ruled that the payroll deduction limitations infringed on existing contracts, and thus violated the Contracts Clause of the U.S. Constitution (UPEA, UEA, et. al. v. Gov. Leavitt et. al. 2002, 13-14).

Both camps declared victory on the ruling. Senator Stephenson wrote, “Utah's teacher unions and public employee unions have failed in their attempt to overturn Utah's paycheck protection law,” which “prohibits government labor unions from using the taxpayer-funded state payroll system to collect their political contributions” (Stephenson 2003, 22). UEA attorney Michael McCoy stated, “The parts the court has upheld are things we are already doing.... If this decision remains as written, we can live with it” (Neff 2002). UPEA's Fred Van Der Veur added, “The judge held unconstitutional the part that prohibits the employer from paying deductions to PAC committees.... We consider this a significant win” (Neff 2002). However, the decision left unclear whether H.B. 179's payroll deduction provisions could apply to future contracts.

**The State Prepares for Another Legal Battle**

Shortly after Judge Henroid ruled on H.B. 179, Representative Bennion introduced H.B. 159: Voluntary Contribution Act Amendments, which attempted to fix some of the legal flaws in H.B. 179 revealed during the court battle and “to make certain government is not in the role of collecting special interest money. There are no exceptions” (Harrie 2003a). In December of 2003, the UEA and several other unions (not including the UPEA) again filed lawsuit challenging the new provisions in federal court. The new suit came after the U.S. Supreme Court upheld the sweeping federal campaign finance law, FECA or McCain-Feingold (Smaeth 2003). According the UEA's Susan Kubiak, “None of the provisions that are still existing (in the new law) that were adjudicated are being challenged in the same way” (Smaeth 2003).

Anticipating coming before the judge, Attorney General Mark Shurtleff recommended certain changes in the law, which came in the form of Representative Styler's H.B. 302 (Bernick and Spangler 2004; Deseret Morning News 2004). The bill passed and was signed by Governor Walker.

Currently (Summer 2004), the Voluntary Contributions Act and its Amendments again await testing through the courts.

**Theoretical Perspectives on the Voluntary Contributions Act**

Utah's crusade of “leveling the playing field” and ensuring that union dues and PAC contributions are voluntary, appears to be anachronistic to the national movement to enforce Beck rights. Utah is a right-to-work state with no agency clauses, and thus no application for Beck rights (Kaufman and Hotchkiss 2000, 581; McCoy 2004a). That is, there is no
requirement for an employee to either join a union or to pay agency fees to a union with exclusive representation. Interestingly, one researcher recommended to those states fighting to ensure Beck rights, that they solve the problem simply by abolishing their agency clauses—mirroring the situation in Utah before any paycheck protection legislation was enacted.

Such an approach would eliminate compulsory unionism and therefore the need to implement demonstrably ineffective government schemes to regulate the negative effects of compulsory unionism while retaining the full availability of truly volunteer unionism.... [The 21 states that have followed this approach] have seen...the elimination of the need to regulate the negative effects of compulsory unionism (Kochkodin 2000, 835).

Utah's Voluntary Contributions Act does, however, appear to be consistent with Grover Norquist's added bonus: "it also defunds the GOP's best-financed and most implacable opponents—the labor union bosses who've taken over the Democratic Party" (Norquist 1998a). Thus, whatever principles legislators couched their votes in appear to be convenient justifications for their more pressing issues: securing their reelection and passing their ideological legislation. One could likely find justifiable restrictions for any chosen opponent.

Accordingly, such measures do maintain valid justifications, and the measures could be sound public policy. However, to become such, they must be applied universally, and not simply to one's political enemy. According to Harvard Law Professor Paul C. Weiler

The aim of true labor law—indeed, any law reform—should not be to confer selected political benefits on the constituencies that happened to support the governing party in the last election. Instead, reform should reflect systematic policy analysis of real world problems and principled adoption of appropriate solutions—no matter who happens to be the winner or loser on a particular item. This is the only way we can ensure that the government will be fair to the people who are directly affected by its actions, and not just react to the positions of those organizations with political clout (Weiler 2001, 178).

A Reform Across the Board: Victor Brudney's Volitional Advocacy

Compelling theoretical applications for paycheck protection legislation are readily available and are important for a broad understanding. David M. Burns and Michael M. Kochkodin address the benefits of opt-in and opt-out union policies for receiving political contributions (Burns 1999, 495-500; Kochkodin 2000, 809-810). Harry G. Hutchison discusses the existence of "forced-riders" in a union as well as dues-paying free-riders who benefit from others' compulsory dues (Hutchison 2000, 477-495). Hutchison also applies post-modern theory to discredit compulsory unionism by examining unions' "historical tendency...to suppress individual identities and interests of workers in support of the 'universal worker'" (Hutchison 2000, 457-461). Paul C. Weiler discusses the weakening of the labor movement and correlates it with the "huge rise in inequality within the American labor market," and makes recommendations for balancing bargaining relationships (Weiler 2001, 179-206). Finally, the theoretical application that appears to have the greatest importance and relevance for Utah is Harvard Law Professor Emeritus Victor Brudney's analysis of the volitional character of advocacy of the spectrum of multi-purpose associations (Brudney 1995, 1-89).

Brudney states the goal of regulating the "advocacy" or political voice of multi-purpose associations has two purposes. First, regulation "[protects] individual members' preferences, or [enhances] their freedom of choice, to refrain from supporting the group's advocacy voice (a kind of 'negative speech interest'—[an interest in remaining silent and not being forced or 'improperly' pressured to speak])" (Brudney 1995, 10-11). Second, regulation protects "society from a collective advocacy voice that is powered by compelled member contributions or by voluntary contributions offered for functions other than advocacy speech and for which the group's advocacy speech is peripheral" (Brudney 1995, 10-11). In other words, the regulation is meant to protect society from organizations using money to support political causes when the money was originally spent by individuals to secure benefits other than enhancing the organization's politics. Regulating organizations would also "make more readily available to [the associations' members] the benefits of the group's non-speech functions and to society the benefits of their members' participation in the group" (Brudney 1995, 80).

However, Brudney limits the degree of regulation of the associational advocacy voice because, "It is a fixture in American political theory that participation in public discourse and advocacy activities by elective associations of all sorts significantly serves the governance of a democracy and enriches the individual participants and audience" (Brudney 1995, 87). Rather, associations should be restricted to maximize the volitional character or willful choice of any advocacy the associations offer and to limit public exposure "to a louder voice and to an impression of larger, and possibly more diversified, support than exists for positions which the individual does not wish accepted" (Brudney 1995, 17).

In his exegesis, Brudney distinguishes between organizations as having varying levels of government sponsorship to compel membership, monopoly power to compel membership, and bundled benefits to induce membership (Brudney 1995, 4-10). He divides the list of existing multi-purpose associations into two groups: compelled or pressured associations and voluntary associations (Brudney 1995, 30, 54). The two groups are again divided. Compelled or pressured associations include the integrated bar, professional and occupational associations, and trade unions with agency or union shop arrangements (Brudney 1995, 31, 38, 47). Voluntary associations include investor-owned business corporations and expressive or advocacy associations (Brudney 1995, 55, 74, 78).
The higher the degree of government sponsorship, the degree of government compulsion of membership, the practical necessity of membership, and the relative weight of benefits other than the advocacy voice, the less volitional the character of the association's advocacy voice, and the greater the benefit for regulating such advocacy voice. The chart below sums up the classifications and recommendations for regulation.

In sum, Brudney's analysis requires associations to unbundle non-advocacy benefits from advocacy benefits when such non-advocacy benefits are the result of government, monopolistic, social and cultural, or economic compulsion. Associations where membership is not compelled and the advocacy benefits outweigh the non-advocacy benefits, should not be required to unbundled benefits. These measures would maximize the volitional character of associational advocacy voice, and thus be in the interest of society and policymakers.

### APPLICATION TO UTAH'S VOLUNTARY CONTRIBUTIONS ACT AND AMENDMENTS

Brudney's analysis of associational advocacy does not specifically address Utah's public employee unions other than to mention that "the claim for protection of the collective voice at the expense of the individual's speech interest is at its strongest," because membership in such unions is not compelled under agency shop or union shop agreements (Brudney 1995, 53-54). To the extent that the public employee unions offer practically compelled non-advocacy benefits like collective bargaining, such non-advocacy benefits should be unbundled from the advocacy benefits of the unions. Thus, Utah's Voluntary Contributions Act and its Amendments increase the volitional character of the advocacy voice of public employee unions with exclusive bargaining rights. However, to mandate such unbundling for the public employee unions without requiring commensurate measures for other associations would not be "leveling the playing field," but would be "[conferring] selected political benefits on the constituencies that happened to support the governing party in the last election" (Stewart 2003; Weiler 2001, 178).

### VOLITIONAL CHARACTER OF ASSOCIATIONAL ADVOCACY VOICE

<table>
<thead>
<tr>
<th>Typical Organizations</th>
<th>Level of Government Sponsorship</th>
<th>Level of Government Compulsion</th>
<th>Level of Practical Necessity besides Government Membership Compulsion</th>
<th>Overall Membership Necessity</th>
<th>Relative Weight of Other Non-Advocacy Benefits</th>
<th>Overall Degree of Volitional Character of Advocacy Voice</th>
<th>Recommendation for Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compelled or Pressured Associations</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Integrated Bar</td>
<td>State bar associations</td>
<td>High</td>
<td>High</td>
<td>Low</td>
<td>High</td>
<td>Low</td>
<td>Prohibit advocacy speech</td>
</tr>
<tr>
<td></td>
<td>Professional Associations</td>
<td>Medical associations, farm organizations, stock or commodities exchanges, associations of real estate agents or brokers, optometrists, pharmacists, architects, and accountants</td>
<td>Medium</td>
<td>Medium</td>
<td>High</td>
<td>Medium</td>
<td>Separate advocacy voice expenditures from membership requirements</td>
</tr>
<tr>
<td></td>
<td>Trade Unions with Agency or Union Shop Arrangements</td>
<td>Labor unions in non-right-to-work states and agency shop unions in right-to-work states</td>
<td>Medium</td>
<td>Medium</td>
<td>High</td>
<td>Medium</td>
<td>Separate advocacy voice expenditures from membership requirements</td>
</tr>
<tr>
<td></td>
<td>Voluntary Associations</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Investor-Owned Business Corporations</td>
<td>Publicly traded corporations</td>
<td>Low</td>
<td>Low</td>
<td>Medium</td>
<td>Medium</td>
<td>Prohibit advocacy speech</td>
</tr>
<tr>
<td></td>
<td>Unions and Employee Associations without Security Clause</td>
<td>Unions with voluntary membership in right-to-work states</td>
<td>Low</td>
<td>Low</td>
<td>Medium</td>
<td>Medium</td>
<td>Separate advocacy voice expenditures from membership requirements</td>
</tr>
<tr>
<td></td>
<td>Expressive or Advocacy Associations</td>
<td>Political parties, political organizations, and media enterprises</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>Low</td>
<td>No additional regulations</td>
</tr>
</tbody>
</table>

(Source: Brudney 1995).
Brudney's article does not, however, offer much insight into the application of payroll deduction limitations on public employee unions. One can logically extrapolate, though, that such limitations should only be applied after a systematic analysis of the practices of the broad spectrum of advocacy associations and commensurate measures are applied universally. When asked to consider the use of state income tax return checkoffs, in which individuals can use government financial systems to donate to political parties and of which four-fifths go to Republicans, proponents of Utah's Voluntary Contributions Act and Amendments did not see a comparison (McCoy 2004b; Salt Lake Tribune 2001). Instead, Utah's Voluntary Contributions Act and its Amendments selectively apply the measure to the organizations that happen to be a nuisance to the ruling party.

Taking such analysis, Utah's public employee unions as well as other Utah associations might find it in their own best interest to voluntarily implement whatever remaining measures might exist to increase the volitional character of their own advocacy speech.

CONCLUSION

To understand Utah's current political controversy over restricting public employee unions, one must understand the historical context of unions, their exclusive bargaining rights, and their security clauses. One must also understand the current movement to reconcile individual rights with group rights. Utah's recent measures to restrict its public employee unions are anachronistic to the application of Beck rights, but consistent with the national conservative movement to defund one of the major opponents of conservative ideas. Given Victor Brudney's analysis of associations and advocacy, some of Utah's measures appear to be valid, but only if accompanied by measures to increase the volitional character of the advocacy speech of the wide range of associations, particularly investor-owned corporations.

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