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Government Integrity Project

The Heritage Foundation

REPORT

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OFFICIAL TIME: HOW TAXPAYERS ARE FORCED TO PAY FOR UNION ACTIVITIES

INTRODUCTION

> *The American people are demanding that we change the way the federal government operates.... It doesn't work well, it costs too much money and it performs very poorly.*
>
> —Vice President Albert Gore, introducing the National Performance Review[1]

One reason the federal government performs so poorly is a policy known as "official time," which allows federal employees who are labor union officials to take authorized and paid time off to perform a variety of union-related tasks. As part of its National Performance Review, the Clinton Administration created "partnership councils" to promote cooperation between union leaders and senior officials at federal agencies. These partnership councils, in turn, have added to the legion of federal bureaucrats who take advantage of official time and thus do relatively little work for the agencies that pay their salaries.

Official time amounts to a direct taxpayer subsidy, valued at hundreds of millions of dollars each year, to certain unions. Surprisingly, there is no effort to compile accurate totals on the number of hours, employees, or dollars devoted to union activities throughout the federal government, or to catalogue what these activities entail. Congressional inquiries have uncovered instances of waste and abuse. Neither partnership councils nor countless hours of official time, moreover, have stemmed the tide of

1 Chris Warden, "Clinton Unveils His Plan to 'Reinvent' Gov't," *Investor's Business Daily*, September 8, 1993, p. 1.

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

lawsuits filed against the government by its own employees—lawsuits that cost the taxpayers additional millions of dollars to contest.

The trend toward increasing waste and abuse of official time may well accelerate because of a recent ruling by the Federal Labor Relations Authority (FLRA) that would enable union representatives to use official time to lobby Congress.[2] Taxpayers thus could be forced not only to pay the salaries of bureaucrats who do little or no federal work, but also to subsidize lobbying activities in opposition to efforts to balance the federal budget. The Clinton Administration is also planning new regulations that would give public-sector unions a role in the labor relations of federal contractors.

In response, Representative Dan Miller (R–FL) has introduced legislation that would remedy some of the problems related to official time. The Workplace Integrity Act would impose limits on the circumstances under which an employee could use official time, including a requirement that federal employees spend at least half of their on-duty hours performing work for the agencies that pay them. These measures constitute a good first step toward reining in an out-of-control federal bureaucratic practice.

BACKGROUND

Official time, simply defined, is "time granted an employee by an agency to perform certain union activities when the employee would otherwise be in a duty status."[3] According to Robert M. Tobias, President of the National Treasury Employees Union (NTEU), "activities permitted to be performed while in official time status include: negotiating collective bargaining agreements, handling employee grievances, conducting and receiving training, management initiated activities and grievances, and reinventing, reengineering, and partnership activities."[4] The use of official time for these activities began during the Kennedy Administration, when federal employees first obtained union representation. The range of permissible activity, however, was limited, and the use of official time was strictly controlled by agency supervisors.

In 1978, through the Civil Service Reform Act, Congress revised the framework for labor–management relations in the federal government. This law created the Federal Labor Relations Authority, an independent agency charged with promulgating regulations and resolving disputes between agencies and public employee unions. The FLRA has two major components: the Federal Service Impasses Panel, which has the power to order settlement conditions between federal agencies and unions, and the Authority, a quasi-judicial body that establishes what issues are negotiable in collective bargaining and decides cases regarding unfair labor practices, grievances, and representation elections.[5] All its members are appointed by the President.

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2 Stephen Barr, "Federal Union Wins Ruling on Use of Taxpayer Funds," *The Washington Post*, February 18, 1997, p. A11.

3 Testimony of Timothy P. Bowling, U.S. General Accounting Office, before the Subcommittee on Civil Service of the Committee on Government Reform and Oversight, U.S. House of Representatives, 104th Cong., 2nd Sess., September 11, 1996, p. 1.

4 Testimony of Robert M. Tobias, National Treasury Employees Union, before the Subcommittee on Civil Service of the Committee on Government Reform and Oversight, U.S. House of Representatives, 104th Cong., 2nd Sess., September 11, 1996, p. 10.

5 Federal Labor Relations Authority, "About the FLRA," ***http://www.gpo.gov/flra/10.html***.

In 1993, President Bill Clinton issued an executive order requiring partnership councils between federal agencies and union leadership, an idea that arose from Vice President Gore's "reinventing government" initiative.[6] Through these councils, union leaders have a direct say in agency structure, personnel decisions, downsizing, and the like. In 1995, one member of the National Partnership Council boasted that "hundreds of partnerships ha[d] sprouted at every level of government from the executive offices down to the plant floors" since the beginning of the reinventing government venture.[7]

The FLRA has provided little oversight of the use of official time for participation in these partnership activities. Considering the enormous incentive to co-opt FLRA policy, federal employee labor unions have sought to capture positions on these panels, and they have met with some success.[8] Under the Clinton Administration, the FLRA has become little more than a publicly financed tool of organized labor. A 1995 FLRA decision bestowed even more power on federal employee labor unions by allowing them to bar non-members from participating in the activities of labor–management partnerships.[9] In addition, the FLRA chairman serves as a member of the National Partnership Council, along with the secretary-treasurer of the AFL–CIO's Public Employee Department and the presidents of the NTEU, the American Federation of Government Employees (AFGE), and the National Federation of Federal Employees (NFFE).[10]

THE GROWING COST OF OFFICIAL TIME

Although the use and abuse of official time are growing rapidly, there is little control of—or even dependable information on—this practice. Last June, the House Ways and Means Committee's Subcommittee on Social Security, chaired by Representative Jim Bunning (R–KY), investigated the use of official time at the Social Security Administration (SSA). An audit by the General Accounting Office (GAO) presented during the hearings revealed that the cost of union activities had doubled from an estimated $6 million in 1993 to $12.6 million in 1995.[11] In other words, money placed in the Social Security Trust Fund to pay for retirement and other benefits was diverted instead to pay for federal employee union activities.[12] During this period, the number of employees who worked on union business full-time grew from 80 to 146, and—in this agency

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6 Vice President Albert Gore, *Creating a Government That Works Better and Costs Less,* Report of the National Performance Review, September 7, 1993, pp. 87–88. Ironically, although the Clinton Administration has been aggressive in promoting its use of partnership councils, in July 1996 President Clinton vetoed the TEAM Act, legislation that would have allowed the private sector to utilize comparable frameworks for management–employee communication outside the formal collective bargaining process.

7 Phyllis N. Segal, quoted in "Reduced Costs, Better Work Environment Have Resulted from NPR, FLRA Head Says," Bureau of National Affairs *Government Employee Relations Report*, October 23, 1995, p. 1355.

8 Federal Labor Relations Authority, "Biographies of the FLRA Leadership," *http://www.gpo.gov/flra/11.html.*

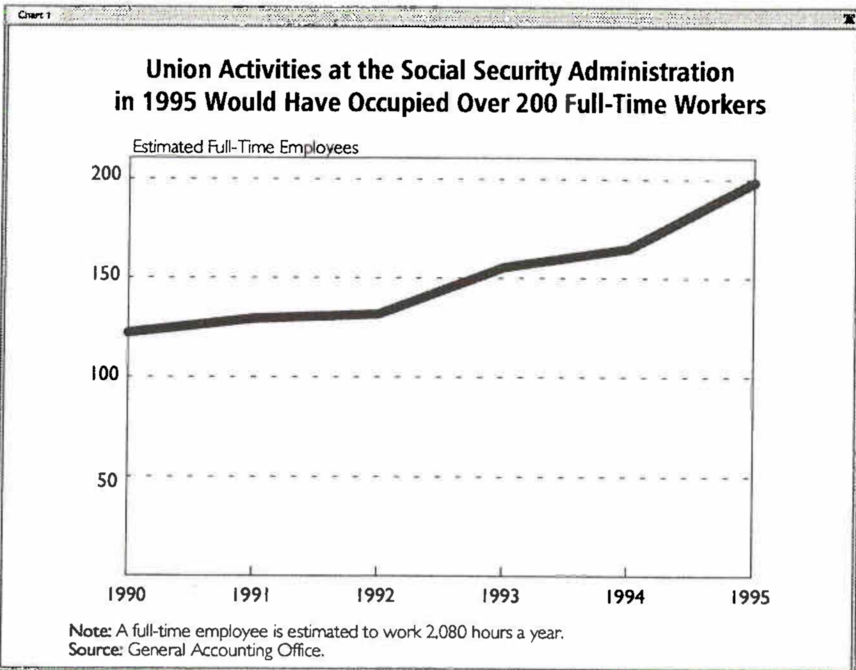
9 "Unions May Close Partnership Body to Non-Members Authority RD Says," *Government Employee Relations Report*, May 1, 1995, p. 606.

10 Executive Order No. 12871, "Labor–Management Partnerships," October 1, 1993, Section 1, Paragraph A; available at *http://www.npr.gov/library/direct/orders/24ea.html.*

11 Testimony of Jane L. Ross, U.S. General Accounting Office, before the Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, 104th Cong., 2nd Sess., June 4, 1996, p. 2.

12 Put another way, $12.6 million equals the total average annual Social Security benefits received by over 1,400 senior citizens. See Larry Wheeler, "Reducing CPI Apparently Not Cure-all for Social Security's Long-term Problems," Gannett News Service, March 19, 1997.

alone—over 1,800 employees were authorized to perform union activities during on-duty hours.[13] Moreover, the GAO suspects that these figures are understated: "Because of limitations in SSA's reporting system, it is not possible to estimate actual time spent agencywide for any reporting period."[14]



As yet, there are no reliable figures on how much money is spent overall on official time, but preliminary estimates indicate that the cost could run to hundreds of millions of dollars. In September 1996, Representative John Mica (R–FL), Chairman of the House Government Reform and Oversight Committee's Subcommittee on Civil Service, held a hearing on the use of official time throughout the federal government. The GAO obtained preliminary estimates of the number of hours used for official time from three agencies (the Social Security Administration, Postal Service, and Internal Revenue Service).[15] The Department of Veterans' Affairs (VA) could not comply with the GAO request because it does not bother to keep records on employees' use of official time.

Because these agencies have different time-reporting procedures and collective bargaining agreements, it is not possible to compare patterns of use or abuse of official time. To correct this problem, Representative Mica has ordered the GAO to review the use of official time at the 30 largest government agencies. It is expected that this comprehensive study will be completed by June 1997. If the remainder of the federal workforce were to use official time at the same rate and pay scale as do union representatives in the SSA, the direct taxpayer subsidy to unions could be as high as $315 million each year (needless to say, variations in federal agency labor practices could cause the overall figure to be significantly higher or lower).

By liberally granting official time to federal workers, the Clinton Administration has given the federal workforce the incentive to avoid normal work duties. The dramatic increase in the use of official time may be linked to a rise in the number of federal workers filing frivolous lawsuits and grievances, at taxpayer expense, alleging discrimination in the workplace or poor working conditions. Among the more egregious complaints filed during the past two years:

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13 Ross, testimony before Subcommittee on Social Security, p. 3.

14 *Ibid.*, p. 8.

15 Bowling, testimony before Subcommittee on Civil Service, p. 9.

- One AFGE local filed an unfair labor practice charge against a medical center under VA control when the center halted its practice of giving employees four hours of administrative leave on their birthdays.[16] On appeal, the FLRA reversed the VA and ordered it to bargain over the issue with the union.

Table 1

In Only 3 Federal Agencies, Some 1,290 Full-Time Employees' Worth of Official Time Was Charged to Labor Union Activities

Fiscal Year 1995	Person-Hours	Estimated Full-Time Employees
Postal Service	1,744,000	838
Internal Revenue Service	527,000	253
Social Security Administration	413,000	207
Total	2,684,000	1,290

Note: A full-time employee is estimated to work 2,080 hours a year.
Source: General Accounting Office.

- The National Air Traffic Controllers Association alleged that the Federal Aviation Administration's refusal to reimburse a union official for per diem and travel expenses to testify at a union-initiated unfair labor practice hearing was itself an unfair labor practice.[17]
- Another air traffic controller was sentenced to a month in jail after his second conviction for driving without a valid driver's license or license plates. The jail term caused him to miss work, thereby meriting a 14-day suspension from his duties.[18] He alleged that this suspension was an unfair labor practice, but lost his appeal.
- In two recent cases, federal employees even wanted to be paid, through official time, for union activities they performed in their spare time, even though management neither asked nor compelled them to work on these activities after hours.[19]
- In 1995, AFGE Local 1592 successfully complained that the Air Force should have negotiated with the union before removing a leaky soda machine from a fire station at Hill Air Force Base.[20]

The cost of such litigation is staggering. Not only must taxpayers pay the salaries of plaintiffs and witnesses, they also must bear the burden—each time a suit is filed—of paying for a court reporter, a federal labor arbitrator, and a counsel representing the government. According to one Labor Department attorney, such lawsuits may cost the taxpayer, on average, between $20,000 to $30,000. The price is much steeper in some lawsuits, depending on the number of federal employees who take official time to attend depositions and how many days these depositions last. Even if just a few hundred

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16 Federal Labor Relations Authority, "Department of Veterans Affairs Medical Center, Asheville, North Carolina and American Federation of Government Employees Local 446, AFL–CIO," 51 FLRA No. 129, July 19, 1996.

17 Federal Labor Relations Authority, "Federal Aviation Administration, Northwest Mountain Region and National Air Traffic Controllers Association," 51 FLRA No. 81, March 26, 1996.

18 Federal Labor Relations Authority, "National Air Traffic Controllers Association and U.S. Department of Transportation, Federal Aviation Administration, Memphis, Tennessee," 52 FLRA No. 77, December 31, 1996.

19 Federal Labor Relations Authority, "U.S. Department of Health and Human Services, Social Security Administration and American Federation of Government Employees Local 3369," 52 FLRA No. 30, September 30, 1996, and "U.S. Department of Health and Human Services, Social Security Administration and American Federation of Government Employees Council 220," 52 FLRA No. 35, September 30, 1996.

20 "Air Force Base Should Have Negotiated Removal of Soda Dispenser, ALJ Rules," *Government Employee Relations Report*, April 17, 1995, p. 541.

of the 1.9 million employees under the FLRA's jurisdiction filed suits, the costs could well be in the tens of millions of dollars. The real costs are almost certainly higher.

THE EGREGIOUS EFFECTS OF PARTNERSHIPS WITH UNIONS

Taxpayers derive few (if any) benefits from official time. Unions frequently claim that participation in partnership councils while on official time has produced a more streamlined government. GAO interviews of SSA field managers, however, revealed that such partnership arrangements are often counterproductive: "of the 31 field managers we interviewed, 21 said that it is more difficult to manage day-to-day office functions because they have little or no control over when and how union activities are conducted."[21] In short, the partnership concept itself seems to impede, not improve, agency effectiveness.

Yet, despite clear evidence that the practice is counterproductive, Vice President Gore recently announced a new role for partnerships. At the annual convention of the AFL–CIO, which counts the AFGE and the American Postal Workers Union (APWU) as affiliates, Gore pledged that the Administration would create new regulations requiring businesses seeking federal contracts to maintain good relationships with labor unions.[22] Because over one-third of American companies do business with the federal government, the regulations would have wide-ranging impact.[23] They also would "encourage governments to consider project agreements, which are usually long-term union contracts for building such major construction projects as dams and highways. They generally require nonunion companies to pay union wages if they want to participate."[24]

In effect, the Clinton Administration's proposals would extend the power of labor unions to control labor relations, even in businesses in which employees have voted against recognizing a union. Should these new regulations include a role for the National Partnership Council, federal employee labor unions would have the unprecedented power to regulate private-sector labor relations—and while on government time. Through regulations similar to Clinton Administration proposals, bureaucrats in several large cities around the country already have micromanaged city contractors' employment policies, telling businesses how much they must pay employees and requiring them to extend health care and other benefits to unmarried and homosexual couples.[25] Taxpayers should not be forced to fund the implementation of such intrusive regulations.

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21 Ross, testimony before Subcommittee on Social Security, pp. 14–15.

22 Dan Balz, "Gore, Gephardt Court Organized Labor in Precursor of 2000 Campaign," *The Washington Post*, February 19, 1997, p. A14.

23 Terry Eastland, *Ending Affirmative Action: The Case for Colorblind Justice* (New York, N.Y.: Basic Books, 1996), p. 12.

24 *Ibid.*

25 Rachel Gordon, "Detailing Domestic Partner Benefits; Officials Work Out Wrinkles Before Law Takes Effect," *San Francisco Examiner*, March 1, 1997, p. A5; Charles Oliver, "A Better Way to Help the Poor?" *Investor's Business Daily*, March 10, 1997, p. A1.

LOBBYING ON OFFICIAL TIME?

Two recent FLRA rulings have opened the way for further abuses of official time. Last November, the Federal Service Impasses Panel resolved an impasse between the Federal Communications Commission (FCC) and the NTEU by directing the FCC to allow union representatives to participate in the union's "Lobby Week" entirely on official time.[26] On January 31, the FLRA went a step further: It ruled that federal employees had a right to use official time to lobby Congress on such issues as benefits, personnel practices, and agency budget appropriations.[27] Defying logic, the panel also found that using official time for a federal employee union's "Lobby Week" violated neither the Hatch Act, which bans the use of federal resources for a variety of political activities, nor criminal laws against using federal funds to influence Congress.

By expanding the permissible uses of official time to include lobbying activities, the FLRA has created a loophole that unions almost certainly will exploit. The prospect of federal employees lobbying Congress at will raises several important questions:

- **Can union representatives lobby on any issue they want?**

  Because many issues affect the government workforce, there is likely to be a dramatic increase in the use of official time for lobbying. The recent FLRA decisions allow union representatives to lobby on federal pay and benefits, government downsizing, health care, and civil service reform.[28] Conceivably—and still at taxpayers' expense—federal employees also could lobby Congress on tangential issues, such as welfare reform, tax policy, health care, and balancing the budget, all of which can be said to have an indirect effect on the federal government's 2 million employees. For example, the AFGE and APWU both were active in President Clinton's push for universal health care in 1994 even though their members already receive government-funded health insurance.[29] The AFGE recently lauded the "intense lobbying, especially at the grassroots level" to pressure freshman Democratic Senators to vote against the Balanced Budget Amendment and criticized those Senators who voted "wrong."[30]

- **How can agency managers limit the use of official time for lobbying?**

  The Clinton Administration's partnership councils have eroded the traditional balance between federal workers and management. Managers have no control over, or even knowledge of, when and how official time is used. According to the GAO, SSA managers indicated that "they have trouble maintaining adequate staffing levels in the office to serve walk in traffic, answer the telephones, and handle routine office workloads."[31] In other words, senior citizens looking for guidance or assistance with their Social Security benefits have been neglected by federal workers

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26 David A. Price, "Federal Unions' Growing Clout," *Investor's Business Daily*, March 7, 1997, p. A26.

27 Barr, "Federal Union Wins Ruling on Use of Taxpayer Funds."

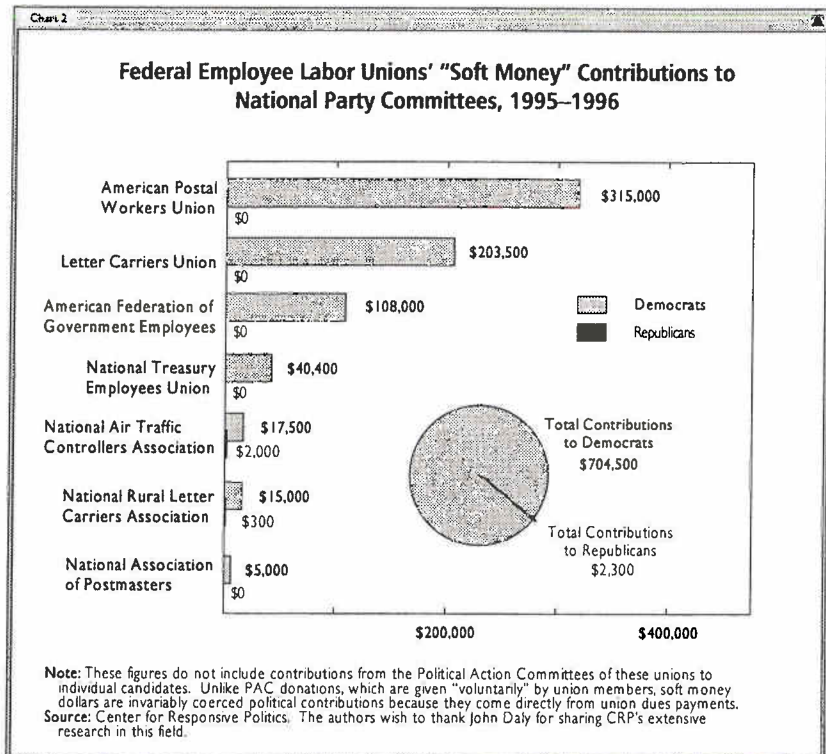
28 *Ibid.*

29 See, for example, testimony of John Sturdivant, President of the AFGE, and Moe Biller, President of the APWU, before Committee on Governmental Affairs, U.S. Senate, 103rd Cong., 2nd Sess., May 10, 1994.

30 AFGE Legislative Dateline, "The Beast Is Beaten Back—for Now," March 7, 1997; available at *http://www.afge.org/LEGISLAT2/LD030797.HTM*.

31 Ross, testimony before Subcommittee on Social Security, p. 15.

who choose to do union work instead. Under these circumstances, lobbying on official time will hinder the performance of routine government business even further.



Note: These figures do not include contributions from the Political Action Committees of these unions to individual candidates. Unlike PAC donations, which are given "voluntarily" by union members, soft money dollars are invariably coerced political contributions because they come directly from union dues payments.
Source: Center for Responsive Politics. The authors wish to thank John Daly for sharing CRP's extensive research in this field.

Compared with contract negotiations or the processing of grievances, lobbying is open-ended: There are always more Members of Congress to contact, staff members to persuade, grassroots campaigns to pursue, and vehicles for amendments. "Lobby Week" could well turn out to be not just an annual event, but a permanent political operation funded by taxpayers through official time. Collective bargaining agreements negotiated by some federal agencies under the Clinton Administration already permit the use of official time for lobbying. The Customs Service has tracked this practice since 1994 and has found that the taxpayers paid for at least 800 hours of official time for lobbying each year.[32] Now that the FLRA has given union representatives an explicit right to lobby during on-duty hours, the use of official time for political purposes can be expected to soar.

- **Why do federal employees need to pay union dues?**

The fundamental problem with allowing union representatives to do union work while on the federal payroll is not the vast sums of money expended, but the fact that taxpayers are forced to underwrite what is essentially union business. The federal government funds federal employee unions to perform traditional union activities, such as negotiating collective bargaining agreements, handling employee grievances, and conducting and receiving worker training. In addition, it now pays for nontraditional union expenses, such as partnership activities and lobbying.

Members of federal employee unions pay hundreds of dollars each in annual dues.[33] The multimillion-dollar amounts of taxpayers' money spent on union activities allow unions to spend this dues revenue for other purposes, including politics. During the 1995–1996 election cycle, for example, federal employee union dues went directly into partisan politics, almost exclusively to the Democratic

32 Price, "Federal Unions' Growing Clout."

33 For example, dues for members of the AFGE are approximately $250 per year, according to data compiled by Stefan Gleason, Director of Legal Information for the National Right to Work Legal Defense Foundation.

Party. Chart 2 lists the amount of "soft money" contributed by federal employee labor unions to the major national political parties during this period. Federal employee unions also donated heavily to state Democratic Party committees.[34]

In addition to these soft money contributions, the AFL–CIO spent $35 million on a television advertising campaign during summer and fall 1996. Federal employee unions contributed substantially to this independent expenditure campaign to unseat the Republican congressional majority. Indeed, "AFSCME [the American Federation of State, County, and Municipal Employees] and AFGE, both AFL–CIO affiliates, also gave more than their assessed share to the AFL–CIO's 'Labor '96' campaign effort.... Along with money, the public-sector unions back[ed] candidates with 'voter education' advertising, canvassing, phone banks, registration drives, and get-out-the-vote pushes."[35]

How can lobbying be kept separate from these partisan activities? The chairman of the National Labor Relations Board, which oversees business-labor relations in the private sector, has stated that "political expenditures [and] lobbying expenditures" are "what a union does" to make contract negotiations easier.[36] If the FLRA were to adopt the same expansive definition, the campaign expenses of labor unions might well be chargeable to federal agencies.

PROPOSALS FOR REFORM

To deal with these problems, several members of the House and Senate have sought to place limits on official time. Senator Lauch Faircloth (R–NC), for example, has introduced legislation to prohibit the use of money in the Medicare and Social Security Trust Funds for union expenses.[37] The GAO survey requested by Representative Mica, scheduled for release this June, will provide reformers with thorough documentation of the use of official time throughout the federal government.

Representative Dan Miller's Workplace Integrity Act would place a variety of restrictions on employees' use of official time. Specifically, it would (1) cap an employee's official time at 50 percent of total work time, thereby ending the practice of paying full-time union representatives with tax dollars; this would create reasonable restrictions on the circumstances in which official time can be used and help to restore integrity to the federal workplace; (2) allow employees to take official time only for agency-sanctioned meetings or to process grievances; (3) prevent employees from taking official time without the approval of their supervisors; and (4) require the Office of Personnel Management to compile aggregate data, on an annual basis and by agency, on the costs of and the numbers of employees and hours involved in official time. This final measure would make it much easier to check for abuses of official time throughout the federal government.

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34 For example, the NTEU contributed approximately $80,000 to various Democratic state parties in the last election cycle. See NTEU, "FEVER Advisory Workgroup Meeting Minutes," December 2–3, 1996, *http://www.nteu.org/nteu/updateindex.qry?function=detail&legislative_updates_uid=78.*

35 David A. Price, "Liberalism's Fifth Column," *Investor's Business Daily*, November 8, 1996, p. A1.

36 Reed E. Larson, "Time to End Compulsory Unionism," *The Wall Street Journal*, February 26, 1997, p. A16.

37 See S. 139, the Social Security and Medicare Trust Funds Protection Act of 1997.

CONCLUSION

Official time is one of the most unnecessary and costly of the Clinton Administration's management techniques. Official time, partnership councils, appointments to the Federal Labor Relations Authority, and the new proposals for contracting regulations amount to little more than a *quid pro quo* for the electoral support of organized labor. Official time is a direct taxpayer subsidy that allows members of federal employee unions to tend to union business rather than the public's business. This disruption of the business of government already costs America's taxpayers hundreds of millions of dollars each year; now that the FLRA has ruled that federal employee unions may use official time for lobbying, the cost will rise even higher. As Congress battles to reduce the federal budget deficit, restricting the practice of "official time" should be high on its list of priorities.

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