

Proposition 32: Stop Special Interest Money Now Brief Summary

SDCTA **SUPPORTS** Proposition 32. Proposition 32 would allow employees from across the state the ability to make their own decisions about contributing to political causes. Proposition 32 would equalize the ability of both unions and corporations to collect and expend contributions from employees for political purposes. Employees will still have the option to allow for wages to go towards these causes should they believe they represent their best interests; this option will be in the affirmative as is the case with all contributions towards political activity.

- Unions gather funds from members' dues, which are commonly collected through payroll deduction. By pooling large amounts of money from their various members' dues, unions are able to carry out collective bargaining activities. In addition to such activities, unions usually use a portion of their funds toward political activity.
- In order for a private sector employer to be able to deduct wages for political purposes, they must receive express written consent from the employees.
- Employees who choose to opt out of having their union dues contributed to a PAC have two options. First, they could file the proper paperwork in order to opt out of any fraction of dues going to a political action committee; and/or second, they could decline union membership and pay only the shop fees, which are the minimum required contributions all employees must make.
- State union-sponsored PACs spent more than \$25 million in direct contributions to candidates during the 2010 election cycle. More than \$48 million was directly contributed to candidates and candidate controlled committees from "corporate coffers".
- Proposition 32 would: 1) Prohibit corporations and unions from making any contributions to candidates or candidate-controlled committees; 2) Prohibit government contractors from making contributions to any elected officer or committee controlled by an elected officer; and 3) Forbid unions from making any automatic payroll deductions that would go toward political purposes.
- In its place, deductions could only be made through a voluntary written consent by the employees.
- Proposition 32 falls in line with the *Citizen's United* decision in that it is legal for a state to prohibit corporations and unions from making direct expenditures to candidates and candidate controlled committees.
- Proposition 32 attempts to redress any potential for "pay-to-play" by eliminating the ability of government contractors from donating to elected officers or committees controlled by elected officers if the contractor is a party to a contract.

Proposition 32: Stop Special Interest Money Now Act

Board Action:

SUPPORT

Title: “*Stop Special Interest Money Now Act*”

Description: Restricts union political fundraising by prohibiting use of payroll-deducted funds for political purposes. Same use restriction would apply to payroll deductions, if any, by corporations or government contractors.

Jurisdiction: State

Type: Initiative Statute

Vote: Simple Majority

Fiscal Impact: Increased costs to state to investigate alleged violations of law and local governments to administer. Combined, costs could exceed \$1 million annually.

Rationale:

This initiative is clearly a taxpayer issue as it directly impacts the ability and ways in which special interests fund political activity to influence major taxpayer expenses. In 2010 SDCTA supported Proposition K, the Oceanside City Charter initiative, which included a paycheck protection provision that restricted the ability of unions representing Oceanside city workers to use automatic payroll deductions for political purposes. Proposition 32 would allow employees from across the state the ability to make their own decisions about contributing to political causes. Proposition 32 would equalize the ability of both unions and corporations to collect and expend contributions from employees for political purposes. Employees will still have the option to allow for wages to go towards these causes should they believe they represent their best interests; this option will be in the affirmative as is the case with all contributions towards political activity.

Background:

Unions in California

California is the state with the largest number of union members at 2.4 million people; 17.1 percent of the state’s employed residents.¹ Unions gather funds from members’ dues, which are commonly collected through payroll deduction. By pooling large amounts of money from their various members’ dues, unions are able to carry out collective bargaining activities. In addition to such activities, unions usually use a portion of their funds toward political activity.

The state allows private sector unions to collect membership dues via payroll deduction as long as they are authorized by the employee. Thus, private sector unions can gather these dues either by payroll deduction or by direct payment.

Congress has authorized mandatory unionism to foster collective bargaining in order to counter the free-rider problem, which occurs as some individuals either consume more than their fair

¹ Bureau of Labor Statistics, U.S. Department of Labor, Union Members Summary (May, 2012)

share of a common resource, or pay less than their fair share of the cost of it. However, this measure was not carried out as means to force employees to support political causes.² Thus, while non-members must pay required fees, they have the right to decide how these can or cannot be used. Moreover, non-unionized employees may specify that their dues may only be used for collective bargaining purposes.³

In regards to corporation payroll deductions, it has been determined that it is illegal for an employer to collect wages that should be paid to the employee with a few exceptions such as income tax, health insurance, pension, etc. Consequently, in order for an employer to be able to deduct wages for political purposes, they must receive express written consent from the employees.⁴

The California Supreme Court has previously established that a ban on lobbyist contributions to candidates was unconstitutional.

Current Law – Beck's Rights

In *Communications Workers of America vs. Beck*, the Supreme Court clarified that non-union employees who work under a union security agreement, and therefore are required to pay union dues, are not required to contribute through those dues to union-supported political causes with which they disagree. Employees who choose to opt out of having their union dues contributed to a PAC have two options. First, they could file the proper paperwork in order to opt out of any fraction of dues going to a political action committee; and/or second, they could decline union membership and pay only the shop fees, which are the minimum required contributions all employees must make.⁵ If an employee carries out both actions they would receive a refund of dues equal to the fraction of dues used for union activities that were unrelated to employee representation. On the other hand, if an employee wishes to be part of the union but does not want part of their dues to be used in political contributions they will not receive a refund.⁶

Currently there is no provision in place to ensure that the proportion of dues of other union members used for political contributions will not be increased in lieu of lost contributions from employees who choose to opt out. If this were to occur, employees who opt out would be subsidizing increased political contributions of those who had not opted out.⁷ In addition, on February 4, 2009, President Barack Obama issued Executive Order 13496. This directive repealed Executive Order 13201, which required federal contractors and subcontractors to post notices informing employees of their right to refrain from joining or paying union dues for non-representational activity.

² Sachs, supra note 4.

³ Ibid.

⁴ Ibid.

⁵ Sachs, Benjamin I., Unions, Corporations, and Political Opt-Out Rights after Citizens United (August 15, 2011). Columbia Law Review, Forthcoming; Harvard Public Law Working Paper No. 11-21. Available at SSRN: <http://ssrn.com/abstract=1924916> or <http://dx.doi.org/10.2139/ssrn.1924916>

⁶ Ibid.

⁷ Ibid.

California law poses certain restrictions on the amount of money corporations, labor unions, individuals, etc. can contribute to a candidate-controlled committee or to a candidate’s campaign for office.⁸

The California Fair Political Practices Commission specifies that individual contributions are limited to \$3,900 to candidates for the state legislature, \$6,500 to candidates for state executive office other than the governor, and \$26,000 to the candidates for governor. This organization also regulates contributions given to state committees that contribute to state candidates. Individuals may donate \$6,500 to non-political party committees, \$32,500 to political parties, and \$200 to small contributor committees.⁹

Campaign Contributions

Figure 1 summarizes campaign contributions by sector in California during elections from 2004-2010. It should be noted this amount includes contributions made to ballot measures, and does not represent direct spending by corporations.

Figure 1: Campaign contributions by sector in California state elections

Sector	2010	2008	2006	2004
Agriculture	\$6,542,366	\$9,712,524	\$7,051,794	\$4,208,049
Candidate Contributions	\$207,352,186	\$25,439,960	\$82,822,367	\$34,162,413
Communications & Electronics	\$30,823,615	\$27,432,377	\$80,618,615	\$19,182,350
Construction	\$4,881,681	\$6,601,452	\$17,264,212	\$8,777,422
Defense	\$225,154	\$309,971	\$253,660	\$192,682
Energy & Natural Resources	\$72,868,155	\$62,379,239	\$107,731,170	\$9,701,082
Finance, Insurance & Real Estate	\$66,001,558	\$51,304,033	\$92,623,583	\$61,135,487
General Business	\$28,885,727	\$32,173,841	\$95,802,367	\$62,249,650
Government Agencies/Education/Other	\$26,298,312	\$187,312,412	\$20,573,216	\$84,101,094
Health	\$18,949,780	\$29,286,357	\$32,571,678	\$28,062,509
Ideology/Single Issue	\$30,900,767	\$50,113,050	\$30,926,671	\$8,805,440
Labor	\$76,701,905	\$56,860,708	\$62,154,967	\$54,192,948
Lawyers & Lobbyists	\$14,343,096	\$10,312,433	\$19,011,146	\$11,782,101
Party	\$25,135,721	\$24,748,278	\$26,437,429	\$27,416,194
Transportation	\$3,037,367	\$3,216,261	\$5,314,885	\$15,841,745

Source: National Institute on Money and Politics

Proponents of Proposition 32 state union-sponsored PACs spent more than \$25 million in direct contributions to candidates during the 2010 election cycle. Proponents of Proposition 32 also state during the 2010 election cycle, more than \$48 million was directly contributed to candidates and candidate controlled committees from “corporate coffers”.

⁸ Ibid.

⁹ Jordan, Nic, and Alisa Reinhardt. "Measure 1487: The Stop Special Interest Money Now Act. Initiative Statute." (2012): 3. Web. 15 May. 2012.

Case Law

The U.S. Supreme Court has recently upheld, on two occasions, the constitutionality of laws regulating political spending of public employee labor unions in *Davenport et. al. v. Washington Education Association* (2007) and *Ysura et. al. v. Pocatello Education Association* (2009).

In *Davenport v. Washington Education Association*, the Washington Education Association challenged a Washington state law that required affirmative consent from nonunion employees prior to the use of their union dues for political activities on the grounds that the law violated the labor unions First Amendment rights. The U.S. Supreme Court ruled as follows:

“It does not violate the First Amendment for a State to require its public-sector unions to receive affirmative authorization from a nonmember before spending that nonmember’s agency fees for election-related purposes.”¹⁰

The Pocatello Education Association challenged Idaho’s Right to Work Act in *Ysura v. Pocatello Education Association* also on the grounds that it violated the labor unions First Amendment rights. Again the law was upheld by the U.S. Supreme Court which found:

“Idaho’s ban on political payroll deductions, as applied to local governmental units, does not infringe the unions’ First Amendment rights.”¹¹

Under *Citizen’s United v. Federal Elections Commission*, the Supreme Court ruled that a state law that prohibited corporations and unions from using treasury money to support or oppose candidates in elections did not violate the First and Fourteenth Amendments.

Prior Legislation

Five states (Idaho, Michigan, Utah, Washington, and Wyoming) have implemented paycheck protection laws which ban or place restrictions upon using union dues for political purposes. The Voluntary Contributions Act (Utah 2001) and Right to Work Act (Idaho 2003) ban the use of any union dues or fair share fees for political contributions regardless of affirmative consent. The Voluntary Contributions Act also requires unions to create a separate fund into which campaign donations can be deposited and mandates that any solicitation of donations from union members must clearly state that donations are voluntary.

Utah has been dubbed a model by proponents for how both reforms (affirmative consent of union dues for political purposes and restricting union dues contributions to political entities) can limit that amount of money expended in political campaigns. Prior to passage of the Voluntary Contributions Act, 68 percent of the Utah Education Association members made annual contributions to its Political Action Committee (PAC).¹² After implementation the number of contributors fell to 6.8 percent. The actual amount contributed also fell from \$155,000 to \$40,000 – a 75 percent drop.

Other states that passed measures such as Washington and Idaho also saw a decline in PAC contributions following passage of their respective measures, but experienced different outcomes in how unions responded. Following the passage of Washington’s measure in 1992, the first in

¹⁰ *Davenport et. al. v. Washington Education Association* (2007)

¹¹ *Ysura et. al. v. Pocatello Education Association* (2009)

¹² “Paychecks Unprotected”. By Michael Reitz, J.D. Capital Research Center. January 2006.

the nation, the percent of members of the Washington Education Association (WEA) contributing to its PAC fell from 82 percent to 11 percent after its first full year of implementation. Voluntary contributions have never exceeded 20 percent of the membership in ensuing years.¹³ In Idaho, the number of union members contributing to union PACs dropped by 75 percent.¹⁴

In both instances, lawsuits were filed challenging each state's respective law. In addition, the WEA transferred over \$160,000 of teachers' collective bargaining dues from general funds to the PAC. Other transfers were carried out leading to campaign violations being brought down by the state's Public Disclosure Commission. A settlement on the matter was eventually agreed to.¹⁵ Despite certain portions of Idaho's law being struck down by lower courts, the United States Supreme Court ruled (*Ysursa v. Pocatello Education Association*) in 2009 that bans on political payroll deductions are constitutional.

Past Measures

Prop 226 was on the June 1998 ballot, and it was defeated with 53.5 percent of Californians voting against it. If it would have passed, Prop 226 would have made it mandatory for all employers and labor organizations to annually obtain employees' or members' approval before withholding wages or utilizing union dues for political purposes. Moreover, it also would have created a provision similar to federal law banning campaign contributions from foreigners for a candidate to public office. Thus, residents, governments or entities of foreign countries could not make political contributions to candidates for state or local office.

Prop 75 was presented in the November 2005 ballot. If passed, this initiative would have forbidden the use by public labor organizations of dues for political purposes without previous written authorization of individual public employees on an annual basis. This measure also proposed to require unions to keep track of its members' political contributions and submit such information to a supervising agency if needed. Although opponents of Prop 75 outspent proponents 10-1, this initiative failed with only 53.5 percent of votes against it.

SDCTA did not take a position on the two previous statewide paycheck protection initiatives, Prop 226 (1998) and Prop 75 (2005).

There was also another similar initiative that did not make it to the ballot. The public employee paycheck protection act of March 2010 intended to carry out very similar reforms as the ones proposed on Proposition 32. The act attempted to make it mandatory for affirmative consent to take place prior to union expenditure of dues or fees on political activities; to provide a specific means by which affirmative consent could be supplied; to mandate the maintenance of records of all political contributions and expenditures as well as a associated authorization forms; to ban the increase of dues or fees for members or nonmembers who do not authorize expenditures for political activities; and require dues and fees to be reduced by the amount previously allocated to political activities.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

Proposal:

Proposition 32 is a statewide initiative that received the required number of signatures to appear on the November 2012 ballot.

If passed, Proposition 32 would:

- Prohibit corporations and unions from making any contributions to candidates or candidate-controlled committees.¹⁶
- Prohibit government contractors from making contributions to any elected officer or committee controlled by an elected officer.
- Forbid unions and corporations from making any automatic payroll deductions that would go toward political purposes.
- In its place, deductions could only be made through a voluntary written consent (e.g. check or credit card) by the employees for political purposes.¹⁷

Fiscal Impact:

The Legislative Analyst's Office (LAO) calculates that if Proposition 32 were implemented, it would potentially increase the costs and workload of the California Fair Political Practices Commission. This organization would have to increase its budget to be able to enforce and implement the measures' financial requirements. Some of these costs could be offset by increased fines for not complying with the measure's provisions.¹⁸ The LAO believes the state would experience increased costs to investigate alleged violation of the law, while local governments would experience some increased administrative costs. Combined, this could amount to over \$1 million annually.¹⁹

Policy Discussion:

If Proposition 32 passes, paycheck deductions could not be taken automatically to make political contributions unless union members and corporate employees submit annual consent. Unions and corporations would be subject to the same rules. According to its proponents, Proposition 32 attacks at every point where money changes hands between special interests and California's politicians in three ways: first, it limits both corporate and labor union contributions to campaigns; second, it prevents government contractors from making contributions to officials who could be in a position to grant them contracts, "thus stopping pay-to-play"²⁰; and third, bans all employers and unions from taking money out of employee's payroll checks for political purposes without annual written agreements.

¹⁶ Proposed Statewide Ballot Measure form Ashlee Titus to Krystal M. Paris, Initiative Coordinator, Office of the Attorney General, California.

¹⁷ Ibid.

¹⁸ "Stop Special Interest Money Now Act." . Legislative Analyst's Office, n.d. Web. 17 May 2012. <<http://www.lao.ca.gov/ballot/2011/110309.aspx>>

¹⁹ Proposition 32 Analysis. Legislative Analyst's Office. July 18, 2012.

²⁰ Proposed Statewide Ballot Measure form Ashlee Titus to Krystal M. Paris, supra note 13

Corporations already need express written consent from their employees in order to carry out payroll deductions that are not allowed by state or federal law, or collective agreements. The three differences with the status quo are that under this measure are: (1) employees would have to submit the consent form every year instead of only once; (2) corporations would not be able to deduct funds from an employee's paycheck (but can debit an account or credit card); and (3) corporations would not be able to use these funds toward candidates or candidate committees.

Given that Proposition 32 closely aligns with the Voluntary Contribution Act passed by Utah voters, a similar outcome can be expected in terms of reduction in annual contributions from union members.

Proposition 32 also falls in line with the *Citizen's United* decision in that it is legal for a state to prohibit corporations and unions from making direct expenditures to candidates and candidate controlled committees. The decision did state though that laws cannot prohibit corporations and unions from making independent expenditures (IEs) from their general treasuries. Thus, Proposition 32 would fall in line with this decision as it only prohibits corporations and unions from giving directly to candidates and candidate controlled committees. Additionally though, the potential for a rise in IEs is likely given this circumstance.

Lastly, Proposition 32 attempts to redress any potential for "pay-to-play" by eliminating the ability of government contractors from donating to elected officers or committees controlled by elected officers if the contractor is a party to a contract. Government contractor is defined as:

"any person, other than an employee of a government employer, who is a party to a contract between the person and a government employer to provide goods, real property, or services to a government employer. Government contractor includes a public employee labor union which is a party to a contract with a government employer."

Proponents' Arguments:

- Corporations and unions are imposing their own political speech on their employees and members.
- With the passing of Proposition 32, government officials and politicians would not be influenced by any breed of special interest money to the extent that they are today.
- A big supporter of this initiative, former US Secretary of State George Shultz, argues that the initiative seeks to, "end the toxic pay-to-play politics by which corporations and unions corrupt politicians in Sacramento and throughout California's cities and counties."
- By weakening the effect of special interest persuasion, legislators will be able to dedicate more time to their actual job at hand and to accomplish something productive for California and its people.

- Initiative will fundamentally dilute the corrosive nature of the political system by altering the relationship between politicians and their campaign contributors.

Opponents' Arguments:

- Proposition 32 is simply a veiled attempt to hinder organized labor's sources of funding.
- Measure would empower corporations vis-a-vis unions. Unions depend on member dues as these are their fundamental source of funding while corporations do not.²¹
- In contrast to unions, it would be significantly easier for corporations to deal with the limitations that Proposition 32 imposes.
- Corporations are not allowed either to make payroll deductions as a means to gather funds for political purposes and rarely use payroll deduction for political purposes.
- Corporations gather funds for political purposes from their own profits.
- Corporations would continue to utilize their own profits in order to sponsor politicians without the necessity to obtain their employees approval.²²
- Almost identical measures have been proposed thrice in the past. Two of them made it to the ballot and were defeated in 1998 and 2005, and one of them did not even gather enough signatures. The only difference between the past initiatives and the new one is the inclusion of an attack to corporate political spending.
- Measure is clearly directed at unions because government contracts are defined as including collective bargain agreements between public agencies and labor unions.
- The measure does not truly address what opponents consider to be the root of political contributions—independently run PACs. Although this provision bans unions and corporations from making direct contributions to political entities or individuals, it does not ban contributions to political action committees. Thus, corporate coffers may still easily reach political campaigns. Conversely, unions would still be crippled in their capacity to contribute to PACs because of Proposition 32's payroll deduction prohibition. Union-founded PACs could not be funded by payroll deduction which is the union's main source of income for unions.²³
- This measure creates a giant loophole to allow for unlimited corporate spending on campaigns while furthering their real agenda of silencing the voices of middle-class workers and their unions.²⁴

Main Supporters:

- Former US Secretary of State and Secretary of Treasury George Shultz
- Orange County Lincoln Club
- Lew Uhler, Head of the National Tax Limitation Committee.

²¹ "Exposing the Corporate Deception Act." *California Labor Federation*. California Labor Federation, n.d. Web. 15 May 2012. <<http://www.calaborfed.org/index.php/site/page/1252/>>.

²² Ibid.

²³ "Corporate Deception Power Grab." *California School Employees Association*. California School Employees Association, n.d. Web. 15 May 2012. <<http://members.csea.com/memberhome/Issues>>

²⁴ Lind, Rond. "Special interest ballot measure really is just anti-union." *Mercury News*. 03 03 2012: n. page. Web. 15 May. 2012. <http://www.mercurynews.com/opinion/ci_20090322?source=rss>.



- Bay Area Council

Main Opponents:

- The California Labor Federation
- California Teachers Association
- President of the United Food and Commercial Workers Ron Lind
- California Professional Firefighters Independent Expenditure PAC
- California State Council of Service Employees Issue Committee