The Burger Court Opinion Writing Database

Pipefitters v. United States

407 U.S. 385 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

February 15, 1972

No. 70-74 -- Pipefitters Local No. 562 v. U.S.

Dear Bill:

I have your February 14 memo and Bill Douglas' memo of the same date.

For my part, I would dispose of the case on the basis of the Conference decision. The provisions of 1 U.S.C. § 109 afford an answer.

Regards,

WEB

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 8, 1972

No. 70-74 -- Pipefitters Local No. 562 v. U.S.

Dear Bill:

Please note me as dissenting. I do not know whether I will have time to write.

Regards,

WEB

Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1972

Re: No. 70-74- Pipefitters v. United States

Dear Lewis:

Please join me in your dissent.

Regards,

WEB

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 14, 1972

Dear Bill:

In No. 70-74 - Pipefitters Union v. United States, the new Act to become effective April 7, 1972 does add a new dimension to our problem and I would think that the thing to do at the present time would be to ask the parties for supplemental briefs. Maybe there will be a consensus develop out of that exchange that will obviate putting the case down for reargument, which I would hate to see happen.

William O. Douglas

Mr. Justice Brennan

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 22, 1972

Dear Bill:

In No. 70-74 - Pipefitters Local Union v. U.S., I agree with the proposed questions contained in your memorandum of February 22.

W. O. D.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 17, 1972

Dear Bill:

In No. 70-74 - Pipefitters Local v. United States, please join me in your opinion.

William O. Douglas

Mr. Justice Brennan

CC: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Brennan, J.

2nd DRAFT

Circulated: 3/17

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 70-74

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1972]

Memorandum of MR. JUSTICE BRENNAN.

Petitioners—Pipefitters Local Union No. 562 and three individual officers of the Union—were convicted by a jury in the United States District Court for the Eastern District of Missouri of conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 610. At the time of trial § 610 provided in relevant part:

> "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in . . . Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .
>
> "Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, . . . in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or

Wm Douglas
OTJ

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 8, 28, 29, 30, 31, 32, 33, 36, 38, 47, 52, 53, 54, 56

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From: Brennan

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70–74

Recirculated: 3-27-72

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioners—Pipefitters Local Union No. 562 and three individual officers of the Union—were convicted by a jury in the United States District Court for the Eastern District of Missouri of conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 610. At the time of trial § 610 provided in relevant part:

> "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in . . . Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .
>
> "Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, . . . in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or

Wm Douglas
Ch 11

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 14, 1972

MEMORANDUM TO THE CONFERENCE

RE: No. 70-74 - Pipefitters Union v. United States

With Harry not participating and Bill Douglas and Potter dissenting, the Conference voted 6 to 2 to affirm the Eighth Circuit which 4 to 3 sustained the conviction of Pipefitters for violating 18 U.S.C. § 610 by making "a contribution or expenditure in connection with" federal elections. The moneys were in fact spent by an entity styled the "Pipefitters Voluntary, Political, Educational, Legislative, Charity and Defense Fund." The proofs were that Pipefitters formally set up the fund separate from the union and the union treasury, that union officials solicited member and non-member (but union) workmen to contribute to the fund, and that union officials as fund officials expended the fund to support candidates of their choice without reference to the contributors preferences or choices. In those circumstances the Government contended, as stated in its brief, that the fund "was in fact a union fund, controlled by the union, contributions to which were

assessed by the union as part of its dues structure", and thus that the moneys spent constituted "a contribution or expenditure" by the union in violation of § 610.

Last week the President signed the "Federal Election Campaign Act of 1971." By its terms it becomes effective April 7 next. That Act adds a paragraph to § 610 with the purpose, according to its sponsor in the House, Hansen of Idaho, "to spell out in more detail what a labor union . . . can or cannot do in connection with a Federal election." One of the things the paragraph provides that a labor union can do without violating § 610 is "the establishment, administration and solicitation of contributions to a separate segregated fund to be utilized for political purposes," except that the fund will violate § 610 "by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination or financial reprisal; or by dues, fees or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction."

On its face, the added paragraph may be read to sanction what the Government at trial and in this Court contended § 610 did not permit, namely the establishment and administration by the union of a separate fund applied to support candidates of the union's choice and made up of monies solicited by union officials from the union members. A violation, in other words, is proved in such cases only if it may be found that the contributors were coerced or harassed in one of the mentioned ways to make contributions, or if the fund includes dues, fees or other monies required as a condition of union membership. Since neither the indictment, the proofs, nor the jury instructions reflect the teaching of the new paragraph - indeed seem to make unlawful what the new paragraph seems to make lawful - the question arises whether the new paragraph applies to the decision of this case, and if so, with what result.

There is a principle of federal law, first expressed by Chief Justice Marshall in 1801 in United States v. Schooner Peggy, 1 Cranch 103, to the effect that convictions on direct review at the time the conduct in question is no longer unlawful by statute, must abate. A recent application of the principle was in Hamm v. Rock

Hill, 379 U.S. 306 (1964). Does that principle apply in this case? I doubt that the fact the new paragraph does not become law until April 7 leads to a negative answer. But in the House debates, there was considerable heat about whether the paragraph was written by AFL-CIO for the express purpose of overruling the Eighth Circuit's construction of § 610 in Pipefitters. Representative Hansen vehemently denied that this was the purpose (I don't find any denial of alleged AFL-CIO authorship) and insisted that the paragraph simply codified existing law and expressed what Congress always meant original § 610 to provide. The opponents quoted an unidentified Justice Department spokesman as saying, "The Hansen provision not only doesn't codify existing law, but it overrules existing law." I lean at this writing to the view that whether the paragraph codified existing law or made new law, if applicable to the Pipefitter prosecution it nullifies the Government's theory of the union's guilt. In that circumstance, would the Government be permitted to try the Pipefitters again, or would the prosecution be abated?

There is a federal savings statute which is designed to nullify abatement of federal convictions. It is 1 U.S.C. § 109 which provides that "The repeal of any statute shall not have the effect to release or

extinguish any penalty incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper . . . prosecution for the enforcement of such penalty . . . ." In Hamm v. Rock Hill, supra, however, the Court gave this statute the narrow construction that it was meant to obviate only "mere technical abatement", which I take it means only prosecutions under statutes which have been expressly repealed. Whatever significance is attached to the new paragraph, it does not purport to be an express repealer of anything in § 610.

I plan to circulate a more detailed memorandum when my views become more settled. I expect we must at the least afford the parties an opportunity to address themselves to the question whether the paragraph applies to this case and, if so, with what result. Whether that should take the form of supplemental briefs or reargument is of course for the Conference to decide.

W.J.B. Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 22, 1972

MEMORANDUM TO THE CONFERENCE

RE: No. 70-74 - Pipefitters Local Union No. 562 v. United States

In 1943 Congress subjected labor unions to the prohibitions of the Corrupt Practices Act but only for the duration of the War. This coincided with the organization by CIO of PAC, which consisted of a national political action committee and fourteen regional committees. Each PAC committee was created and administered by unions, and its funds were solicited and disbursed by unions. Seed money was provided from union treasuries, but the money disbursed following the nomination of President Roosevelt for reelection came from a segregated fund of voluntary $1 contributions from union members. PAC was forthright and single-minded in raising its money to support reelection of President Roosevelt and election of Senators and Congressmen favoring labor's cause.

The prohibition on contributions by labor organizations was made permanent after the War (when application of the Corrupt

Practices Act to unions expired)in § 304 of the Taft-Hartley Act. Section 304 originated in the House where apparently it was passed with little debate and even without hearings. The Senate accepted it in joint conference. The only meaningful legislative debate was that directed by Senator Taft in urging adoption by the Senate of the conference bill. In an extended debate on the coverage of the statute, Senator Taft time and time again stated that PAC was the model of permissible union political activity, that, as with PAC, unions could create, solicit for, and disburse political funds without violating § 304, so long as the funds solicited and collected from union members were contributed as a matter of the members' own free choice and the members were not pressured or assessed to pay them. His categorical statement was that unions which spent money contributed of a member's own free choice spent his money and not its money and therefore would not violate § 304.

At no place in the debate over § 304 (now 18 U.S.C. § 610) is there any discussion of the Government's theory in Pipefitters, that a contribution is not a matter of a member's own free choice if, although not assessed and not coerced from him by actual threats affecting his job or his union membership, the member makes the

contribution because jectively he feels obliged to make it. Senator Taft's illustrations dealt only with instances where actual threats or assessments were proved. Pipefitters then presents a proposed interpretation of § 304 not actually debated by the Senate, but supported by the Senate's purpose to protect union members from having their union dues used to support Federal candidates whom they opposed. The Government's proofs in Pipefitters were almost entirely in the form of testimony of members who admitted no actual threats but said they contributed because they felt they must. In other words, they said that they contributed much as they paid their dues - because they thought the obligation was the same in each case. The Government's interpretation of § 304 is that in such case the political fund must be taken to be spending not the member's money but union money. For this reason, according to the Government, the trial court instructed the jury that they could convict even if all the contributions to the fund were voluntary (i. e, were paid willingly in the same sense that a member pays union dues). The Court of Appeals did not address the validity of this interpretation, although, in my view, petitioners properly preserved their objections to the jury charge by contending that § 610, as construed and applied by the trial court, was invalid and by

specifically attacking the instructions in a supplemental brief that the Court of Appeals authorized them to file.

This brings me to the paragraph added to § 610 by § 205 of the Federal Election Campaign Act of 1971 which becomes effective April 7 next. That amendment was first proposed on the floor of the House on November 30, 1971. It was not referred to Committee and therefore we do not have the benefit of Committee hearings. It was not mentioned in the parties' briefs in Pipefitters, or in any of the amicus briefs (perhaps because they were all filed shortly before or after November 30) or at oral argument. My attention was first called to it by my clerk Jerry Goldman who saw a reference to it in a newspaper report of the Election Campaign Act published the day before the President signed it, and shortly after the argument here.

The amendment was offered on the floor by Representative Hansen of Wyoming. He is a Republican, highly respected by his colleagues. He insisted that the paragraph simply declared the law as the courts had already interpreted § 610. The opponents of the amendment, however, charged that Hansen had been duped by Thompson of New Jersey (sponsor of much legislation desired by organized labor) to front for a change in § 610 which would overrule

the Eighth Circuit's Pipefitters decision. (Accusation was not made directly by a member from the floor, but by the insertion in the record during the debate of an article from the Wall Street Journal purporting to detail the legislative machinations at some length.) I must say that the new paragraph on its face strongly supports the opponents' claim. After initially providing that violations of § 610 shall not include "the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized by a . . . labor organization," it goes on to specify that "it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction." It may be argued with some force, I think, that these provisions limit union violations of § 610 to spending monies obtained, as in Senator Taft's illustrations, by assessments or actual threats to a member's job or his union membership and forecloses the Government's theory that the mere subjective feeling that he is obliged to contribute

negates a member's contribution being of his own free choice. Thus, by adding the new paragraph, § 205 of the 1971 Act may well have made a substantive change in the law.

If § 205 has materially changed the law, we are confronted with the question whether the change abated this prosecution. United States v. Schooner Peggy, 1 Cranch 103, and its progeny, have settled the proposition that convictions on direct review under statutes impliedly or expressly repealed must abate in the absence of a savings statute. The Solicitor General is apparently of the view that § 205 was an implied repeal of § 610, since his letter of February 14 directing our attention to it closes with the statement that by force of 1 U.S.C. § 109 "the present case is governed by § 610 as it existed during the acts of the defendants, and their trial and conviction." But the Solicitor General overlooks this Court's decision in Hamm v. Rock Hill, 379 U.S. 306 (1964), which at page 314 construes § 109 as nullifying only a "mere technical abatement." As an example of a "technical abatement," the Court cited United States v. Tynen, 11 Wall 88 (1871), where a prosecution was held to abate in view of a new statute simply substituting a greater schedule of penalties for the offense for which the prosecution was brought. "In contrast," the Hamm Court stated, "the [public accommodations provisions of the]

Civil Rights Act works no such technical abatement. It substitutes a right for a crime. So drastic a change is well beyond the narrow language of amendment and repeal. It is clear, therefore, that if the convictions [for trespass in public restaurants] were under a federal statute they would be abated." Thus, we cannot decide whether § 109 nullified any abatement resulting from a material change in the law of § 610 until it is determined whether the abatement is a "technical abatement." I would suppose that the question is open whether or not any change effected by the amendment is "a change well beyond the narrow language of amendment and repeal."

In all the circumstances I think we should ask the parties to file by March 15 supplemental briefs addressed to the following questions:

Does § 205 of the Federal Election Campaign Act of 1971 affect the decision in this case, and if so, with what result? More particularly, does § 205 effect a substantive change in 18 U.S.C. § 610 in any way material to this case, as, for example, by altering any of the attributes of union political organizations (such as the method of organization or administration or the method of collection of contributions) that are conceded to have been permissible

under prior law? If so, must this prosecution abate under the doctrine of United States v. Schooner Peggy, 1 Cranch 103, and its progeny? Or does the federal savings statute, 1 U.S.C. § 109, nullify any abatement of the prosecution? In the latter regard see Hamm v. Rock Hill, 379 U.S. 306.

W.J. B. Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 23, 1972

RE: No. 70-74 -- Pipefitters Local v. United States

Dear Bill:

Thank you very much for your suggestion as to revision of the proposed question in the above. I am happy to adopt it and would therefore revise the question to read as follows:

"Does § 205 of the Federal Election Campaign Act of 1971 affect the decision in this case, and if so, with what result? More particularly, does § 205 effect a substantive change in 18 U.S.C. § 610 in any way material to this case, as, for example, by altering any of the attributes of union political organizations (such as the method of organization or administration or the method of collection of contributions) that are conceded to have been permissible under prior law? If so, must this prosecution abate under the doctrine of United States v. Schooner Peggy, 1 Cranch 103, and its progeny? Or does the federal saving statute, 1 U.S.C. § 109, nullify any abatement of the prosecution? In answering the latter question, what effect should be given to Hamm v. Rock Hill, 379 U.S. 306?

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

29

Please join me
BM

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 3/17

No. 70-74

Recirculated: _____

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1972]

Memorandum of MR. JUSTICE BRENNAN.

Petitioners—Pipefitters Local Union No. 562 and three individual officers of the Union—were convicted by a jury in the United States District Court for the Eastern District of Missouri of conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 610. At the time of trial § 610 provided in relevant part:

> "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in . . . Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .
>
> "Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, . . . in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 17, 1972

MEMORANDUM TO THE CONFERENCE

RE: No. 70-74 - Pipefitters Local Union No. 562, et al. v. United States

The conference vote was 6 to 2 to Affirm this case with Harry not participating and Bill Douglas and Potter dissenting.

After much digging into legislative history and wrestling with the consequences upon this prosecution of the recent amendment of § 610, I have concluded I must change my vote from Affirm to Reverse. The reasons leading me to that result appear in the attached. While I apologize for the length, this prosecution is such a can of worms that detailed analysis is unavoidable.

The more important items are the following:

1. The Government tried this case upon a construction of § 610 which, to put it baldly, is squarely contrary to the meaning of the statute revealed in its legislative history. The Government's construction, accepted by the Trial Court and the Court of Appeals,

was that a violation was proved by evidence that the union established, administered, solicited for, and paid out -- i.e., controlled -- a union political fund, without regard to whether contributions were made by union members of their own free and knowing choice. The legislative history of § 610 requires a very different construction. That construction is that the union does not violate the section although it establishes, administers, solicits for, and pays out a political fund so long as (a) the fund is segregated from the union treasury, (b) the fund is made up of moneys contributed by union members as a matter of free and knowing choice, even though spent by union officials to support candidates selected by them without reference to the preference of the contributors, and (c) no moneys from the union treasury, but only fund moneys freely and knowingly donated, are used to pay administrative and other expenses of operating the fund. Contributions are general union moneys and not contributions of the members' free and knowing choice if members are pressured or coerced to make them, or, although not actually pressured or coerced, members make their contributions in circumstances which cause them to believe that they must contribute or risk reprisals affecting their employment or union membership.

2. This construction is confirmed by the paragraph added to § 610 by § 205 of the Federal Campaign Act of 1971. That addition, as said by its sponsor, was "intended to codify court decisions interpreting [and the legislative history above-mentioned explicating] § 610 . . . and to spell out in more detail what a labor union or corporation can or cannot do in connection with a federal election." The addition does, however, change the law in a single respect; it explicitly authorizes unions to finance the administration of political funds from general union treasuries. The attached concludes, however, that this change does not abate the Pipefitters' prosecution because the abatement is nullified by the Federal Saving Act, 18 U.S.C. § 109.

3. A reversal is required since the whole prosecution was based upon the erroneous construction of the statute and the instructions to the jury were erroneous. While the judges of the Court of Appeals differed on whether petitioners' objections to the erroneous instruction had been preserved on appeal, I think they were in any event plain error that must be noticed under our Rule 40(d)(2) and Civil Procedure Rule 52(b).

4. There is a question whether the present indictment charges a crime under the proper construction of the statute. The attached

suggests that this question should be decided in the first instance by the District Court on remand. The Government may -- and, I suppose, would prefer to -- obtain a new indictment, since on the basis of an alleged overt act committed on July 14, 1967, the five year statute of limitations governing conspiracy offenses will not expire until July 14, 1972.

W.J.B. Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 29, 1972

RE: No. 70-74 - Pipefitters Local Union #562
v. United States

Dear Bill:

Thank you very much for your note of March 29. I am delighted to accept your suggestion in the concluding paragraph and am revising the footnote in that way.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

Changes throughout

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Brennan, J.

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 5-15-72 ✓

Syllabus

PIPEFITTERS LOCAL UNION NO. 562 ET AL. *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 70–74. Argued January 11, 1972—Decided April —, 1972

Petitioner union and three of its officers were convicted of conspiracy to violate 18 U. S. C. § 610, which prohibited a labor organization from making a contribution or an expenditure in connection with a federal election. Evidence indicated that the union from 1949 through 1962 maintained a political fund to which union members and others working under the union's jurisdiction were required to contribute and that that fund was then succeeded by the present fund, which was, in form, set up as a separate "voluntary" organization: union officials, nevertheless, retained unlimited control over the fund, and no significant change was made in the regular and systematic collection of contributions at a prescribed rate based on hours worked; union agents, moreover, continued to collect donations at jobsites on union time, and the proceeds were used for a variety of purposes, including political contributions in connection with federal elections; those contributions, on the other hand, were made from accounts strictly segregated from union dues and assessments, and although some of the contributors believed otherwise, donations to the fund were not, in fact, necessary for employment or union membership. Under instructions to determine whether the monies spent for political contributions by the fund were in reality contributors', or union, monies, the jury found each defendant guilty. The Court of Appeals rejected petitioners' challenges, and held that the fund was a subterfuge through which the union made political contributions of union monies in violation of § 610. The Federal Election Campaign Act of 1971, which became effective after oral argument here, added a paragraph at the end of § 610 which expressly authorizes labor organizations to establish, administer, and solicit contributions for political funds, provided

B

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 9-10, 10, 11, 21-24, 28, 33, 34

Joined 3/17 memo, but not this opinion

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

6th DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70–74

Recirculated: 5/23

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioners—Pipefitters Local Union No. 562 and three individual officers of the Union—were convicted by a jury in the United States District Court for the Eastern District of Missouri of conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 610. At the time of trial § 610 provided in relevant part:

> "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in . . . Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .
>
> "Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, . . . in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or

BB

Joined his memo on 3/21

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 16, 22-23

To: The Chief J.
Mr. Jus.
Mr. Jus.
Mr. Jus.
Mr. Jus.
Mr. Jus.
Mr. Justice

From: Br.

7th DRAFT

Circulated:

Recirculated: 6-20-72

SUPREME COURT OF THE UNITED STATES

No. 70–74

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June 22, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioners—Pipefitters Local Union No. 562 and three individual officers of the Union—were convicted by a jury in the United States District Court for the Eastern District of Missouri of conspiracy under 18 U. S. C. § 371 to violate 18 U. S. C. § 610. At the time of trial § 610 provided in relevant part:

> "It is unlawful . . . for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in . . . Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices . . . .
>
> "Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, . . . in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

February 24, 1972

70-74 - Pipefitters v. U. S.

Dear Bill,

Confirming our telephone conversation, I think your proposed questions are satisfactory. I would, however, be wholly agreeable to Bill Rehnquist's suggested modification.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 20, 1972

70-74 - Pipefitters v. U.S.

Dear Bill,

I am in basic agreement with your memorandum in this case.

Sincerely yours,

P.S.
1.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 24, 1972

Re: No. 70-74 - Pipefitters Local
No. 562 v. United States

Dear Bill:

Your question as revised is o.k. with me.

Sincerely,

Byron

Mr. Justice Brennan

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(26)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 21, 1972

Re: No. 70-74 - Pipefitters Local No. 562 v. U. S.

Dear Bill:

My vote to affirm was unsure and rested on the unexplored assumption that Congress intended to--and constitutionally could--forbid political contributions in the name of the union even though the funds so used were voluntarily contributed to the union for this special purpose and were kept and administered by the union separate from the funds available for general union purposes. Your memorandum effectively destroys this assumption, demonstrates that the voluntariness of the contributions at issue here is therefore critical and concludes that the issue was not properly handled in the trial court's constructions.

I am thus in basic agreement with you but there are one or two matters I might chat with you about.

Sincerely,

Byron

Mr. Justice Brennan

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 22, 1972

Re: No. 70-74 - Pipefitters Local v. U. S.

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1972

Re: No. 70-74 Pipefitters Union v.
United States

Dear Bill:

I assume that the Solicitor General's letter dated February 14, 1972, will engender a response from Petitioners without this Court requesting one.

While I will await further consideration of this problem pending your final views, my tentative inclination is that the amendment to section 610 should not affect the Court's decision.

Sincerely,

Lewis

Mr. Justice Brennan

CC: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 24, 1972

I told WJB
I joined them
Pm
2/25

Dear Bill:

I concur in the questions proposed in No. 70-74 Pipefitters v. U. S.

Sincerely,

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 28, 1972

Re: No. 70-74 Pipefitters v. U. S.

Dear Bill:

In reviewing my files, I believe that I have not advised you as to my position in Pipefitters.

Although your analysis of the legislative history is a most impressive and commendable work of scholarship, I remain unconvinced that the statute must be construed to allow unions and corporations to participate directly in politics.

Accordingly, I plan to write a brief dissent.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 16, 1972

MEMORANDUM TO THE CONFERENCE

Re: 70-74 Pipefitters v. U. S.

In view of the pressure on the print shop, I am circulating herewith xerox copies of my long-promised dissent in the above case.

I owe Bill Brennan an apology for this delay, as I am sure that it has inconvenienced him as well as held up final action on this case.

L. F. P., Jr.

No. 70-74 PIPEFITTERS v. U. S.

Mr. Justice Powell dissenting.

The decision of the Court today will have a profound effect upon the role of labor unions and corporations in the political life of this country. The holding, reversing a trend since 1907, opens the way for major participation in politics by the largest aggregations of economic power, the great unions and corporations. This occurs at a time, paradoxically, when public and legislative interest has focused on limiting - rather than enlarging - the influence upon the elective process of concentrations of wealth and power.

I

The majority opinion holds that unions lawfull may make political contributions so long as they come from funds voluntarily given to the union for such purpose. The Court seeks to buttress this holding by a long and scholarly presentation of the legislative

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

1st DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: JUN 20 1972

Recirculated: _____

No. 70–74

Pipefitters Local Union No. 562 et al., Petitioners, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June 22, 1972]

MR. JUSTICE POWELL, dissenting with whom THE CHIEF JUSTICE joi.

The decision of the Court today will have a profound effect upon the role of labor unions and corporations in the political life of this country. The holding, reversing a trend since 1907, opens the way for major participation in politics by the largest aggregations of economic power, the great unions and corporations. This occurs at a time, paradoxically, when public and legislative interest has focused on limiting—rather than enlarging—the influence upon the elective process of concentrations of wealth and power.

I

The majority opinion holds that *unions* lawfully may make political contributions so long as they come from funds voluntarily given to the union for such purpose. The Court seeks to buttress this by holding by a long and scholarly presentation of the legislative history of § 610 of the Labor Management Relations Act. But some of that history invites conflicting inferences, and the background of § 205 of the Federal Election Campaign Act of 1971, to which the majority also devotes ex-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 22, 1972

Re: No. 70-74 - Pipefitters Union v. United States

Dear Bill:

I have had an opportunity to review the "proposed questions" with which you furnished us at last Friday's conference, with a view that they be propounded by the Court to counsel. Assuming that counsel do not, as suggested by Lewis in his memo to you, address the issue on their own initiative, I think your proposed questions are very useful. I draw back a little at the rather unqualified intimation of approval of all that was said in Hamm v. Rock Hill which seems to flow from your last sentence. Would you have any objection to rewording it to read "What effect should be given to Hamm v. Rock Hill, 379 U.S. 306, in answering this question?"

Sincerely,

Bill

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 29, 1972

Re: 70-74 - Pipefitters Local Union #562 v. United States

Dear Bill:

As I mentioned to you the other day, unless one of the brethren comes up with a rather earth shaking refutation of your account of the legislative history in this case, I would like to join your opinion. I have one problem with your footnote no. 53 on page 56 of the second draft. As I understand the record, the issue upon which your opinion decides the case was fully presented to the trial court, appropriate instructions were requested, and the trial court denied them. Thus we are not dealing with the situation presented in Screws v. United States, 325 U.S. 91, where the Court at page 107 said that "fundamental" error could be noted even though there was no exception to the trial court's charge; to me it takes a very strong case of "plain error" to overcome the failure to raise the issue at trial, where if it had been presented the trial court might have adopted the proposed instruction, or rejected the objectionable one, and thereby cured the error. What we have here, as I understand it, is an error fully preserved in the trial court, but claimed to have been abandoned in the Court of Appeals. It seems to me this should be an easier kind of error for this Court to reach, both because of our own Rule 40(1)(d)(2), and because of Silber v. United States, 370 U.S. 717, which you cite in the footnote. I think it should be a good deal easier for a party who is basically making a second appellate argument

before this Court to persuade it to notice a point that was fully made in the trial court, but perhaps not made in argument to the federal Court of Appeals, than it should be for that party to persuade either appellate court to notice a deficiency in the instructions which was never urged as error in the trial court, and which that court therefore never had an opportunity to consider before the case went to the jury.

Would you be receptive to the idea of adding, in the footnote language, after the words in the seventh line "instructions were plainly erroneous", the phrase "and the claim of error was brought to the attention of the trial court", and then cite only Silber, and not Screws?

Sincerely,

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 19, 1972

Re: No. 70-74 - Pipefitters v. U. S.

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

W.H.R.

Mr. Justice Brennan

Copies to the Conference

Office of the Solicitor General
Washington, D.C. 20530

February 14, 1972

Honorable E. Robert Seaver
Clerk
Supreme Court of the United States
Washington, D. C. 20543

Re: Pipefitters Local Union No. 562, et al. v. United States (No. 70-74, Oct. Term, 1970)

Dear Mr. Seaver:

The purpose of this letter is to advise the Court that an amendment to 18 U.S.C. 610 has been enacted since the argument of the above case. Public Law 92-225, approved on February 7, 1972, will become effective on April 7, 1972, and amends Section 610 by adding the following paragraph:

> As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stocholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be

...zed for political purposes by a corporation ...labor organization; Provided, That ... shall be ...lawful for such a fund to make a contribution ...r expenditure by utilizing money or anything of ...value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

Of course, under established principles, the present case is governed by Section 610 as it existed during the acts of the defendants, and their trial and conviction. 1 U.S.C. 109.

Very truly yours,

Erwin N. Griswold
Solicitor General

cc:

Murray Randall, Esquire
506 Olive Street
St. Louis, Missouri 63101

John L. Boeger, Esquire
408 Olive Street
St. Louis, Missouri 63102

Richard L. Daly, Esquire
7 North Seventh Street
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Morris A. Shenker, Esquire
408 Olive Street
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Norman S. London, Esquire
418 Olive Street
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