

INDEX

	PAGE
STATEMENT OF INTEREST.....	2
I—Section 9h of the National Labor Relations Act, as amended, violates the Constitution.....	3

CASES CITED

American Steel Foundries v. Tri-City Central Council, 257 U. S. 184.....	4
Chambers v. Florida, 309 U. S. 227.....	6
Jones & Laughlin Steel Co. v. NLRB, 301 U. S. 1.....	4
Thomas v. Collins, 323 U. S. 516, 544.....	4
Thornhill v. Alabama, 310 U. S. 88.....	4, 6
Steele v. Louisville & Nashville Railroad Co., 323 U. S. 192	5
United States v. Caroline Products, 303 U. S. 144.....	6

AUTHORITIES CITED

National Labor Relations Act:	
Section 9h.....	3
United States Constitution:	
First Amendment.....	3
Fifth Amendment.....	3
Article I, Section 9, Clause 3.....	4

IN THE
Supreme Court of the United States

October Term, 1948.

No. 431.

UNITED STEEL WORKERS OF AMERICA, ET AL., *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD.

No. 336.

AMERICAN COMMUNICATIONS ASSOCIATION, ET AL., *Petitioners,*

v.

CHARLES T. DOUDS, ET AL.

**MOTION FOR LEAVE TO FILE BRIEF AS AMICUS
CURIAE AFTER ARGUMENT AND BRIEF.**

Now comes United Electrical Radio & Machine Workers of America (UE), C.I.O., by their attorney, and respectfully moves the Court for leave to file the annexed brief after argument as amicus curiae in support of the petitioners in the above entitled actions.

In support thereof, movant respectfully shows that the written consent of the petitioners' and respondents' counsel

to the filing of a brief amicus curiae by movant has been filed with the Clerk; that movant was notified of the date of argument by petitioners too late for movant to file its brief before argument; and that movant has moved diligently to file its brief as soon as possible after argument.

Respectfully submitted,

ALLAN R. ROSENBERG,
*Counsel for United Electrical
Radio & Machine Workers of
America, C.I.O.*
938 Bowen Bldg.,
Washington, D. C.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1948

No. 431

UNITED STEEL WORKERS OF AMERICA, et al.,
Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD.

No. 336

AMERICAN COMMUNICATIONS ASSOCIATION, et al.,
Petitioners,

v.

CHARLES T. DOUDS, et al.

**MOTION FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE AND BRIEF**

United Electrical, Radio & Machine Workers of America (UE), CIO, respectfully moves this Court for leave to file a brief amicus curiae in support of the petitioners in the above entitled actions. The written consent of petitioners' and respondents' counsel to this motion has been filed with the Clerk.

Statement of Interest

The United Electrical, Radio & Machine Workers of America (UE), CIO, is a national trade union representing over 600,000 working men and women in the electrical, radio and machine industries of this country and Canada. The UE was organized by representatives of working men and women in 1936. It is an organization which as the preamble to its constitution and by-laws states, "unites all workers in our industry on an industrial basis, and rank and file control, regardless of craft, age, sex, nationality, race, creed or political beliefs." At its founding convention, the delegates assembled pledged themselves "to labor unitedly for the principles herein set forth, perpetuate our union and work concertedly with other labor organizations to bring about a higher standard of living of the workers".

The UE from its very inception has been built upon the solid rock of democratic trade unionism. It has endeavored in its every action to shape its fundamental law and its daily conduct in the light of the basic principles of American democracy. Membership in the UE by constitutional provision is open to all men and women whose normal occupation is in the electrical, radio and machine industries, and as the constitution states, "this membership is available regardless of skill, age, sex, nationality, color, religious or political belief or affiliation". This insistence upon thoroughgoing democracy as a way of life for a trade union has been over the years grounded not only in a deep belief in the validity of American traditions, but also in the firm realization that trade unionism itself can survive only in this framework. As the General Officers of the UE stated to the Congress of the United States prior to the passage of the Taft-Hartley Act:

"The maintenance by our membership of the equal rights of every member, 'regardless of craft, age, sex, nationality, race, creed or political beliefs' does not

constitute adherence by the organization or of any individual member to any particular political philosophy, any more than it implies adherence to any particular creed, or membership in any race or sex.

“But it does most strongly affirm the right, not only of the individual member to hold any office or position in the Union for which he may be chosen by his fellow-members, but also the right of all members, collectively, to elect any member they may choose to any office or post in the UE.

“This is the strongest possible insurance that the membership will continue to control this Union, and that no group, political, religious, fraternal, national, or any other, will ever be able to dominate the Union.”

I

Section 9h of the National Labor Relations Act, as amended, violates the Constitution.

In their petition for the writ of certiorari the United Steelworkers attacked the constitutionality of Section 9h of the National Labor Relations Act, as amended, for the following reasons:

(1) Because it deprives unions, union officers, and members of unions, of freedom of thought, speech, and assembly, in violation of the First Amendment of the United States Constitution.

(2) Because it is not narrowly drawn to meet the evil purportedly aimed at, while invading as little as possible the guarantees of the First Amendment, but invades basic rights whose impairment is unnecessary to the provision's claimed purpose, in violation of the First and Fifth Amendments.

(3) Because it is vague and indefinite, and imposes tests of guilt by association, all in violation of the First and Fifth Amendments.

(4) Because it constitutes a bill of attainder, within the meaning of Article I, Section 9, Clause 3 of the Constitution.

The UE fully associates itself with this statement of the petitioners, United Steelworkers of America.

This Court has many times reaffirmed the fundamental importance of trade unions to the country. *Jones & Laughlin Steel Co. v. NLRB*, 301 U. S. 1; *American Steel Foundries v. Tri-City Central Council*, 257 U. S. 184. The right to organize into trade unions and bargain collectively with their employers has been recognized by this Court as the most essential method through which working people exercise the rights of economic, social and political democracy guaranteed to them in the Constitution itself. *Thomas v. Collins*, 323 U. S. 516, 544 (concurring opinion of Mr. Justice Jackson); *Thornhill v. Alabama*, 310 U. S. 88. A trade union is more than another organization. Without a trade union a worker is unable to gain for himself even the most elementary standard of subsistence. American history has demonstrated, as this Court has pointed out, that trade unions are the instruments through which American workers have been able to resist the ravages of organized industrial monopolies. Chief Justice Taft, more than twenty-five years ago, stated for this Court that unions are "essential" to working men; that they are born out of the "necessities" of economic life. *American Steel Foundries v. Tri-City Central Council*, 257 U. S. 184. The trade union has become for the American worker not only a bulwark of strength against economic oppression, but a vehicle for exercising his political rights of free press, speech and assembly. Through his trade union the American worker takes part in the political processes of democracy. Indeed, without vigorous and free trade unions it is doubtful whether American democracy itself could survive.

This Court itself has recognized in recent years that the very nature of a trade union requires that the concept of full democracy runs through every aspect of

trade union activities. *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192. Any device, legislative or judicial, which threatens to emasculate and destroy the complete democratic life of a trade union, strikes therefore not at the trade union alone but the entire country. This country will depend for its future peace and security, for the happiness of its entire people, to a very great extent upon the functioning of free democratic trade unions. This Court, therefore, is under a profound obligation to reject any attempt to undermine the democratic control of a trade union by its own membership.

There is no more inflexible principle of American democracy than that the Government may not dictate to any citizen concerning his religious, economic, social or political beliefs or affiliation. This Court has reaffirmed this first principle in most vigorous language. This is the principle upon which all other precepts of democratic government are based. It is the cornerstone upon which the entire structure of constitutional democracy is erected.

This country has just emerged from a war in which hundreds of thousands of Americans were killed or maimed, a war fought against those forces of German and Japanese fascism who sought to impose their system of thought control on the entire world. It is too late indeed for anyone, whether or not in high legislative office, to challenge in this Court the meaning of this underriding concept of the Constitution.

Those who fashioned this constitutional democracy were concerned with providing for the fullest possible opportunity for popular control over the destinies of the country. They were concerned lest the Government falling into the hands of powerful selfish interests could perpetuate itself while adopting measures destructive of the public interest by closing off the normal channels of democratic participation and control over the Government. A government under the influence of powerful, wealthy corporate interests could perpetuate its control over the entire life of the nation by declaring heretical unorthodox opinions

and beliefs, and those who oppose their rule. This was precisely the situation which the Constitution was designed to prevent. As long as the right of every American to determine for himself the truth or falsity of religious, economic, social and political ideas remains unimpaired by governmental restriction, so long will the corrective processes of political democracy remain open. Once a concession is made, once a wedge is driven into this constitutional bedrock, the entire structure of democratic government begins to totter.

This Court has said, "no higher duty, no more solemn responsibility rests upon this Court than that of translating to living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our constitution—of whatever race, creed, or persuasion." *Chambers v. Florida*, 309 U. S. 227.

The Government may not dictate to trade unions as to the political beliefs or affiliation of its members or officers for the very reason that the Government may not so dictate to any American citizen. The very reason which requires the adoption of the First Amendment and the Bill of Rights requires the rejection of any such governmental dictation.

If a trade union is the channel through which working people utilize the processes of popular government to shape the destiny of modern industrial society (*Thornhill v. Alabama*, 310 U. S. at 103) trade union members may not be restricted in any way by Government or employers in the selection of their representatives. A restraint upon this free selection is prohibited by the Constitution for the very same reason which forbids restraints upon any channel of democratic expression. Such a restraint interferes with the very procedure through which democracy functions. *United States v. Caroline Products*, 303 U. S. 144.

American democracy requires for its vitality a free trade union movement. Any attempt to substitute govern-

mental dictation for free, unrestricted membership control of a trade union is therefore not merely an attack upon the constitutional rights of trade union members. It is a threat to the entire framework of American democracy.

Respectfully submitted,

UNITED ELECTRICAL, RADIO & MACHINE
WORKERS OF AMERICA, CIO.

DAVID SCRIBNER,
ARTHUR KINOY,
11 East 51st Street,
New York City, N. Y.