Requiring Unions to Notify Covered Employees of Their Rights to Be an Agency Fee Payer in the Post Beck Era

David M. Burns
A union is a labor organization whose primary purpose is to represent the concerns of employees regarding grievances, wages, hours, and working conditions when dealing with their employer. Under the amended National Labor Relations Act (NLRA), a union has the authority to bargain collectively such terms and conditions of employment on behalf of all employees if a majority of employees select a union as their exclusive bargaining representative.

Once it has been recognized as the collective bargaining representative for a group of employees, the union has a duty of fair representation to all of the employees. Because it is bound to represent all employees, the union generally will seek to insert a union security clause into the contract that it negotiates with the employer. Union security clauses, which are permitted under the NLRA, generally provide that an employee who works for the contracted employer must become a member of the union

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3. See id. § 159(a). Section 9(a) of the National Labor Relations Act provides in pertinent part that Representatives designated or selected for the purposes of collective bargaining by the majority of employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment . . . .
4. See Vaca v. Sipes, 386 U.S. 171, 177 (1967) (holding that a union must serve all employees in good faith and without hostility or discrimination).
and pay dues. The rationale behind union security clauses arises from the union’s duty of fair representation; the idea is that, in the absence of a security clause, some employees would not join the union or pay dues but would benefit from the union’s representation at the expense of the dues paying members. Such non-paying employees have been dubbed “free riders.” Union security clauses are permitted under section 8(a)(3) of the National Labor Relations Act in order to prevent free riding. The Supreme Court, however, has ruled that employees do not have to

6. See BENJAMIN J. TAYLOR & FRED WITNEY, LABOR RELATIONS LAW 377 (4th ed. 1983); see also 29 U.S.C. § 158(a)(3). Section 8(a)(3) of the NLRA states in pertinent part that

[N]othing in this [Act], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later . . . .

Id.


8. See id.

9. See id. at 252.

10. See id. However, section 14(b) of the NLRA permits states to forbid union security agreements even where both the union and employer are willing to make such an agreement. See STEPHEN I. SCHLOSSBERG & JUDITH A. SCOTT, ORGANIZING AND THE LAW 25 (4th ed. 1991). In particular, section 14(b) of the NLRA states

Nothing in this [Act] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.


Laws that prohibit union security agreements are termed “right-to-work” laws. See HUNT & STRONGIN, supra note 5, at 49. Currently, there are 21 states with “right-to-work” laws in force. See id. at 49-50. These states include: Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. See ALA. CODE §§ 25-7-6, 25-7-30 to 25-7-36 (Supp. 1992); ARIZ. REV. STAT. ANN. CONST. art. XXV (West 1984) and §§ 23-1301 to 23-1303 (West 1995); ARK. CODE ANN. §§ 11-3-301 to 11-3-304 (Michie Supp. 1996); FLA. STAT. ANN. CONST. art. 1, § 6 (West 1991); GA. CODE ANN. §§ 34-6-20 to 34-6-28 (1998); IDAHO CODE §§ 44-2001 to 44-2012 (1997); IOWA CODE ANN. §§ 731.1 to 731.5 (West 1993); KAN. STAT. ANN. CONST. art. 15, § 12 (1988); LA. REV. STAT. ANN. §§ 23-981 to 23-985 (West 1998); MISS. CODE ANN. § 71-1-47 (1995); NEB. REV. STAT. CONST. art. XV, § 13 (1995); NEV. REV. STAT. ANN. §§ 613.230 to 613.300 (Michie 1996); N.C. GEN. STAT. §§ 95-78 to 95-84 (1997); N.D. CENT. CODE §§ 34-01-14, 34-08-04 (1987); S.C. CODE ANN. §§ 41-7-10 to 41-7-90 (Law Co-op. 1986); S.D. CODIFIED LAWS CONST. art. VI, § 2 (Michie 1978) and §§ 60-8-3 to 60-8-8 (Michie 1993); TENN. CODE ANN. §§ 50-1-201 to 50-1-204 (1991); TEX. LAB. CODE ANN. §§ 101.051 to 101.053 (West 1996); UTAH CODE ANN. §§ 34-34-01 to 34-34-17 (1997); VA. CODE ANN. §§ 40.1-58 to 40.1-69 (Michie 1994); WYO. STAT. ANN. §§ 27-7-108 to 27-7-115 (Michie 1997).
become full members of the union. Furthermore, in *Communications Workers of America v. Beck*, the Court held that those employees who are not full members do not have to pay the entire amount of dues that full members pay.

In the wake of the Supreme Court's decision in *Beck*, several issues involving how to implement the decision have emerged. One major and controversial issue involves delineating the duty of unions to provide employees covered by a union security clause with notice of their right under *Beck* to pay less than full dues.

This Comment discusses the various efforts and approaches utilized to force unions to notify covered employees of their right to pay less than full union dues in the wake of *Beck*. First, this Comment looks at various union security clauses and their requirements and then examines the Supreme Court's decision in *Beck*. Next, this Comment considers attempts by the President, the judiciary, the National Labor Relations Board, and, finally, Congress to notify union members of their *Beck* rights. It then compares and contrasts these attempts and analyzes them in light of *Beck*. This Comment then looks at the potential effects that notice of *Beck* rights would have on covered employees. Finally, this Comment reviews the overwhelming political issues underlying the problem of notifying employees of their *Beck* rights and concludes that the issue is best suited for review by the Supreme Court.

I. Notification of *Beck* Rights to Employees Covered by a Union Security Agreement - Rising, Falling, and Rising Again

A. Understanding *Communications Workers of America v. Beck*

Under a union security clause, an employee is required to become a

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11. See *NLRB v. General Motors Corp.*, 373 U.S. 734, 742 (1963) (stating that “membership” may be “conditioned only upon payment of fees and dues”).


15. See *id.* at 208. Three other issues regarding the implementation of the *Beck* decision include: (1) determining the appropriate process through which an employee must request a refund; (2) delineating the proportion of dues that are refundable to an employee who objects to paying full dues and fees; and (3) determining the appropriate methods of enforcing *Beck* rights and the accompanying remedies. See *id.* at 213.
member of the union once he is hired by the employer. There are, however, several types of union security agreements. Such agreements include the closed shop, the union shop, maintenance of membership clauses, and the agency shop. The closed shop agreement requires an employer to hire only individuals who are already union members and requires the employee to maintain union membership during employment. This type of agreement, however, is illegal and is not covered by section 8(a)(3) of the NLRA. A union shop agreement requires employees to become union members after they have been hired, if they are not already members, and to maintain their membership during employment. A maintenance of membership clause requires employees who voluntarily join the union to remain members for the length of the contract. There is no requirement, however, that an employee join the union involuntarily. Finally, under an agency shop agreement, employees are not required to become union members, but they also are not permitted to be "free riders." Rather, they may become "agency fee payers" by paying the union an amount of money equal to the initiation fees and dues of a full member without participating as a full member.

1. NLRB v. General Motors: Asserting the Right Not to Be a Member of the Union

The Supreme Court addressed the question of whether an agency shop

16. See supra note 6 and accompanying text (stating that union security clauses are permitted by the NLRA and require employees to become dues paying members of the union).


18. See id. at 4 (noting that there has not been uniform terminology in referring to various union security agreements, but that these are the most common descriptions).

19. See id.

20. See ROBERT A. GORMAN, BASIC TEXT ON LABOR LAW: UNIONIZATION AND COLLECTIVE BARGAINING 642 (1976) (noting that the closed shop is discriminatory and, therefore, not protected under section 8(a)(3) of the NLRA); see also Amalgamated Meat Cutters and Butcher Workmen of N. Am., 81 N.L.R.B. 1052, 1055 (1949) (holding that the mere signing of a closed shop agreement constitutes an illegal action).

21. See HAGGARD, supra note 17, at 4 (stating that the employee must become a member within a specified time); see also National Labor Relations Act § 8(a)(3), 29 U.S.C. § 158(a)(3) (1994) (stating that the specified time cannot be shorter than 30 days).

22. See HAGGARD, supra note 17, at 71 (identifying maintenance of membership clauses as a "less compulsive variation of the union shop" agreement).

23. See id.

24. See id. at 4.

25. See id.
violated section 8(a)(3) of the NLRA in *NLRB v. General Motors Corp.* The Court held that an employee covered by a union security clause need not become a member of the union, but must continue to pay the dues and initiation fees required of union members. The Court defined this type of arrangement as an agency shop. In *General Motors*, the employer had refused the union’s agency shop agreement offer believing it to be illegal, but the Court, having noted the validity of such agreements, stated that such agreements are legal. In arriving at this conclusion, the Court evaluated the legislative history surrounding the enactment of section 8(a)(3). According to this legislative history analysis, section 8(a)(3)’s allowance of union security agreements serves a dual purpose. The provision was implemented in order to eliminate both the abuses of compulsory unionism and the problem of free riders.

Because other types of union security agreements are not prohibited by section 8(a)(3), the Court focused on the definition of “membership” with respect to union security agreements. It held that “membership” under section 8(a)(3) was limited to payment of initiation fees and monthly dues, but did not mean actual membership. Thus, an agency fee payer’s “[m]embership” as a condition of employment is whittled down to its financial core. The agency fee payer is, therefore, not a formal member.

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27. See id. at 742.
28. See id. at 736 (citing Meade Elec. Co. v. Hagberg, 159 N.E.2d 408 (Ind. App. 1959)).
29. See id. 744-45.
30. See id. at 740-41.
31. See id. at 740.
32. See id. (commenting that the most serious abuse of compulsory unionism, the closed shop, was abolished by the Taft-Hartley Act).
33. See id. at 740-41 (citing S. REP. NO. 80-105, at 7 (1947), reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947 at 407, 413 (1985)). A decline in the amount of free riding may have a “profound” effect on some unions. See Decline in ‘Free-Riding’ Beneficial, 47 UNION LAB. REP. Wkly. News1. (BNA) 119 (Apr. 15, 1993) (citing the findings of two University of Pittsburgh researchers studying three federal employee unions). As an example, it was estimated that a ten percent drop in free riding at one of the federal employee unions “would have generated between 20 percent and 28 percent more revenue for that union in each year of the 1981-1990 decade.” Id.
35. See *General Motors*, 373 U.S. at 742.
36. Id.
37. See id.
2. Reducing Nonmembers' Dues and Fees Under Beck

The Court narrowed the requirements of an agency fee payer's "financial core membership" in *Communications Workers of America v. Beck.* The *Beck* Court considered the issue in light of the *General Motors* definition of "financial core membership" requiring payment equivalent to the union's initiation fees and monthly dues. *Beck* specifically addressed whether a union violated its duty of fair representation by charging agency fee payers, who were nonmembers of the union, the full amount of dues and fees that it charged formal members. Grieving nonmember employees raised the issue and argued that spending a nonmember's dues money on nonrepresentational activities, such as social, charitable, and political events, violated section 8(a)(3) and the union's duty of fair representation.

In light of the legislative history of section 8(a)(3), the Court concluded that an agency fee payer's "financial core membership" did not extend beyond those representational activities that were related to labor-management relations. Thus, a union could not require an objecting nonmember to pay for that part of dues and fees (agency fees) beyond those activities related to collective bargaining, contract negotiation, and grievance adjustment.

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39. See id.
40. See id. at 738-39 (stating that a union must fairly represent all employees and may not discriminate against any of them in using its authority to negotiate a collective bargaining contract) (citing *Vaca v. Sipes*, 386 U.S. 171, 177 (1967)).
41. See id. at 740. Specifically, the nonmember agency fee payers claimed "that the union failed to represent their interests fairly and without hostility by negotiating and enforcing an agreement that allows the exaction of funds for purposes that do not serve their interests and in some cases are contrary to their personal beliefs." *Id.* at 743.
42. See id. at 762-63 (stating that section 8(a)(3) authorized the collection of fees and dues "necessary to performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues") (quoting *Ellis v. Brotherhood of Ry., Airline and Steamship Clerks, Freight Handlers, Express and Station Employees*, 466 U.S. 435, 448 (1984)).
43. See id. at 738. The Court also based its decision on section 2, Eleventh of the Railway Labor Act (RLA), 45 U.S.C. § 152, Eleventh (1994). The Court held that section 2, Eleventh of the RLA is the statutory equivalent of section 8(a)(3) of the *NLRA.* See *Beck*, 487 U.S. at 762.

Section 2, Eleventh of the RLA states in pertinent part any carrier or carriers as defined in this [Act] and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this [Act] shall be permitted—(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the
B. The Battle of the Presidents: Executive Orders and Beck's Notice Requirement

The first effort to implement the Supreme Court's ruling in *Beck* was slow in coming and not realized until President Bush signed Executive Order 12,800, entitled "Notification of Employee Rights Concerning Payment of Union Dues or Fees." This first effort at notifying employees of their *Beck* right, to object and receive a reduced dues requirement commensurate with only representational spending, placed the burden of notification squarely on the employer.

The Executive Order sought to promote harmonious workplace relations, thereby increasing the efficient administration and completion of government contracts. In order to enforce the notice requirement, a federal contractor who failed to comply could lose any current govern-

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44. Exec. Order No. 12,800, 57 Fed. Reg. 12,985 (1992), reprinted in 1992 U.S.C.C.A.N. B22. Although this Executive Order is one of the first efforts to provide employees with notice of their *Beck* rights, the Office of the General Counsel of the National Labor Relations Board, in 1988, issued an advisory memorandum to its Regional Directors, Officers-in-Charge, and Resident Officers regarding notice requirements to be imposed on unions. *See General Counsel Memorandum on Objections to Dues Expenditures*, Memorandum GC 88-14 (Nov. 15, 1988), reprinted in 225 Daily Lab. Rep. (BNA) D-1 (Nov. 22, 1988); *see also infra* note 73 (comparing the NLRB notice content requirements with the General Counsel's memorandum to show that the NLRB, in effect, merely enforced the General Counsel's notice content requirements).

45. *See Exec. Order No. 12,800, § 2(a)(1), 57 Fed. Reg. at 12,985 (requiring federal contractors to post an actual notice to its employees). The required notice informs employees of their right to become or remain nonmembers of a union as well as their right to object to payments made for nonrepresentational activities for which they do not have to pay. *See id.*

46. *See id.; see also* Remarks on Signing the Executive Order on Employee Rights Concerning Union Dues, 28 WEEKLY COMP. PRES. DOC. 644 (Apr. 13, 1992) (stating that the Executive Order will help "guarantee that no American will have his job or livelihood threatened for refusing to contribute to political activities against his will").
ment contracts it had and become ineligible for future contracts.47

However, President Bush's efforts at notifying employees of their rights under Beck lasted less than a year, as the newly sworn President Clinton rescinded the order in 1993.48 Clinton asserted that the purpose of rescinding Executive Order 12,800 was to restore a balance in America's workplace.49

C. Easing Their Way In: The Judiciary and the NLRB Recognize a Duty to Notify Employees of their Beck Rights

Section 7 of the NLRA provides that employees not only have the right to engage in concerted activities, but also the right to refrain from engaging in them.50 The National Labor Relations Board (NLRB) has stated that a union has a duty of fair representation under NLRA section 8(b)(1)(A)'s51 prohibition on restraint or coercion of an employee's section 7 rights.52 This duty of fair representation requires unions to inform employees of their right to object to the spending of dues for nonrepresentational activities and the right to become a reduced fee payer.53 In the absence of this, an employee may unknowingly support an activity with his dues that he has a statutory right to refrain from supporting under section 7.54 Thus, a union is restraining an employee's rights under section 7 and is in breach of its duty of fair representation under section

47. See Executive Order No. 12,800, § 2(a), 57 Fed. Reg. at 12,986. The Department of Labor issued regulations to implement Executive Order 12,800 after it was signed. See Obligations of Federal Contractors and Subcontractors; Employee Rights Concerning Payment of Union Dues or Fees, 57 Fed. Reg. 49,588 (1992).


50. See National Labor Relations Act § 7, 29 U.S.C. § 157 (1994). Section 7 of the NLRA provides in pertinent part that:

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining . . . and shall also have the right to refrain from any or all of such activities . . . .

Id.

51. See id. § 158(b)(1)(A). Section 8(b)(1)(A) provides in part that it will be an unfair labor practice for a union to "restrain or coerce (A) employees in the exercise of the rights guaranteed in section [7]." Id.


53. See id.

54. See id.
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8(b)(1)(A) if the employee is not notified of his *Beck* rights.  

1. The National Labor Relations Board’s First Look at Beck

*California Saw & Knife Works*\(^5\) is the first case in which the NLRB made an affirmative ruling regarding a union’s duty to inform employees covered by a union security clause of their *Beck* rights under the NLRA.\(^7\) This decision, however, only affected the rights of nonmember employees under *Beck* and not the rights of those employees who were union members.\(^5\) The NLRB stated that it will hold a union to a duty of fair representation in cases addressing *Beck* issues.\(^9\)

The NLRB held that, in determining when a union must inform a nonmember employee of his *Beck* rights, a union is obliged to inform such an employee only when it seeks to enforce a union security clause by making the nonmember pay dues or fees.\(^6\) Furthermore, the union does not have a duty of fair representation to give additional notice to a new nonmember when he resigns his membership.\(^6\) Thus, a union is un-

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\(^5\) See *id.* The NLRB proposed a set of rules for notifying employees in order to assure that employees receive notice of their rights under *Beck.* See *id.* at 43,635 (1992). Several alternative forms of notice were suggested and had to be given each year. See *id.* at 43,642. These alternatives include direct mailings to the last known addresses of employees, posting notices in the workplace and in places where the union normally posted notices, or publishing the information in newsletters that were sent to all employees covered by the security agreement. See *id.* The proposed rules also required unions to separately notify nonmember financial core employees of their right to object to nonrepresentational expenditures and thereby pay only reduced union dues. See *id.* The alternative methods for providing nonmember employees with such notice also involved either direct mailings, posting, or publication. See *id.* At the time it proposed the rules, the NLRB recognized that cases involving issues addressed by the rules were coming before the Board for review. See *id.* at 43,641. The proposed rules were eventually withdrawn in favor of a case-by-case implementation of *Beck’s* notice requirements. See Rules and Procedures for the Implementation of Communications Workers v. *Beck*, 487 U.S. 735 (1988), 61 Fed. Reg. 11,167 (1996).


\(^7\) See *California Saw & Knife Works*, 320 N.L.R.B. 224, 233 (1995). The NLRB notes that the issue of whether a union must provide a nonmember employee notice of his right to object to payment of full fees is an issue that came out of *Beck*, yet was not addressed by the Supreme Court. See *id.* at 225.

\(^8\) See *id.* at 224 n.7.

\(^9\) See *id.* at 230. The NLRB noted that it will apply the duty of fair representation standard set forth by the Supreme Court in *Vaca v. Sipes*, 386 U.S. 171 (1967). See *id.* The *Vaca* standard holds that a union breaches its duty of fair representation when its actions are “arbitrary, discriminatory, or in bad faith.” *Id.* However, the NLRB also stated that *Beck* notice issues can be resolved under the duty of fair representation as set forth in section 8(b)(1)(A) of the NLRA. See *id.* at 233 n.47.

\(^60\) See *id.* at 231 & 232 n.46.

\(^61\) See *id.* at 231.
nder a duty of fair representation to give Beck rights notice to newly hired nonmember employees only at the time that the union seeks to collect dues or fees. In addition, newly resigned members are to be given such notice only if they have not received prior notice.

In meeting their duty of fair representation, a "wide range of reasonableness" is given to unions when it comes to the mode by which they give an employee notice of his Beck rights. Specifically, the NLRB held that notice printed once a year in a union publication that is sent to all covered employees is sufficient to notify nonmember employees of their Beck rights and thereby fulfills the union's duty of fair representation. This type of publication notice is sufficient even where the cover of the publication does not indicate that the notice is enclosed. However, if "the notice is not reasonably calculated to apprise the nonmember employees of [their] Beck rights," then the union may violate its duty of fair representation.

The NLRB held that the content of notice provided to a nonmember employee must have several elements. First, the union must inform the employee that he may remain or become a nonmember of the union. Second, the union must inform the nonmember of his right both to object to paying for union activities that are not related to collective bargaining and to receive a reduction in fees for such unrelated activities. Third, the union must inform the nonmember of his right to be given enough information to allow an intelligent decision on whether to object. Fourth, the union must inform the nonmember employee of his right to

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62. See id.
63. See id.
64. See id. at 235.
65. See id. at 234.
66. See id. (noting that "[w]e cannot agree with the General Counsel that the IAM acted arbitrarily, in bad faith, or in a discriminatory manner, and thereby violated its duty of fair representation, by failing specifically to note its Beck policy on the cover of its publication").
67. Id. at 234 n.55. Where a union publication is so lengthy that it basically hides the notice, however, it similarly will not be sufficient. See id. at 234.
68. See id. at 233.
69. See id. The right to become or remain a nonmember comes from the Supreme Court's decision in NLRB v. General Motors Corp., 373 U.S. 734 (1963). See supra notes 34-37 and accompanying text (explaining that the Supreme Court does not consider an agency fee payer a formal member of a union). However, the NLRB in California Saw noted that General Motors rights and Beck rights are inextricably linked such that it is necessary to inform an employee of his General Motors rights before informing him of his Beck rights. See California Saw, 320 N.L.R.B. at 235 n.57.
70. See California Saw, 320 N.L.R.B. at 233.
71. See id.
be made aware of any internal union procedures for filing an objection. Finally, when an employee does object, "he must be apprised of the percentage of the reduction, the basis for the calculation, and the right to challenge these figures." As these are only the minimum necessary rights of which a nonmember employee must be apprised, the union, in its discretion, may give fuller information to an employee.

2. Extending California Saw

Following its decision in *California Saw*, the NLRB considered the case of *Weyerhaeuser Paper Co.*, which dealt with a union's duty to provide notice to all covered employees, including current union members, as opposed to only nonmembers. In *Weyerhaeuser*, the NLRB held that notice to nonmembers must be given only once—at the time the union first seeks to collect dues and fees.

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72. See id.

73. Id.; see also United Bhd. of Carpenters and Joiners of Am., Local Union No. 943 (Oklahoma Fixture Co.), 322 N.L.R.B. 825, 825-26 (1997) (holding that a union breaches its duty of fair representation where it fails to disclose its expenditure breakdown to an objecting employee who requests it even if the union claims that 100% of the dues were spent for representational activities, and even if the union offers to the employee the alternative of contributing the fees to a mutually agreeable charity); Laborers' Int'l Union of N. Am. Local 265, 322 N.L.R.B. 294, 296 (1996) (holding that where a union waives an employee's obligations under a security agreement by telling him that he does not have to pay the required dues or fees, the union will not have violated its duty of fair representation if it does not provide that objector with *Beck* related financial information); International Union of Elec., Elec., Salaried, Mach. and Furniture Workers Local 444, 322 N.L.R.B. 1, 1-2 (1996) (holding that a union must provide an objecting employee with a union funds expenditure breakdown so that the employee can make an intelligent decision as to whether he should challenge the union's nonrepresentational fee calculations). Compare supra notes 69-73 and accompanying text, with General Counsel Memorandum on Objections to Dues Expenditures, Memorandum GC 88-14 (Nov. 15, 1988), reprinted in 225 Daily Lab. Rep. (BNA) D-1 (Nov. 22, 1988) (comparing the NLRB notice content requirements with the General Counsel's memorandum to show that the NLRB, in effect, merely enforced the General Counsel's notice content requirements).

74. See *California Saw*, 320 N.L.R.B. at 233 n.51.


76. See id. at 349. In *Weyerhaeuser*, the NLRB applied the rationale of *California Saw*. See id. However, in *Weyerhaeuser*, the NLRB assessed the union's duty of fair representation under section 8(b)(1)(A) of the NLRA, rather than under the standard articulated in *Vaca v. Sipes*, 386 U.S. 171 (1967). See id. at 349 n.5; see also supra notes 57-59 and accompanying text (noting that in *California Saw*, the NLRB chose to apply the duty of fair representation standard as set forth by the Supreme Court in *Vaca*, while at the same time recognizing that *Beck* notice issues also could be resolved under section 8(b)(1)(A) of the NLRA).
from the nonmember employee. As for current union members, the same notice given to nonmembers under California Saw also must be given once to those current members who have not previously received the notice. Furthermore, unions must inform covered employees of the statutory limits on union security obligations, regardless of the language used in the security clause. Finally, the NLRB noted that it does not prescribe the form of the notice that must be given.

Another issue that has arisen regarding Beck notification requirements is whether notice must be provided in the union security clause itself. In Nielsen v. International Association of Machinists & Aerospace Workers, Local Lodge 2569, the United States Court of Appeals for the Seventh Circuit held that a union security clause itself need not contain detailed notice provisions. However, a union may be found to have inadequately informed the employees of their right to object and, therefore, breached its duty of fair representation where its notice defines financial core expenses too broadly.

Finally, in Rochester Manufacturing Co., the NLRB addressed the issue of the proper remedy where a union failed to inform all covered employees of their Beck rights. The NLRB noted that in remediying violations of the NLRA, its practice was to restore the status quo ante. Therefore, the violating union first must give Beck rights notice to all

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77. See Weyerhaeuser, 320 N.L.R.B. at 350.
78. See id. (stating that notice to current members assures that they have not been misled about dues requirements).
79. See id.
80. See id.
82. Id.
83. See id. at 1115; see also International Union of Electronic, Electrical, Salaried, Mach. & Furniture Workers v. NLRB, 41 F.3d 1534, 1539 (D.C. Cir. 1994) (holding that there was no substantial evidence that the union was acting in bad faith by not inserting notice of Beck rights in the union security clause).
84. See Abrams v. Communications Workers of Am., 59 F.3d 1373, 1379-80 (D.C. Cir. 1995) (noting that overbreadth is not cured even if a union lists some nonchargeable expenses).
86. See id. slip op. at 4, 154 L.R.R.M. at 1252 (noting that the issue was not addressed in either California Saw or Weyerhaeuser).
87. See id. (stating that to restore the status quo ante, there must be a reconstruction of "the circumstances that would have existed but for the unlawful conduct").
Requiring Unions to Notify Covered Employees. Second, the union must give each employee the opportunity to object to each of the past accounting periods about which the employee complains. Lastly, the union must reimburse each objecting employee for the "nonrepresentational activities that occurred during the accounting period or periods covered by the complaint in which the nonmember employee has objected."

D. Congress Gets Into the Act: Proposing Legislation to Increase Notification that Employees Receive Regarding the Right to be Agency Fee Payers

In the wake of Beck and various NLRB decisions implementing its holding, Congress has not gone unspoken with regard to notifying employees of their right to be an agency fee payer under the NLRA. Indeed, the House Committee on Education and the Workforce's stated purpose under the Worker Paycheck Fairness Act ("the House Bill") was to make sure that all workers are aware of their Beck rights.

The House Bill proposed two forms of notice to make workers aware of these rights: written consent and posting. Section 4 of the House Bill would have required unions to obtain prior, voluntary, written consent for any part of dues that are not germane to the representational func-

88. See id. slip op. at 4, 154 L.R.R.M. at 1253.
89. See id. (asserting that the union must process each objection as it would have under California Saw).
90. Id.
93. See H.R. 1625, §§ 4-5.
The written authorization must state that the employee does not have to sign and that, by signing, he allows fees paid to the union to be spent on nonrepresentational activities such as political, social, and charitable activities. The posted notice portion of the House Bill would have required employers to post notices in employee areas informing them that the union must obtain their prior, written authorizations for securing fees that may be used for nonrepresentational activities. In addition to the notice requirements, the House Bill contained a punitive clause for failure to obtain a prior written authorization from each employee. This clause made labor organizations liable for up to two times the amount of fees they accept without obtaining prior written consent.

The Senate's Paycheck Protection Act ("the Senate Bill") also sought to make workers aware of how their union fees are being spent, particularly in relation to political spending. Specifically, the Senate Bill would have amended section 316 of the Federal Election Campaign Act of 1971 by requiring labor organizations to obtain prior written, voluntary authorization from each covered employee before collecting or assessing dues that would be spent on political activities.

Various facets of the government, including two Presidents, the NLRB, the courts, and Congress have all played a role in efforts to make workers aware of their Beck rights. However, whether union workers are actually aware of their rights to be fee objectors may be questionable in light of a recent survey finding that seventy-eight percent of union workers were not aware of their right to pay a reduced fee based on rep-

94. See id. § 4(a)(1).
95. See id. § 4(a)(2).
96. See id. § 5.
97. See id. § 4(c).
98. See id. § 4(c)(1).
99. S. 9, 105th Cong. (1997); see also 143 CONG. REC. S264 (daily ed. Jan. 21, 1997) (statement of Sen. Nickles) (commenting that the Paycheck Protection Act "deals with making sure that no one is compelled to contribute to political campaigns with which they [sic] disagree"). The Senate Committee on Rules and Administration held hearings on S. 9, however, no other action was taken before the 105th Congress adjourned. See Bill Summary & Status for the 105th Congress, S. 9, (visited Jan. 24, 1999) <http://thomas.loc.gov/cgi-bin/bdquery/D?d105:1:/temp/~bd50lk/L/bss/d105query.html>.
101. See S. 9, § 2(c)(1)(B); see also 143 CONG. REC. S265 (daily ed. Jan. 21, 1997) (statement of Sen. Nickles) (noting that the NLRB has made efforts in enforcing Beck rights, but stating that "more needs to be done").
resentational activities only.\textsuperscript{102}

II. Delineating the Appropriate Notice Requirements

"Notice" generally involves "[a]ny fact which would put an ordinarily prudent person on inquiry."\textsuperscript{103} In the legal sense of the word, notice is "information concerning a fact, actually communicated to a person by an authorized person, or actually derived by him from a proper source."\textsuperscript{104} The communication is considered "actual" when "the person sought to be affected by it knows thereby of the existence of the particular fact in question."\textsuperscript{105}

A. The Executive's Application of Notice

President Bush's Executive Order to implement Beck placed the burden of notice squarely on the employer, without placing any duty on the union itself.\textsuperscript{106} However, under Beck, the union, not the employer, owes the duty of fair representation to the covered employee.\textsuperscript{107} Following the holding in Beck, the NLRB placed the duty of fair representation to no-

\begin{footnotes}
\footnotetext{103}{BLACK'S LAW DICTIONARY 1061 (6th ed. 1990) (citing State ex rel. Gleason v. Rickhoff, 541 S.W.2d 47, 50 (Mo. Ct. App. 1977)).}
\footnotetext{104}{Id. (citing United States v. Tuteur, 215 F.2d 415, 418 (7th Cir. 1954)).}
\footnotetext{105}{Id. (citing United States v. Tuteur, 215 F.2d 415, 418 (7th Cir. 1954)).}
\footnotetext{106}{See supra notes 45-47 and accompanying text (discussing Executive Order 12,800 as placing the notice requirement on federal contractors). Executive Order 12,800 included a sample notice containing information that had to be provided in any notice. See Exec. Order No. 12,800, 57 Fed. Reg. 12,985 (1992). The sample notice was headed by the words "NOTICE TO EMPLOYEES" and stated:

Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not unionmembers [sic] can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance [sic] adjustment, you may be entitled to a refund and to an appropriate reduction in future [sic] payments.

Id. The notice concluded with the address of the National Labor Relations Board so that employees could obtain further information regarding their rights. See id.}
\end{footnotes}
tify members of their *Beck* rights on the union.108 Thus, President Bush's Executive Order seems to have misplaced the burden of notification.109

Furthermore, the Executive Order sought only to notify employees of their right to object and pay reduced fees under the NLRA; it did not seek to notify employees of their other rights under the NLRA.110 As *Beck* rights are only a few among many of the NLRA rights available to protect employees, many have criticized a notice requirement that notifies employees of one set of rights while ignoring the rest of the body of NLRA rights.111 As one commentator stated, notifying employees only of their *Beck* rights without notifying them of their other rights is like the tail wagging the dog.112 Thus, whether the true purpose of President Bush's Executive Order was actually to inform employees of their *Beck* rights or was rather some antiunion tactic has been called into question.113

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108. See supra note 59 and accompanying text (recognizing the duty of fair representation as found in *Vaca* and section 8(b)(1)(A)).

109. See supra notes 45-47, 106-08 and accompanying text (discussing Executive Order 12,800 as placing the notice requirement on the employer, while it is actually the union, and not the employer, who owes the duty of fair representation to the covered employee).

110. See Statement on Revocation of Certain Executive Orders Concerning Federal Contracting, 29 WEEKLY COMP. PRES. DOC. 120 (Feb. 1, 1993) (stating President Clinton's view that the Executive Order was distinctly antiunion).


112. See id. (explaining that notifying employees only of their *Beck* rights and not the rest of their NLRA rights has been criticized).

113. See Richard L. Berke, *Bush Fires a Shot at Union Political Spending*, N.Y. TIMES, Apr. 19, 1992, at E3 (stating that some union officials believed that President Bush was attempting to hurt the labor movement); see also infra notes 204-12 and accompanying text (illustrating further discussion of President Bush's possible purposes for Executive Order 12,800).

Not only have President Bush's motives in signing the Executive Order been questioned, but so has his authority to enact the Order. See MCCALLION, supra note 111, at CRS-18 (noting that Congress has given the NLRB the exclusive role of assessing remedies for unfair labor practices and that the President had little authority to enact Executive Order 12,800). When evaluating presidential authority and powers, there are three situations to consider: (1) when the President acts under express or implied authorization of Congress, (2) when the President acts without a congressional grant or denial, such that he may have concurrent power with Congress, often dubbed a "zone of twilight," and (3) "[w]hen the President takes measures incompatible with the expressed or implied will of Congress." Id. at CRS-16 (citing Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)). In the third situation, the presidential powers are at their weakest. See id.

President Bush's powers in issuing Executive Order 12,800 appear to fall into the third category. See id. at CRS-18. Imposing notice-posting requirements is a power reserved to the NLRB by Congress. See id. As such, his powers are at their weakest point and, therefore, he may not have authority to impose notice-posting requirements. See id.
B. The Aftermath of California Saw

It took the NLRB approximately four years after the 1988 Beck decision to first address the issues raised in Beck. Recognizing the significance of the Beck decision, the NLRB sought to enforce the decision by engaging in substantive rulemaking, something it had done only one other time in Board history. However, the NLRB, after abandoning rulemaking in favor of resolving Beck issues on a case-by-case approach, has been criticized for moving at an egregiously slow pace in enforcing Beck rights. The slow pace at which the NLRB has moved is evidenced by the fact that it took nearly eight years to address Beck rights issues determinatively, including the notice issue, in California Saw & Knife Works.

1. A Wide Range of Reasonableness

The NLRB, in California Saw, granted unions a “wide range of reasonableness” in addressing the way in which a union may notify employees of their Beck rights. Logically, it follows that the NLRB, in granting this “wide range of reasonableness,” does not prescribe the form which a union’s notice to covered employees must take.

One rationale, which may explain the NLRB’s failure to provide a Beck notice bright line test, may come from its concern for fairness. In both California Saw and Weyerhaeuser, the NLRB asserted that the no-
tice requirements it had prescribed provided fair protection both to individual employees and to unions.\textsuperscript{122} Particularly, the individual employee's rights were protected by the NLRB's notice requirements while the union, comprised of full dues paying members, was ensured that a free rider problem would not develop.\textsuperscript{123}

However, fairness may not be the NLRB's only reason in granting unions such wide latitude in determining the form that their notice will take. In fact, the NLRB may not truly be acting fairly towards individual employees and may, in fact, be of no help to them in determining their dues obligations in light of *Beck*.\textsuperscript{124} This lack of help may come from disagreement with Supreme Court decisions\textsuperscript{125} allowing covered employees to remain nonmembers\textsuperscript{126} and to pay reduced dues.\textsuperscript{127} Chairman Gould has asserted that covered employees should pay full dues and not be allowed to become nonmembers.\textsuperscript{128} This belief may have carried over into the NLRB's decision not to specify the form of notice that unions must provide, but rather allow them a "wide range of reasonableness."

2. Union Publications and Annual Notice

The NLRB did, however, sanction the use of notice through a union

\begin{footnotes}
\footnotetext[122]{\textit{See} id. at 233; \textit{see also} Weyerhaeuser, 320 N.L.R.B. at 350.}
\footnotetext[123]{\textit{See} Weyerhaeuser, 320 N.L.R.B. at 350. Specifically, the Board stated that "[t]hese notice requirements furnish significant protection to the interests of the individual unit employee \textit{vis-a-vis} *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective-bargaining activities." \textit{Id.}
\footnotetext[125]{\textit{See} id. at 4 (citing NLRB Public Release, March 20, 1997, pp. 5-6). In this press release, NLRB Chairman Gould asserted that \textit{[General Motors]} in its insistence that union membership can be defined as only requiring the payment of periodic dues and initiation fees is, in my judgment, a decision that was erroneous. I think that the statute is consistent with an approach which would allow unions and employers, where the union enjoys majority support, to negotiate an agreement which requires full membership obligations, as well as the payment of initiation fees and dues. \textit{Id.}}
\footnotetext[126]{\textit{See} NLRB v. General Motors Corp., 373 U.S. 734, 743 (1963) (allowing covered employees to be or become nonmember employees).}
\footnotetext[127]{{\textit{See} Communications Workers of America v. *Beck*, 487 U.S. 735, 745 (allowing nonmember employees to object to paying full dues and fees and, therefore, only pay for representational activities).}}
\footnotetext[128]{{\textit{See supra} note 125 (quoting comments made by Chairman Gould in an NLRB press release).}}
\end{footnotes}
Requiring Unions to Notify Covered Employees

In fact, the NLRB has held that such notice is sufficient to notify covered employees of their Beck rights where it is printed in one union publication per year and is mailed to the last known address of each employee.

Despite the NLRB's ruling that publication notice is sufficient to apprise employees of their Beck rights, such notice may not "actually" communicate these rights to employees. One criticism of publication notice is that the cover of the magazine or pamphlet does not have to mention that the Beck rights notice is enclosed. Additionally, even if the notice is not highlighted on the cover of the publication, it has been argued that the notice should at least be highlighted in the table of contents. The dilemma of failing to highlight the notice on the cover may come into play when dealing with covered employees who do not belong to the union. Without the notice highlighted on the cover to catch the eye, a nonmember employee is not likely to read the union publication because he does not belong to the union. Furthermore, the publication notice may simply be sent to the employee's last known address. Accordingly, if an employee no longer resides at that address, the employee may never get any notice. Thus, publication notice may not "actually" inform employees of their Beck rights.

Moreover, publication notice has been criticized as a means of hiding the notice. The NLRB has recognized that where a publication is lengthy, it may not be reasonably calculated to inform an employee of his rights. Yet, the NLRB assumes that, even with a short publication, a nonmember should make a reasonable perusal of the publication in order to discover possible notice. This ignores the argument that non-

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130. See id. at 234.
131. See id. (noting that the General Counsel of the NLRB believed that the publication notice was unlawful because it did not mention the Beck notice on the cover).
132. See id. at 231-32 n.41 (noting Member Cohen's assertion that "the [Machinists'] Union highlights other information on the cover of [its publication], but has never mentioned Beck rights on the cover").
133. See id.
134. See id.
135. See supra note 130 and accompanying text (citing California Saw for the proposition that publication notice need only be sent to each employee's last known address).
136. See Campaign Finance Revisions, supra note 124, at 6-7 (written statement of Raymond J. LaJeunesse) (stating that the notice in the union publication was not highlighted on the cover and was printed in reduced typeface).
137. See California Saw, 320 N.L.R.B. at 234 & n.55.
138. See id. at 234.
members will not even look through the publication of an organization to which they do not belong in the first place.\textsuperscript{139}

The NLRB, in \textit{Weyerhaeuser}, also asserted that notice need be given only once, not annually, regardless of whether notice is by publication or some other form.\textsuperscript{140} However, the initial NLRB reaction to \textit{Beck} was that notice was to be given annually.\textsuperscript{141} One reason for this may stem from the fact that unions may require nonmember employees to file new objections each year in order to receive their reduced dues rate.\textsuperscript{142} In fact, members of the NLRB have argued that annual notice should be given to employees who must renew their objections each year.\textsuperscript{143} Even some unions, out of fairness to employees, have taken it upon themselves to provide notice on an annual basis under some circumstances.\textsuperscript{144}

3. \textit{Posting Notice Through Punishment}

Although the NLRB does not prescribe the form that a union's \textit{Beck} notice must take, there are times that it will require posting of notice.\textsuperscript{145}

\textsuperscript{139} See \textit{supra} note 134 and accompanying text (discussing Member Cohen's dissenting argument in \textit{California Saw} that nonmembers will not read a union publication since they do not belong to the union and, as a result, they will not actually be notified of their \textit{Beck} rights).


\textsuperscript{141} \textit{General Counsel Memorandum on Objections to Dues Expenditures}, Memorandum GC 88-14 (Nov. 15, 1988), reprinted in 225 Daily Lab. Rep. (BNA) D-1 (Nov. 22, 1988); see also \textit{supra} note 73 (comparing the NLRB notice content requirements with the General Counsel's memorandum to show that the NLRB, in effect, merely enforced the General Counsel's notice content requirements). However, the NLRB has not enforced that annual notice provision of the memorandum. \textit{See Weyerhaeuser}, 320 N.L.R.B. at 350 (holding that notice needs to be given to nonmembers and members alike only once and is not a "continuing requirement").

\textsuperscript{142} See Matsis, \textit{supra} note 7, at 268.

\textsuperscript{143} \textit{See Weyerhaeuser}, 320 N.L.R.B. at 350 n.7 (noting Member Cohen's support of annual notice where the union requires an employee to renew his objection each year in order to receive reduced dues and fees); see also Group Health Inc., 323 N.L.R.B. No. 31, 154 L.R.R.M. (BNA) 1204, 1209 n.6 (Feb. 27, 1997) (noting Member Higgins's support of annual notice).

\textsuperscript{144} See \textit{Hearings on H.R. 3580}, \textit{supra} note 14, at 102 (written statement of Mark Schneider, Associate General Counsel of the International Association of Machinists and Aerospace Workers) (stating that because the Machinists Union requires objectors to submit their objections within "a particular one-month 'window period,' [they] felt that fairness required that [they] provide notice to all of [their] represented employees on an annual basis"). This ability of unions to provide fuller notice of \textit{Beck} rights to its employees was asserted in \textit{California Saw \& Knife Works}. \textit{See 320 N.L.R.B.} 224, 233 n.51 (1995).

\textsuperscript{145} \textit{See McCALLION ET AL.}, \textit{supra} note 111, at CRS-19 (asserting that the NLRB may require posting of notice as a part of a cease and desist order).
For example, a union may be required to post notice of Beck rights at the workplace for sixty days as part of a cease and desist order where it fails to inform its covered employees of these rights. Thus, the NLRB does prescribe a form of notice in this respect.

This posting of notices may be more effective than mere publication. For example, an employee who shows up for work will find notice posted in the workplace, whereas an employee who only receives notice through a publication mailed to his last known address may never actually receive the notice. Therefore, to “actually” communicate Beck rights to employees, it seems more beneficial for the individual employee to have the union fail to provide notice and thereby be forced to post it in the workplace by an NLRB order.

Though the NLRB may actually prescribe notice posting in its orders, the Board may be justified in its decision not to prescribe the form that notice must take. In the past, the Supreme Court has refused to enforce NLRB decisions on other issues that included orders to post notice, where Congress had not spoken to the particular issue.

C. Opting-Out and Opting-In

While the NLRB has decided not to prescribe the form that notice must take, Members of Congress, speaking out on the issue of notifying

146. See id.; see also Weyerhaeuser, 320 N.L.R.B. at 355 (noting that the union must also maintain the notices to ensure that they are not vandalized). In Weyerhaeuser, the Board also required the Union to “make additional signed copies of their notice available for the employer to post with its own notice to ensure that nonmember employees are sufficiently apprised of their rights.” Id.; see also Service Employees Int'l Union Local 74 (Parkside Lodge of Connecticut, Inc.), 323 N.L.R.B. No. 39, slip op. at 3 (Mar. 21, 1997), available at Decisions and Orders of the NLRB (Volume 323) (visited Oct. 22, 1998) <http://www.nlrb.gov/slip323.html> (stating that the notice must be maintained for 60 consecutive days in conspicuous places); Rochester Mfg. Co., 323 N.L.R.B. No. 36, slip op. at 6 (Mar. 12, 1997), available at Decisions and Orders of the NLRB (Volume 323) (visited Oct. 22, 1998) <http://www.nlrb.gov/slip323.html> (requiring notice to be posted and maintained for 60 consecutive days in places where notice to employees and members are customarily posted).

147. See supra notes 134-35 and accompanying text (stating that a nonmember employee is not likely to read a union publication since he is not a member of the union). Even if he would read the publication, the employee may no longer live at the last known address that the union has and therefore might never get the publication containing the notice in the first place. See id.

148. See id.

149. See supra note 120 and accompanying text (pointing out the NLRB's decision not to prescribe the form that a union's notice must take as asserted in Weyerhaeuser).

employees of their Beck rights, have proposed several forms of notification. The first proposed form of notification, prior written authorizations, requires unions to obtain written authorizations of employees before they collect any dues for nonrepresentational activities. These prior written authorizations are, in essence, an “opt-in” procedure whereby the employee must approve of the union’s collection of dues for nonrepresentational activities such that he does not have to object to nonrepresentational spending in order to pay reduced dues. On the other hand, an employee currently is required to opt-out of nonrepresentational activities by objecting to the use of his dues for those purposes.

While the opt-in procedure may seem more likely to “actually” communicate Beck rights to employees, it is in direct opposition to the Supreme Court’s decision in International Association of Machinists v. Street. Specifically, Street held that “dissent is not to be presumed—it must affirmatively be made known to the union by the dissenting employee.” Thus, under Beck, the onus is on the agency fee payer to assert an objection to nonrepresentational dues before he can receive a reduction. By following an opt-in procedure, such as that proposed by Congress, an employee would be circumventing this objection requirement.

While an opt-in procedure may be at odds with Supreme Court precedent, the procedure does have some features that make it more attractive

151. See supra notes 91-101 and accompanying text (discussing the notice provisions in both the Worker Paycheck Fairness Act, introduced by the House of Representatives, and the Paycheck Protection Act, introduced by the Senate).
153. See Hearing on H.R. 1625, The Worker Paycheck Fairness Act Before the House Comm. on Educ. and the Workforce, 105th Cong. 189 (1997) [hereinafter Hearing on H.R. 1625] (written statement of Marshall J. Breger, Visiting Professor, Columbus School of Law, The Catholic University of America) (stating that the current opt-out procedures create “confusion as to the clarity of the notice” and that opt-in procedures are fairer than opt-out procedures).
154. See id.
155. 367 U.S. 740, 774 (1961). Although Street is a Railway Labor Act case, the Beck Court found it to be controlling such that its dissent requirement would be applicable in Beck. See Communications Workers of Am. v. Beck, 487 U.S. 735, 745 (1988); see also supra note 43 (discussing the interaction of Street and the Railway Labor Act with Beck).
156. Street, 367 U.S. at 774. The Street Court went on to state that “[t]he union receiving money exacted from an employee under a union-shop agreement should not in fairness be subjected to sanctions in favor of an employee who makes no complaint of the use of his money for such activities.” Id.
158. See Street, 367 U.S. at 774.
than the opt-out procedure. The opt-in procedure would distinguish between representational and nonrepresentational dues from the very start of employment.\footnote{See Hearing on H.R. 1625, supra note 153, at 157 (written statement of Roger Pilon, Ph.D., J.D., Senior Fellow and Director, Center for Constitutional Studies, CATO Institute).}

By distinguishing the two sets of dues, this opt-in procedure recognizes the employee, rather than the union, as having control of the money from the start.\footnote{See id. (noting that this procedure would allow the employee to retain control and be the “master” over the use of his dues).} The opt-in procedure also may be considered fairer to the employee since he would not have to go through the refund procedure to get his money.\footnote{See id. at 189 (written statement of Marshall J. Breger, Visiting Professor, Columbus School of Law, The Catholic University of America).}

Furthermore, employees who must object under the opt-out procedure sometimes find themselves harassed by the union.\footnote{See Hearing on H.R. 3580, supra note 14, at 234 (statement of Charles W. Baird, Ph.D., Professor of Economics and Director, Smith Center for Private Enterprise Studies); see also Hearings on Mandatory Union Dues Before the Subcomm. on Employer-Employee Relations of the House Comm. on Educ. and the Workforce, 105th Cong. 34-35 (1997) [hereinafter Mandatory Union Dues] (statement of Jane Gansmann, TWA employee) (stating that her name, along with the names of other union dues objectors, was printed in a recent issue of the union’s publication); Hearing on H.R. 1625, supra note 153, at 91 (testimony of Charles Barth, Aircraft Maintenance Technician, U.S. Airways) (testifying that letters were posted in the workplace “listing the names of Political Objectors, and labeling them Union Objectors, Dues Objectors and Scabs”); Mandatory Union Dues, supra, at 18 (statement of Kerry W. Gipe, Aircraft Mechanic, U.S. Airways) (stating that, in addition to the names of objectors being posted on both union and company property calling them scabs, the objectors were told that their names also were being distributed to other union officials so as to prevent them from being employed at any union shop in any other location).}

In addition to facing potential harassment for objecting to paying full dues, an employee who becomes a nonmember of the union to receive the reduced dues may also lose his right to participate in union affairs that affect him. See H.R. REP. NO. 105-397, at 9 (1997). While a nonmember employee has a right to vote on collective bargaining representatives (unions), a nonmember employee does not have a right to vote on the particular individuals who represent the union. See Kidwell v. Transportation Communications Int’l Union, 946 F.2d 283, 295 (4th Cir. 1991). Also, a nonmember employee is not permitted to participate in the ratification of negotiated terms and conditions of employment. See id. Furthermore, a nonmember employee has no right to vote in decisions about disputes, such as whether or not to strike an employer. See id. at 296. Thus, in the process of becoming a nonmember of the union so as to take advantage of one’s Beck rights, a nonmember employee also gives up significant workplace rights.

Section 7 of the Worker Paycheck Fairness Act sought to remedy nonmember employees’ problems of harassment and loss of workplace rights. See H.R. REP. NO. 105-397, at 19 (1997). Section 7 of the Act prohibited retaliation and coercion of a labor organization against an employee exercising his Beck rights. See Worker Paycheck Fairness Act, H.R. 1625, 105th Cong. § 7 (1997). Specifically, section 7 stated, “[i]t shall be unlawful for any
authorizations would allow employees to exercise their *Beck* rights without such harassment. Finally, the opt-in notice procedure could reduce the possibility of non-compliance with *Beck* principles, as well confusion over the sufficiency of a union publication notice. Despite these benefits, the NLRB refuses to prescribe a bright line form of notice and the opt-in procedure remains at odds with settled Supreme Court decisions.

The second proposed form of notice involves posting. This proposed congressional requirement, like Executive Order 12,800, places the responsibility on the employer to post notice of *Beck* rights around the workplace. Furthermore, the congressional proposal commands the Department of Labor to prescribe the form and size of the notice. Likewise, Executive Order 12,800 also had commanded the Department of Labor to prescribe the size and form of the notice. However, the

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labor organization to coerce, intimidate, threaten, interfere with, or retaliate against any employee in the exercise of, or on account of having exercised, any right granted or protected by this Act.” *Id.* Not only would section 7 of H.R. 1625 curb harassment, but “[i]t would also prevent unions from forcing workers to resign their union membership—and in the process, to give up critical workplace rights.” *See H.R. Rep. No. 105-397, at 19 (1997).*

The language of section 7 of H.R. 1625 was modeled after the language in section 503 of the Americans with Disabilities Act and section 704 of Title VII of the Civil Rights Act of 1964. Section 503 of the Americans with Disabilities Act provides in part:

> It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.


165. *See* Hearings on H.R. 3580, supra note 14, at 219 (written statement of Marshall J. Breger) (stating that disclosure to employees of their *Beck* rights before a union collects dues and fees not germane to collective bargaining will help reduce questions as to the sufficiency of notice).

166. *See* supra note 120 and accompanying text (pointing out the NLRB’s refusal in *Weyerhaeuser* to prescribe the form that *Beck* notice must take).

167. *See* supra notes 155-58 and accompanying text (citing the Supreme Court’s decision in *Street* that an employee has an affirmative duty to object and that objection is not to be presumed).


169. *See* id.; supra note 45 and accompanying text (discussing Executive Order 12,800’s requirement that notice must be posted by the employer).

170. *See* H.R. 1625 § 5.

one difference between Executive Order 12,800 and proposed congressional notice-posting is that the Executive Order applies only to employees of federal contractors while the congressional posting would apply to all employees covered by a union security clause. Despite this difference, it appears that the proposed congressional notice-requirements are merely delayed support and implementation of President Bush's Executive Order.

One distinct point about proposed congressional notice requirements can be seen in the punitive clauses that attach to unions for failure to provide notice. Under the proposed Worker Paycheck Fairness Act, a union who failed to provide notice to employees would be liable to the employee for up to two times the amount of dues and fees collected as well as attorney's fees. This severe liability doubles the liability currently imposed by the NLRB. However, both provisions may encounter the problem of an employee who would not have objected in prior years even if he had been aware of Beck rights, but, now having the opportunity for financial gain, the employee may assert that he would have objected in those prior years if notice had been provided. Furthermore, while congressional proposed notice requirements appear to be Executive Order 12,800 reincarnated, the congressional requirements, unlike the Executive Order, shift the liability to the union and away from the employer. This adjustment seems appropriate in light of the fact

172. Cf. Ann Devroy, *Bush Moves to Enforce Union Curb*, WASH. POST, Apr. 14, 1992, at A1 (stating that President Bush urged Congress to agree to implement Beck so that all workers would be provided notice, but subsequently decided to issue the Executive Order since doing so would not require congressional action).

173. See *Hearings on H.R. 3580*, *supra* note 14, at 218-19 (written statement of Marshall J. Breger) (stating that the proposed congressional act requiring posting of notice would "take the rescinded Bush Executive order requiring posting for federal contractors and extend it to all employees subject to the NLRA")


175. See *supra* notes 91-98 and accompanying text (citing the House Bill and delineating its basic requirements).

176. See H.R. 1625, §§ 4(c)(1)-(3); *supra* notes 97-98 and accompanying text.

177. See *supra* note 90 and accompanying text (noting that the union may be liable to reimburse the objecting employee for only the amount of dues and fees collected).

178. See Rochester Manufacturing Co., 323 N.L.R.B. No. 36, slip op. at 4, 154 L.R.R.M. (BNA) 1249, 1253 (Mar. 12, 1997) (noting that the wrongdoer must bear the burden of uncertainty and that the union has the opportunity to limit its liability by showing that it provided notice in the past but that the employee failed to object).

179. See *supra* notes 174-76 and accompanying text (stating that, under H.R. 1625, the union may be penalized when it fails to notify an employee of his Beck rights by having to pay up to two times the amount of dues and fees that the employee would have objected to had he been notified); cf. *supra* note 47 and accompanying text (noting that Executive Order 12,800 penalized the federal contractor employer for failing to notify employees of
that it is the union, not the employer, who benefits from members' dues. Thus, it is only proper that the benefiting union be penalized for failure to provide notice as opposed to the employer, who reaps no direct financial benefit from employee dues. Finally, the stated rationale for the congressional notice requirements is to make the playing field even and fair between the individual employee and the union. President Bush, in issuing Executive Order 12,800, and the NLRB similarly expressed this rationale of fairness.

III. PUSHING ASIDE THE WORKER: BECK NOTICE AS A PAWN IN A WAR OF POLITICS

Despite assertions by Congress, the NLRB, and the President that notifying employees of their Beck rights is about fairness, complying with Beck's notice requirements has generated political controversy. The issue of enforcing Beck rights is not so much an individual rights issue but, rather, more of a "political hot potato." Historically, labor has been related directly to political involvement and protection. Indeed, much of labor's advances are due to participation in the political proc-

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181. See Remarks on Signing the Executive Order on Employee Rights Concerning Union Dues, 28 WEEKLY COMP. PERS. DOC. 644 (Apr. 13, 1992) (quoting "a principal of fundamental fairness," expressed by Thomas Jefferson, upon signing Executive Order 12,800); supra note 122 and accompanying text (noting that the NLRB addressed this issue of fairness in both California Saw and Weyerhaeuser).
182. See California Saw, the NLRB specifically used the term "fairness" in discussing employees' rights and a union's duty to notify the employees. See 320 N.L.R.B. 224, 233 n.50 (1995). The NLRB in Weyerhaeuser, on the other hand, refrained from using the word "fairness," but revealed its concern about this issue by stating that "[t]hese notice requirements furnish significant protection to the interests of the individual unit employee vis-a-vis Beck rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective-bargaining activities." 320 N.L.R.B. 349, 350 (1995).
183. See Mandsory Union Dues, supra note 162, at 59 (testimony of Allison Beck, General Counsel, International Association of Machinists and Aerospace Workers).
Unions are involved in politics in several ways.\textsuperscript{186} engaging in legislative lobbying,\textsuperscript{187} endorsing individual candidates,\textsuperscript{188} providing in-kind assistance to candidates,\textsuperscript{189} and providing financial assistance through political action committees (PACs).\textsuperscript{190} Nearly all of the money raised by union PACs comes from its members.\textsuperscript{191} As a result, as union memberships are on the decline, the labor movement's political power is similarly decreasing.\textsuperscript{192}

"[L]abor as a whole is closely tied to the Democratic Party."\textsuperscript{193} In fact, labor is a major weapon of the Democratic Party.\textsuperscript{194} As such a valued part of this political arena, and because strikes and collective bargaining are losing their effect, unions increasingly are seeking to advance their causes through politics.\textsuperscript{195}

Because unions are becoming more dependent on the political arena and they rely on their members to support these political activities, it is logical that unions need to maintain their membership base at all costs.\textsuperscript{196} Thus, notifying covered employees that they can become nonmembers and not support these political activities poses a real threat to unions.\textsuperscript{197} As a result, unions have no interest in notifying employees of their \textit{Beck} rights for fear that their political funds will decrease if employees object

\begin{itemize}
\item \textsuperscript{185} See \textit{Selected Statements}, supra note 184, at E-20 (testimony of James B. Coppess, Communications Workers of America) (noting that labor has utilized the political process to make such advances as "enactment of the minimum wage and forty-hour work-week," among others).
\item \textsuperscript{186} See John Thomas Delaney, \textit{The Future of Unions as Political Organizations}, 12 J. LAB. RES. 373, 373-74 (1991).
\item \textsuperscript{187} See id. at 374.
\item \textsuperscript{188} See id. at 373.
\item \textsuperscript{189} See id. at 374 (noting that examples of in-kind assistance include providing campaign workers, telephone banks, equipment, and union mailing lists).
\item \textsuperscript{190} See id.
\item \textsuperscript{191} See John Thomas Delaney & Marick F. Masters, \textit{Union Characteristics and Union Political Action}, 42 LAB. L.J. 467, 469 (1991).
\item \textsuperscript{192} See Berke, \textit{supra} note 113, at E3.
\item \textsuperscript{193} See Delaney & Masters, \textit{supra} note 191, at 468.
\item \textsuperscript{194} See Berke, \textit{supra} note 113, at E3 (declaring that organized labor is the one major weapon of Democrats with which Republicans could never compete).
\item \textsuperscript{195} See id.
\item \textsuperscript{196} See \textit{supra} notes 186-91 and accompanying text (noting that many of labor's advances are due to participation in the political process and that nearly all of the money union PACs raise comes from its members).
\item \textsuperscript{197} See \textit{Hunter}, \textit{supra} note 117, at 5 (explaining that awareness of \textit{Beck} rights could cost unions millions of dollars in annual income otherwise used for political and other nonrepresentational activities).
\end{itemize}
to dues spent on nonrepresentational activities. In fact, Beck rights have been and still are one of labor's best kept secrets.

Many employees are not aware of their rights under Beck to become a reduced agency fee payer. Critics claim that Beck rights have not passed into the "common consciousness of industrial relations" and that the news media has not given this secret much publicity. However, workers are waking up to the fact that their dues are being spent on po-

198. See Hearings on H.R. 3580, supra note 14, at 213 (written statement of Marshall J. Breger) (noting that the Beck dues and fees reduction also reduces the discretionary funds of unions).

199. See Hunter, supra note 117, at 6 (suggesting that this secret of modern day labor relations is maintained by government inaction).

200. See supra note 102 (citing a poll of 1,000 union employees that found 78% of them were not aware of their Beck rights). Other evidence that employees are not aware of their Beck rights may be seen in recent cases before the NLRB where employees were not given notice of these rights. See, e.g., Monson Trucking Inc., 324 N.L.R.B. No. 149, 156 L.R.R.M. (BNA) 1277, 1280 (Oct. 31, 1997) (finding the union in violation of section 8(b)(1)(A) of the NLRA for failing to provide an employee Beck rights notice); Service Employees Int'l Union Local 74 (Parkside Lodge of Connecticut, Inc.), 323 N.L.R.B. No. 39, 154 L.R.R.M. (BNA) 1253, 1255 (Mar. 21, 1997) (same); Rochester Mfg. Co., 323 N.L.R.B. No. 36, 154 L.R.R.M. (BNA) 1249, 1252 (Mar. 12, 1997) (same); International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators (Hughes-Avicom International, Inc.), 322 N.L.R.B. 1064, 1064 (1997) (reporting that an employee directly asked a union representative whether there was a way he could pay only for collective bargaining activities without joining the union but was told that a nonmember alternative was not available).

While many employees may not be aware of their Beck rights, several individuals and groups have attempted to educate and notify employees via the internet. See, e.g., Financial Core: Rights of Union Members (visited Sept. 22, 1997) <http://www.campol.com/beck.html> (advertising a handbook that informs people about their Beck rights); Right Now, Labor Unions (visited Sept. 5, 1997) <http://www.rightnow.org/labor_unions.html>; Unions & Unions and Union Dues (visited Sept. 22, 1997) <http://www.pff.org/heritage/labor/workplace/uniondue.html> (citing Beck and the Senate's proposed Paycheck Protection Act); Kenneth R. Weinstein & Thomas M. Wielgus, How Unions Deny Workers' Rights (visited Sept. 22, 1997) <http://www.capitalresearch.org/heritage/library/categories/regulation/bg1087.html> (providing information on Beck rights, stating that "[i]t is time to make workers aware of their rights under applicable Supreme Court decisions and to make it possible for them to exercise these rights freely").

201. See Hearings on H.R. 3580, supra note 14, at 213 (written statement of Marshall J. Breger) (noting that there does not seem to be evidence that Beck rights are in the "common consciousness of industrial relations"). It also has been asserted that the "mere finding" by the NLRB in unfair labor practice decisions about a union's duty to advise employees of their Beck and General Motors rights will not guarantee that this issue will come to the employees' attention. See id. at 206 (statement of Michael A. Taylor, former Regional Director of the Oakland, California National Labor Relations Board Regional Office).

202. See Hunter, supra note 117, at 6 (stating that the news media has not "widely publicized the issue" of Beck rights notice).
litical activities.\textsuperscript{203}

\textbf{A. Each Attempt to Construct Beck Notice Requirements Has Been Mixed With Political Motivations}

President Bush’s Executive Order 12,800 garnered wide attention from both labor and management, despite the fact that the Order only applied to federal contractors, an arguably limited group of people.\textsuperscript{204} In signing the Order, President Bush proclaimed that it would prevent workers’ jobs and livelihoods from being threatened for refusing to make political contributions.\textsuperscript{205} While President Bush never mentioned political motives for issuing the Order,\textsuperscript{206} the Order could have cut off as much as $2.4 billion in union political money each year.\textsuperscript{207} Therefore, the order may have been an attempt to lighten the political spending purse of organized labor or an attempt to gain conservative support during an election year.\textsuperscript{208}

While proclaiming a gain for individual rights, President Bush did state that the order was part of a reform of politics in government.\textsuperscript{209} In announcing the Order, he noted that he was asking Congress to reform campaign financing and fighting to eliminate special interest PACs.\textsuperscript{210} President Bush’s goal to eliminate PACs would have severely hurt unions\textsuperscript{211} because unions cannot spend money directly on candidates but

\textsuperscript{203} See Hearing on H.R. 1625, supra note 153, at 112 (written statement of Steven J. Nemirow, Esq.).

\textsuperscript{204} See MCCALLION, supra note 111, at CRS-13 (noting as well that federal contractors in right-to-work states could be exempted from Executive Order 12,800 “where no union was formally recognized or certified”).

\textsuperscript{205} See Remarks on Signing the Executive Order on Employee Rights Concerning Union Dues, 28 WEEKLY COMP. PRES. DOC. 644 (Apr. 13, 1992).

\textsuperscript{206} See Berke, supra note 113, at E3 (reporting that President Bush claimed that his motive for issuing Executive Order 12,800 was to “guarantee that no American will have his job or livelihood threatened for refusing to contribute to political activities against his will,” but he did not mention political motives).

\textsuperscript{207} See id. (noting the White House estimates of the Executive Order’s effect).

\textsuperscript{208} See id. Either way, however, the Order may be seen as using Beck rights notice as a political tool; AFL-CIO President Lane Kirkland stated that the Order was an “11th-hour election year bid” to gain conservative support. See Clinton Rescinds Executive Orders on Beck Disclosure, ‘Open Bidding,’ 7 Lab. Rel. Wk. (BNA) 125, 126 (Feb. 3, 1993); see also Devroy, supra note 172, at A1 (stating that the Order was a bow to GOP conservatives and was used merely as an election year weapon because President Bush avoided such an order for his first three years as President).

\textsuperscript{209} See Remarks on Signing the Executive Order on Employee Rights Concerning Union Dues, 28 WEEKLY COMP. PRES. DOC. 644, 645 (Apr. 13, 1992).

\textsuperscript{210} See id. President Bush asserted that he did not just want to restrict PACs, but wanted to eliminate them altogether. See id.

\textsuperscript{211} See generally Obligations of Federal Contractors and Subcontractors; Employee Rights Concerning Payment of Union Dues or Fees, 57 Fed. Reg. 49,588, 49,589 (1992)
must rely on PACs.\textsuperscript{212}

The NLRB also has been less than neutral in its decision making.\textsuperscript{213} In fact, the \textit{California Saw} Board has been labeled a "Clinton-appointed NLRB" that bowed to labor in an election year.\textsuperscript{214} Furthermore, a majority of the \textit{California Saw} Board has been identified as siding more closely with unions than management.\textsuperscript{215} Many also contend that the Board, lacking neutral enforcement, has been attempting to hollow out the \textit{Beck} decision through "interpretive gymnastics."\textsuperscript{216} An example of this may be found in a complaint issued against an employer, alleging that an unfair labor practice occurred, when the employer sent a letter to his employees notifying them of their \textit{Beck} rights.\textsuperscript{217} As a result, employers, fearing sanctions from a union-sided NLRB, may refrain from taking it upon themselves to notify employees of their \textit{Beck} rights.\textsuperscript{218}

In Congress, H.R. 1625, the Worker Paycheck Fairness Act, was spon-

\textsuperscript{212} See Delaney, supra note 186, at 376 (noting that unions are not allowed to directly spend their members' dues money on political candidates but may do so indirectly through PACs).

\textsuperscript{213} See Hearings on H.R. 1625, supra note 153, at 157 n.4 (written statement of Roger Pilon) (citing, as an example of the Board's lack of neutrality, a complaint filed by the NLRB's general counsel against an employer for notifying his employees by letter of their \textit{Beck} rights).

\textsuperscript{214} See Rose & Burkins, supra note 183, at A3 (quoting a statement of the National Right to Work Legal Defense Foundation that the NLRB "genuflected to Big Labor in an election year"). Of the four members deciding \textit{California Saw}, the three concurring members, Chairman Gould, Member Browning, and Member Truesdale, were all Democrats, while the lone dissenter, Member Cohen, was a Republican. \textit{See id.} Tim McConville, a National Right-To-Work Committee spokesman has said that "it is not surprising that an agency made up of Clinton appointees would not see fit to impose 'a single meaningful restraint on union officials' use of forced dues for politics.'" \textit{See NLRA's Fair Representation Principles Govern Beck Dues Challenges, NLRB Says}, 10 Lab. Rel. Wk. (BNA) 89 (Jan. 31, 1996).

\textsuperscript{215} See Edward B. Miller, \textit{What Has The Gould Board Been Doing?}, 47 LAB. L.J. 75, 75 (1996) (noting also that NLRB General Counsel Fred Feinstein was a long-time Democrat and a union sympathizer).

\textsuperscript{216} See Hearings on H.R. 3580, supra note 14, at 234 (written statement of Charles Baird) (speculating additionally that the Department of Labor would rather ignore \textit{Beck} than enforce it).


\textsuperscript{218} See \textit{Campaign Finance Revisions}, supra note 124, at 4-5 (written statement of Robert J. LaJeunesse) (stating that "[t]he rare employer that tries to set the record straight, and tell employees that they have the right to refrain from union membership, is subject to sanctions or worse").
sored by Representative Fawell and cosponsored by 111 members, all of whom were Republicans. In an attack against Democratic opposition, Representative Fawell stated that the onus should not be on the employee to object to nonrepresentational dues spending and that "if his subcommittee [does] not reach some sort of compromise, then it [is] very likely that labor 'is going to lose the union security clause all together [sic]' and that the 'right-to-work' community will prevail in all 50 states."  

The Worker Paycheck Fairness Act, while purporting to protect the rights of individual workers, has been criticized as an effort to quash union voices in political activities such as elections. Thus, the House Bill may be considered an exploit of antunion sentiment just as President Clinton asserted Bush's Executive Order 12,800 was distinctly anti-union.  

Democratic opposition to legislation such as the Worker Paycheck Fairness Act also may have motives aside from the purported protection of individual rights. "Politicians who are generously supported by union political cash and in-kind contributions are afraid that unions might have significantly fewer donations to make" if such acts are made law. The trade union movement has endorsed every Democratic Party candidate

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222. See Hearing on H.R. 1625, supra note 153, at 128 (written statement of Mitchell Kraus, General Counsel, Transportation Communications International Union) (stating that the Act "is an effort to punish union members for making their views heard on issues during the 1996 election"); see also William B. Gould IV, "Campaign Finance Reform and the Union Dues Dispute Under Beck", Speech at the Iowa Chapter of the Industrial Relations Research Association Fall Meeting at 2 (Oct. 8, 1997) (NLRB Press Release R-2259), available at <http://www.nlrb.gov/r2259.html> (stating that "[m]embers of Congress, on the Republican side of the aisle, are angry about the support given by the AFL-CIO to the Democratic Party candidates in '96, and the attacks made upon Republican members of the 104th Congress through television issue advertisements" (footnote omitted)).  
223. See Statement on Revocation of Certain Executive Orders Concerning Federal Contracting, 29 WEEKLY COMP. PRES. DOC. 119, 120 (Feb. 1, 1993) (making these comments in conjunction with revoking Bush's Executive Order 12,800); see generally Gould, supra note 222, at 4 (stating that the general requirements of a union to notify members of their right to become nonmembers promotes anti-unionism in the workplace).  
for President, save one, since 1952. President Clinton, as one of those Democratic Party candidates supported by the trade union movement, has been criticized as keeping employees in the dark about their *Beck* rights.

**B. Posting as an Equitable Resolve**

“Actual” communication of *Beck* rights may only be realized where employees are orally told of their rights or are required to read and sign

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225. *See* Gould, *supra* note 222, at 2 (commenting on use of union dues for political activities, campaign finance reform, and the proposed Worker Paycheck Fairness Act). The one Democratic Party candidate that the trade union movement did not endorse was George McGovern in 1972. *See id.*

226. *See* 143 Cong. Rec. S264 (daily ed. Jan. 21, 1997) (statement of Senator Nickles) (introducing the Paycheck Protection Act, S. 9, which would require unions to obtain prior written authorizations from employees before collecting or assessing dues from employees that would be spent on political activities). Senator Nickles made this comment while noting that one of President Clinton’s first acts in office was to repeal the regulations implementing Bush’s Executive Order 12,800. *See id.* Also, it has been suggested that President Clinton will veto the Paycheck Protection Act if it passes Congress. *See Hearing on H.R. 1625, supra* note 153, at 190 (written statement of Marshall J. Breger) (noting that Vice President Gore made this assertion to the AFL-CIO Executive Council).

This interaction between political spending and notifying employees of their *Beck* rights has surfaced as a part of campaign finance reform legislation. *See supra* note 91 (citing highlights of the McCain-Feingold campaign finance reform legislation). The proposed campaign finance reform legislation would have “[required] labor unions to tell nonmembers they [could] get refunds on fees used for political purposes.” *Id.*

While the 104th and 105th Congresses’ efforts are modern attempts to implement *Beck* notice into campaign finance reform legislation, they are by no means the first. President Bush proposed legislation to implement the *Beck* decision as part of campaign finance reform legislation as far back as 1989, the year after the Supreme Court issued *Beck*. *See* Mccallion, *supra* note 111, at CRS-20 (noting that the White House asserted this proposition). In fact, President Bush, in his remarks on signing Executive Order 12,800 requiring federal contractors to notify employees of their *Beck* rights, stated that he was “asking Congress to enact a sweeping reform of campaign finance reform legislation. Remarks on Signing the Executive Order on Employee Rights Concerning Union Dues, 28 Weekly Comp. Pres. Doc. 644, 645 (Apr. 13, 1992). Thus, the issue of *Beck* rights notice has been recognized as a part of campaign finance legislation since the Supreme Court issued the *Beck* decision.
a notice authorizing unions to use their dues for political purposes. Yet, this type of opt-in method is not supported by case law.

Unions, while opposing stricter notification requirements that may extract money from their coffers, cannot delay disclosure forever and delay may only discredit them. Unions may feel a loss of money and members in the short run if more Beck rights notice is provided. However, if notice is not given, unions run the risk of alienating its members as they realize that they have been kept in the dark about their rights. Thus, it may be in the unions’ best interest to make more of an effort to notify their employees.

The one method that has been accepted by the Executive Office, the NLRB, and Congress is to post notices at the worksite. Such notice-posting would be accessible to all employees and would make them more aware of their Beck rights. However, such notice may also need to be provided in other languages in order to accommodate those non-English speaking employees. Despite the apparent benefits of notice-posting, it has been criticized as not providing employees with information about

227. See supra note 105 and accompanying text (stating that communication will be "actual" only where the person sought to be informed knows of the fact in question).
228. See International Ass'n of Machinists v. Street, 367 U.S. 740, 774 (1961) (stating that an employee has an affirmative duty to opt-out before receiving a reduction in dues and fees).
229. See Hunter, supra note 117, at 5 (maintaining that beyond losing credibility, avoiding disclosure of Beck rights "will invite intervention by the courts, legislatures, or other government bodies").
230. See id. at 23.
231. See id.
232. See generally supra notes 229-31 and accompanying text (noting that unions may lose some of their membership if they delay providing notice).
233. See Worker Paycheck Fairness Act, H.R. 1625, 105th Cong. § 5 (1997) (not enacted) (requiring employers to post notices in plants and offices); Exec. Order No. 12,800, 57 Fed. Reg. 12,985 (1992) (requiring federal contractors to post Beck notice at the worksite); McCALLION ET AL., supra note 111, at CRS-19 (asserting that the NLRB may require posting of notice as a part of a cease and desist order).
234. See McCALLION ET AL., supra note 111, at CRS-13 (pointing out that notice posting specifically would make more employees aware of their Beck rights).
235. See generally Service Employees Int'l Union Local 254, 324 N.L.R.B. No. 126, slip op. at 1 n.3 (Oct. 15, 1997), available at Decisions and Orders of the NLRB (Volume 324) (visited Oct. 25, 1998) <http://www.nlrb.gov/slip324.html> (requiring the union to post a Spanish translation of the order issued by the Board). This case involved picketing and handbilling of a hospital in Rhode Island. See id. slip op. at 1. The NLRB found that this picketing had an unlawful secondary objective such that it violated section 8(b)(4)(ii)(B) of the National Labor Relations Act. See id. While this case did not involve a union's duty to provide Beck notice to its employees as part of its duty of fair representation under section 8(b)(1)(A), it does illustrate the potential need to accommodate non-English speaking employees by posting required notices in languages other than English.
their other NLRA rights.\textsuperscript{236} This could be resolved by attaching a toll-free phone number to the notice that employees could call to find out about their other rights.\textsuperscript{237} Unions could fulfill their duty of fair representation and avoid being criticized of attempting to hide Beck rights from its members by taking such a proactive approach.\textsuperscript{238} Thus, dispute over the proper method for providing employees notice may be put to rest by meeting in the middle at a notice-posting requirement.

Notice posting may be sufficient to notify employees of their Beck rights, but whether unions will voluntarily provide this notice remains to be seen. Perhaps the only way that notice posting or other increased notification procedures may be required is if the Supreme Court addresses this issue in light of its failure to address notice requirements in the Beck decision.\textsuperscript{239} Thus, the ultimate decision about what constitutes sufficient notice to actually communicate Beck rights to employees may rest with the Supreme Court.\textsuperscript{240}

IV. CONCLUSION

Labor unions will not provide more notice for fear of losing members and the accompanying dues.\textsuperscript{241} Employers will not provide employees

\textsuperscript{236} See MCCALLION ET AL., supra note 111, at CRS-14 (indicating a commentator’s criticism of President Bush’s Executive Order 12,800 for only notifying employees of their Beck rights and not of their numerous other NLRA rights).

\textsuperscript{237} See generally Right-To-Work Group Unveils Toll-Free Number Regarding Rebate of Union Dues, 10 Lab. Rel. Wk. (BNA) 867-68 (Sept. 4, 1996) (noting that such a phone number already has been set up by the National Right to Work Legal Defense Foundation). The number, 1-888-789-4255, is toll-free. See id. Additionally, the sample notice provided in President Bush’s Executive Order 12,800 listed the address of the National Labor Relations Board so that employees could inquire further about their rights. See Exec. Order No. 12,800, 57 Fed. Reg. 12,985 (1992).

\textsuperscript{238} See supra note 231 and accompanying text (stating that unions may risk alienating members as the members begin to realize that they have been kept in the dark about their Beck rights).

\textsuperscript{239} See California Saw & Knife Works, 320 N.L.R.B 224, 225 (1995) (noting that the issue of whether a union must provide a nonmember employee notice of his right to object to payment of full dues and fees is an issue that came out of Beck yet was not addressed by the Supreme Court).

\textsuperscript{240} But see Right-To-Work Group, Machinists Union File Competing Appeals on Dues Issue, 10 Lab. Rel. Wk. (BNA) 113, 114 (Feb. 7, 1996) (quoting International Association of Machinists attorney Mark Schneider as saying that “[a]s for a possible return to the Supreme Court . . . in light of the developing body of case law resolving these [Beck] issues [such as notice requirements], the justices may not want to revisit the Beck question”).

\textsuperscript{241} See Hunter, supra note 117, at 6 (stating that “long-standing divisions among political parties” prevent politicians from reaching an agreement on the way in which unions must notify employees of their Beck rights).
with *Beck* rights notice for fear of reprisal. Politicians are unable to reach an agreement on notice requirements because of the divisive nature of labor. The NLRB and judiciary have been slow in responding to *Beck* notice requirements. Further conflict about the implications of *California Saw* will persist. Also, the *California Saw* decision is being appealed with regard to the portion that places an affirmative duty on unions to notify all covered employees of their *Beck* rights. Thus, in order to prevent Congress from contravening the precedent in *Street*, and to enforce the holding in *Beck*, the Supreme Court may have to address this issue of proper *Beck* notice as it works its way through the courts.

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242. See supra notes 217-18 and accompanying text (citing a complaint issued against an employer who sent a letter to his employees notifying them of their *Beck* rights and noting that this type of sanction may prevent employers from providing their employees with *Beck* rights notice).


244. See id.

245. See Rose, supra note 183, at A3 (stating that the *California Saw* decision “will be used as a guidepost in future cases” as conflict about its implications persist).

246. See Right-To-Work Group, supra note 240, at 113 (noting that both the National Right to Work Legal Defense Foundation and the International Association of Machinists have filed appeals). An attorney for the International Association of Machinists stated that “the union will challenge that portion of the Board’s decision that creates an affirmative obligation on the part of the union to notify all in the bargaining unit concerning their rights under the U.S. Supreme Court’s 1988 holding of *Communications Workers v. Beck.*” See id. (citation omitted).

247. See International Ass’n of Machinists v. Street, 367 U.S. 740, 774 (1961) (holding that an employee’s dissent is not to be presumed; rather, the employee must affirmatively object before dues can be reduced).