



Unions and Abortion Protestors
by
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The National Organization for Women (NOW) and labor unions have a long record of supporting each other in their respective public policy wars, so one could reasonably expect the AFL-CIO to be on NOW's side in *Scheidler v. NOW*, a long-running case which, in November 2005, came back for a third time to the U. S. Supreme Court. But NOW and the unions are on opposite sides of *Scheidler*. The reason goes back to a 1973 Supreme Court case, *U.S. v. Enmons*. The question in both cases is when is it legitimate for a private group to initiate violence and threats of violence in pursuit of its ends? A classical liberal's answer to that question is, of course, never, even if the ends being pursued are themselves legitimate. Alas, in *Enmons* the Court said that when unions initiate violence and threats of violence they are exempt from federal prosecution under the Hobbs Act as long as in doing so they pursue "legitimate" union objectives. The *Scheidler* case is about whether anti-abortion activist groups such as Operation Rescue should enjoy the same exemption to the rule of law given to unions in *Enmons*. The AFL-CIO says yes, and NOW says no.

The Hobbs Act amended the federal Anti-Racketeering Act of 1934 which was aimed primarily at organized crime and which prohibited violence, threats of violence and other forms of extortion by individuals and groups against other individuals and groups. As the 1934 Act was working its way through Congress, the American Federation of Labor objected that if applied to labor unions the law would thwart

standard union practices in labor disputes. This explicit recognition by the AFL that much of what it did was illicit under ordinary law got Congress to stipulate that unions would be exempt from the Act to the extent that they “lawfully” pursued “legitimate” union objectives.

In *U.S. v. Local 807, International Brotherhood of Teamsters* (1942) the Teamsters asserted that they were lawfully pursuing legitimate union objectives when, using threats and violence, they stopped trucks entering New York City and demanded that the owner-drivers of those trucks pay tribute to the union equal to a full day’s wage before the trucks were allowed to proceed. The Supreme Court agreed with the Teamsters. Congressman Hobbs and several other members of Congress were outraged by this decision and promulgated the Hobbs Act to reverse the Court. In the words of Congressman Gwynne, an ally of Hobbs, “I think the intent of the Congress in the 1934 statute was to protect the *lawful* activities of organized labor. The construction put on it by the Supreme Court would authorize *unlawful* acts – certainly never intended by this Congress” (emphases added). The Hobbs Act became law in 1946.

The Hobbs Act says anyone who “in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.” While the Act did not “repeal, modify or affect” any provisions of pro-union legislation such as the National Labor Relations Act, it included no explicit

exemptions for unions from federal anti-extortion legislation even in pursuit of “legitimate” union objectives.

The *Enmons* case involved a strike in which individual unionists fired high-powered rifles at three utility company transformers, drained the oil from another transformer, and blew up a company transformer substation, all in pursuit of a higher-pay union contract. The Court decided that such violence was exempt from Hobbs Act prosecution because it was in pursuit of a legitimate union objective. The Court asserted that the Hobbs Act was meant only to bring union violence under the purview of federal anti-extortion legislation if it was in pursuit of illegitimate ends, such as, in *Local 807*, extorting money for work not performed. If the ends were legitimate there could be no extortion. The Court found that since the National Labor Relations Act empowers unions to strike in pursuit of higher-pay contracts, the use of violence in that pursuit was not extortion.

In dissent, Justice Douglas wrote, “the Court today achieves by interpretation what those who were opposed to the Hobbs Act were unable to get Congress to do.” In Douglas’ view “the regime of violence, whatever its precise objective, is a common device of extortion and is condemned by the Act.” Justice Douglas was no classical liberal, but he at least understood that legitimate ends do not justify illegitimate means.

The first Supreme Court decision in the *Scheidler* case was in 1994. In the late 1980s Joseph Scheidler, the head of a coalition of anti-abortion groups called the Pro Life Action Network, other individuals, and other anti-abortion groups such as Operation Rescue were alleged to have attempted to shut down abortion clinics by picketing, demonstrating, threatening and, in some cases, hostile physical contact with both abortion

providers and women seeking their services. These tactics are, of course, often employed by unions during strikes and other labor disputes. NOW, et. al. sued Scheidler et. al. alleging violations of the Racketeer Influenced and Corrupt Organizations (RICO) statute and the Hobbs Act. The defendants argued that since their actions were not motivated by economic gain RICO was not applicable. The Court's 1994 decision was simply that "RICO contains no economic motive requirement."

The case was remanded to the trial court which found that the anti-abortion protestors were guilty of 121 acts which violated RICO and/or the Hobbs Act. The Seventh Circuit Appeals Court upheld the judgment of the trial court. When the case returned to the Supreme Court in 2003, the Court found that, since the protestors did not receive any property from their victims as a result of their violence and threats, none of the acts of the protestors involved extortion or robbery. Therefore the protestors did not violate RICO. There remained, however, four acts of violence and threats in which there was never any allegation of extortion or robbery but which could violate the Hobbs Act. That is the issue currently before the Supreme Court.

NOW wants the Hobbs Act to be read to say that it proscribes any obstruction, delay or interference with commerce by any of three means: (1) robbery, (2) extortion, or (3) acts and threats of violence that do not involve robbery or extortion. The AFL-CIO doesn't want number three to stand alone. It wants robbery and/or extortion to be required before a violation of the Hobbs Act can be found. If the Court now accepts stand-alone violence and threats as Hobbs Act violations, the Court may later decide to revisit its *Enmons* decision which exempted unions from the Hobbs Act on the grounds

that violent strike actions, by themselves, do not involve robbery or extortion when undertaken in pursuit of “legitimate” union objectives.

During oral argument on November 30, 2005 Justice Breyer expressed concern that if NOW prevails in *Scheidler III*, routine union violence during strikes could become “a major federal crime.” Imagine that! Three cheers for NOW.