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Measure 1487: The Stop Special Interest Monday Now Act of 2012.

Nic Jordan

Alisa Reinhardt

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The Stop Special Interest Money Now Act of 2012.

Initiative Statute.

University of the Pacific, McGeorge School of Law

By,

Nic Jordan
J.D., University of the Pacific, McGeorge School of Law, to be conferred May 2013
B.A., Political Science, Fordham University, 2010

&

Alisa Reinhardt
J.D. University of the Pacific, McGeorge School of Law, to be conferred May 2012
B.A. Communication and Political Science, University of Southern California, 2009

I. EXECUTIVE SUMMARY

The initiative currently designated as 1487 is a measure that would change California law by disallowing the use of automatic payroll-deducted funds for political purposes by unions, corporations, and government contractors.[1] Measure 1487 is qualified for the November 2012 ballot. If passed, this measure would make California political contribution laws stricter than federal law in the area of payroll deductions.[2] As California law stands right now, unions and corporations are free to automatically deduct money from employees' paychecks and use those funds for political contributions. Federal law allows for this same use of paycheck deductions for political purposes.[3]

This initiative would also prohibit unions and corporations from making direct or indirect contributions to candidates and candidate-controlled committees, while political expenditures derived from resources other than automatic payroll deductions would remain unrestricted.[4] Corporate profits being used towards direct or indirect political contributions, for example, would remain unrestricted.[5] Under Measure 1487, government contractors would be able to make contributions to elected officers or officer-controlled committees, but only if the elected official who benefited from that contribution did not attempt to use his or her official position to influence the granting or awarding of a government contract.[6] However, this guard against corruption in regards to beneficiaries of government contracts is already a part of state law.[7] Currently, California law prohibits agents and independent contractors from contributing more than $500 on behalf of or for the benefit of any candidate or committee unless the candidate or committee reports the expenditure as if they had made it themselves.[8] This prohibition includes, but is not limited to, contributions made to an advertising agency.[9]

A "yes" vote on Measure 1487 would make the restriction on the use of payroll-deducted funds for political purposes apply to unions, corporations and government contractors alike.[10] Employees would still be permitted to make voluntary contributions to their employer or employer's committees if written authorization was given every year.[11] The change to existing law would provide that if the union employees did not consent annually to these deductions, the deductions could not be taken automatically. Corporations and government contractors would be

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[1] Proposed Statewide Ballot Measure from Ashlee Titus, Proponent, to Krystal Paris, Initiative Coordinator, Office of the Attorney General, California (April 1, 2011) (on file with McGeorge California Initiative Review).
[2] 11 C.F.R. § 114.2 (2012).
[3] 11 C.F.R. § 114.5 (2012).
[4] 11 C.F.R. § 114.2 (2012).
[5] *Id.*
[6] Proposed Statewide Ballot Measure from Ashlee Titus to Krystal M. Paris, *supra* note 1.
[7] *Great West Contractors Inc. v. Irvine Unified School District*, 187 Cal.App.4th 1425 (2010), citing *Schram Construction, Inc. v. Regents of the University of California*, 187 Cal.App.4th 1040, 1053-1054 (2010), and *Protective Coatings, Inc. v. City of Pico Rivera*, 181 Cal.App.4th 1207, 1224 (2010) (considering bidding statutes "in light of the purpose for which they were enacted," namely 'to guard against favoritism, improvidence, extravagance, fraud and corruption, and to secure the best work or supplies at the lowest price practicable'").
[8] CAL. GOV'T CODE § 84303 (West 2001).
[9] *Id.*
[10] Proposed Statewide Ballot Measure from Ashlee Titus to Krystal M. Paris, *supra* note 1.
[11] Proposed Statewide Ballot Measure from Ashlee Titus to Krystal M. Paris, *supra* note 1.

subject to the same limitation, although these types of organizations do not tend to collect money from employees through the use of payroll deductions.[12]

If Measure 1487 does not pass, unions will be able to continue the practice of using automatic payroll deductions in order to make political contributions. Corporations and government contractors will also be free to use automatic payroll deductions for political contributions.

II. THE LAW

a. Existing Law

i. Definitions

California law defines a contribution as a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment.[13] Specifically, that payment is made for purposes related to a political nominee's candidacy for elective office if all or a portion of the payment is used for election-related activities.[14]

ii. Campaign Contributions Under California Law

State laws place certain restrictions on the amount of money individuals, corporations, labor unions, and other organizations may contribute to a candidate's campaign for political office or to a candidate-controlled committee.

The California Fair Political Practices Commission ("FPPC") administers the state's campaign financing laws, imposes fines for violations of these laws, and defends these laws in court. The FPPC sets forth all of their regulations in the California Code of Regulations ("CCR"). Specifically, contribution amounts by individuals 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.[15] The FPPC 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.[16]

iii. Campaign Contributions Under Federal Law

Organizations and individuals have a constitutional right to contribute money to political campaigns, which is a right protected under freedom of speech.[17] Contribution limits for federal elections are enforced by the Federal Election Commission ("FEC"). The FEC set forth all its

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12 *FAQ*, CALIFORNIA STATE UNIVERSITY, NORTHRIDGE (Sept. 7, 2011), *http://www.csueu.org/Home/Article/tabid/936/ItemId/723/View/Details/AMID/1977/Default.aspx*
13 CAL. GOV'T CODE § 82015(a) (West 2010).
14 CAL. GOV'T CODE § 82015(2)(C) (West 2010).
15 2 C.C.R. § 18545 (2012).
16 2 C.C.R. § 18534 (2012).
17 *Buckley v. Valeo*, 424 U.S. 1 (1976).

regulations in Title 11 of the Code of Federal Regulations. Individual contributions are limited to $2,500 per candidate per federal election.[18]

The FEC also regulates the amount individuals may give to committees that financially contribute to candidates. Individuals are limited to: $30,800 to national party committees per year; $10,000 combined to state, local, and district party committees per year; and $5,000 to any other political committee per year.[19] In total, no individual may give more than $46,200 to candidates and $70,800 to committees and PACs every two years.[20] This represents a $117,000 overall biennial limit.[21] The biennial limit runs for a two-year period beginning January 1 of the odd-numbered year to December 31 of the next even-numbered year.[22]

iv. Use of Union Dues

California has the largest number of union members in the country at 2.4 million people.[23] In 2011, 17.1% of all employed California residents were members of a union.[24] Union dues are usually paid through the payroll deduction system, and these dues are typically used for collective bargaining activities.[25] A portion of union members' dues may be used to contribute to candidates and candidate-controlled committees as identified by union leaders.[26]

Public employee unions are free to set their own requirements of membership, including membership dues and fees.[27] In the absence of an opt-out provision, members are required to pay the full amount of their dues and can only object to the use of union funds by resigning his or her union membership.[28] After resigning membership in the union, the "agency fee objector" can officially object to the use of his or her dues for political purposes.[29] According to the United States Department of Labor, employees who object to paying for non-representational activities such as political expenditures may be entitled to a refund as well as an appropriate reduction of future payments.[30]

Private sector unions are governed by the National Labor Relations Act ("NLRA"). Private sector unions are allowed to collect membership dues through payroll deduction, provided that they receive written authorization from the employee.[31] Thus, private sector unions can collect membership dues either automatically through payroll deduction, or through regular payment.

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[18] 11 C.F.R. § 110.1 (2010).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, UNION MEMBERS SUMMARY (Jan. 27, 2012) .
[24] *Id.*
[25] Benjamin I. Sachs, *Unions, Corporations, and Political Opt-Out Rights after Citizens United*, 112 COLUM. L. REV. (forthcoming 2012).
[26] 11 C.F.R. § 114.5 (2012).
[27] CAL. GOV'T CODE **§** 1152 (West 1982).
[28] LIBRARY OF CONGRESS, *The Use of Union Dues for Political Purposes: A Discussion of Agency Fee Objectors and Public Policy*, CONGRESSIONAL RESEARCH POLICY ARCHIVE, (June 1998) http://www.policyarchive.org/handle/10207/413.
[29] LIBRARY OF CONGRESS, *supra* note 28.
[30] Office of Labor-Management Standards, *Fact Sheet: Executive Order 13201 – The Notice of Employee Rights Concerning Payment of Union Dues*, UNITED STATES DEPARTMENT OF LABOR (June 15, 2005), http://www.dol.gov/olms/regs/compliance/Beck_Fact_Sheet.htm.
[31] 29 U.S.C.A. § 186(C)(4) (West 1995).

v. Non-Union Members

Non-union members pay union dues as a result of the "free-rider" problem, and payment of these dues is often a condition of employment.[32] The "free-rider" problem refers to the concern that because non-union members will benefit from union negotiations, negotiations on behalf of all employees, those non-member need to pay union dues.[33] Due to the free-rider problem, Congress has authorized compulsory unionism to the extent of funding collective bargaining, but not as a means to force employees to support political causes.[34]

The rights of public employee non-members are governed by the Supreme Court's decision in *Chicago Teachers Union v. Hudson*.[35] While non-members must still pay required fees, they have the right to control how their fees are used. Specifically, non-members are allowed to object to fees that are used for any purpose unrelated to collective bargaining.[36]

Hudson set forth procedural requirements that a public-employee union must provide before a non-member's fees can be used for a non-collective bargaining purpose. First, there must be an adequate explanation of the basis for the fee.[37] Second, non-members must be given a reasonably prompt opportunity to challenge the amount of the fee before a neutral decision-maker.[38] Third, the disputed fees must be placed in an escrow account while the challenge is pending.[39] In addition to the *Hudson* requirements, California requires that public employee unions annually keep an adequate itemized record of its financial transactions.[40]

A similar standard is imposed on private sector unions. The Supreme Court has established that non-members are not required to pay fees that are unrelated to collective bargaining activities.[41] The National Labor Relations Board ("NLRB") currently requires a somewhat different procedural framework from *Hudson* that a public-employee union must provide before a non-member's fees can be used for a non-collective bargaining purpose. First, a union employee must show that he or she has the right to be a non-member.[42] Second, as a non-member, the person must show that he or she has the right to object to payments not germane to collective bargaining activities.[43] Third, the union must provide enough information for the employee to make an intelligent and informed decision.[44] Fourth, the union must inform the employee of its

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[32] Sachs, *supra* note 25.
[33] *Id.*
[34] *Id.*
[35] *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292 (1986) (holding that non-members have a constitutional right to object to a compulsory funding of a union's ideological activity).
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson*, 475 U.S. 292 (1986).
[40] CAL. GOV'T CODE § 3546.5 (West 1977).
[41] *Commc'n Workers of Am. v. Beck*, 487 U.S. 735 (1988) (holding that requiring non-members to pay fees as a condition of employment does not include the right to charge fees that are not reasonably germane to collective bargaining activities).
[42] *How do I cut off the use of my dues for politics and other nonbargaining activities?*, NATIONAL RIGHT TO WORK LEGAL FOUNDATION, INC. (Feb. 12, 2012), http://www.nrtw.org/a/a_4_p.htm.
[43] *Id.*
[44] *Id.*

procedure for filing objections.[45] Fifth, the union must provide the percentage of the reduction and the basis for the calculation, with the opportunity to challenge their calculations.[46]

vi. Corporation Payroll Deductions

It is unlawful for an employer to collect wages that are to be paid to an employee.[47] Employers are allowed, however, to make deductions in certain circumstances. First, an employer is required to deduct when empowered by state or federal law, such as for income tax or wage garnishments for court judgments.[48] Second, an employer is allowed to make deductions when expressly authorized by the employee in writing, in order to cover insurance premiums, health benefits, or other deductions that do not amount to a rebate or deduction of the standard wage.[49] Third, employers are allowed to deduct in order to cover health, welfare, or pension plans that are expressly authorized by collective bargaining agreements.[50] Thus, in order to deduct wages for political purposes, an employer would have to receive express written consent from its employee.

b. Proposed Changes to the Law

i. In General

The proposed changes to the law would still permit voluntary contributions to a union's PAC, but only if the union employee provides annual written consent to the union and the funds are not taken by automatic payroll deduction.[51]

ii. Contributions

Currently, corporations and unions are treated as individuals for purposes of political contribution limits. Measure 1487 would create a new prohibition on corporations and unions by disallowing them from making any contributions to candidates or candidate-controlled committees.[52] The proposed language of Measure 1487 states that all terms used in the proposal's language that are defined by the Political Reform Act of 1974 or by regulation enacted by the Fair Political Practices Commission have the same meanings.[53] "Contribution" is defined in the California Government Code § 84308(a)(6), an outgrowth of the Political Reform Act, as including "contributions to candidates and committees in federal, state, or local elections."[54] Due to the inclusive language of Measure 1487, the prohibition would extend to political contributions made to both state and federal candidates.[55] In addition, government contractors

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[45] *Id.*
[46] *Id.*
[47] West's Ann. CAL. LABOR CODE § 224 (West 2012).
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] Rep. SEIU California State Council, *supra* note 12.
[52] Proposed Statewide Ballot Measure from Ashlee Titus to Krystal M. Paris, *supra* note 1.
[53] *Id.*
[54] CAL. GOV'T CODE **§** 84308 (West 2012).
[55] Proposed Statewide Ballot Measure from Ashlee Titus to Krystal M. Paris, *supra* note 1.

would be prohibited from making candidate contributions if that candidate, when elected, could play a role in awarding them a government contract.[56]

iii. Payroll Deductions

Unions are allowed to make payroll deductions from members for political purposes, while non-members have a federal right to object to political purpose deductions. Measure 1487 would prohibit unions from making any payroll deductions that would go towards political purposes.[57] Instead, such deductions would be made strictly on a voluntary basis and unions would need to acquire yearly written consent.[58]

Conversely, Measure 1487 would have little effect on corporate payroll deductions. Currently, corporations already need express written consent from employees if they wish to make payroll deductions that are not authorized by state or federal law, or collective bargaining agreements.[59] Measure 1487 would create an additional requirement that written consent from corporate employees to be given on an annual basis for payroll deductions.[60]

iv. Change of the burden of proof

The statutory language of Measure 1487 states, "this measure shall be liberally construed to further its purposes. In any legal action brought by an employee or union member to enforce the provisions of this Act, the burden shall be on the employer or labor union to prove compliance with the provisions herein."[61]

III. HISTORY

a. Proposition 226 (1998)

Proposition 226 was an initiative on the June 1998 ballot. If passed, Proposition 226 would have established new requirements with regards to payroll deductions for political activities. The language of Proposition 226 was very much in line with that of Measure 1487. If passed, it would have required all employers and labor organizations to annually obtain an employee's or member's permission before withholding wages or using union dues or fees for political contributions.[62]

In addition, Proposition 226 would have established a provision similar to federal law prohibiting campaign contributions from a foreign national for a candidate for public office.[63] This restriction would have provided that residents, governments or entities of foreign countries could not contribute to political candidates for state or local office.[64]

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[56] *Id*.
[57] *Id*.
[58] *Id*.
[59] West's Ann. CAL. LABOR CODE § 224 (West 2012).
[60] Proposed Statewide Ballot Measure from Ashlee Titus to Krystal M. Paris, *supra* note 1.
[61] *Id*.
[62] *Proposition 226: Political Contributions by Employees, Union Members, Foreign Entities*, SMART VOTER, LEAGUE OF WOMEN VOTERS (June 17, 1998), http://www.smartvoter.org/1998jun/ca/state/prop/226.
[63] *Political Contributions by Employees, Union Members, Foreign Entities. Initiative Statute*, LEGISLATIVE ANALYST'S OFFICE (June 1998), http://www.lao.ca.gov/ballot/1998/226_06_1998.htm.
[64] *Proposition 226: Political Contributions by Employees, supra* note 62.

Proposition 226 was defeated in the June 1998 primary with 46.5% of voting Californians in support of the initiative and 53.5% of voting Californians against it.[65]

b. Proposition 75 (2005)

Proposition 75 was a measure put forth on the November 2005 ballot. If passed, Proposition 75 would have prohibited the use by public employee labor organizations of dues or fees for political contributions without with the prior consent of individual public employees each year on a specified written form.[66] This version of the measure also would have required unions to keep track of member political contributions and, if requested, report this information to the FPPC.[67]

The restriction would not have applied to dues or fees collected for charitable organizations, health care insurance, or other purposes directly benefiting the public employee.[68]

Proposition 75 was defeated on the November 2005 ballot with 46.5% of voting Californians in support of the initiative and 53.5% of voting Californians against it.[69]

In 2005, opponents of Proposition 75 outspent proponents 10-to-1, "with the California Teachers Association alone kicking in $12 million, and the California State Council of Service Employees adding $10 million. The biggest contributor in support of the 2005 initiative was the California Republican Party, which spent $1.2 million, followed by the California Chamber of Commerce, which added $500,000."[70]

IV. LIKELY EFFECTS OF PROPOSED CHANGES

a. Fiscal effect

The Legislative Analysts Office ("LAO") estimates that if Measure 1487 were implemented, it would likely increase the workload and costs of the FPPC.[71] The FPPC would have to increase its budget in order to enforce and implement the new campaign finance requirements.[72] While the LAO cannot predict an exact figure, it estimates that the cost could be in the hundreds of thousands of dollars.[73] The LAO does note, however, that some costs could be offset by additional revenue that the FPPC would receive for fines due to noncompliance with the new requirements.[74]

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[65] *Id.*
[66] , Ira G. Clary & Nathan Barankin. *Proposition 75: Public Employee Union Dues. Restrictions on Political Contributions.*, CAL. INIT. REV., (Fall 2005).
[67] *Proposition 75: Public Employee Union Dues. Restrictions on Political Contributions. Employee Consent Requirement*, SMART VOTER, LEAGUE OF WOMEN VOTERS (Jan. 28, 2006), http://www.smartvoter.org/2005/11/08/ca/state/prop/75/.
[68] Clary & Barankin, *supra* note 66.
[69] *Proposition 75: Public Employee Union Dues, supra* note 67.
[70] Steve Malanga, *New bid to limit union political donations in California*, PUBLIC SECTOR, INC. (June 9, 2011), http://www.publicsectorinc.com/forum/2011/06/new-bid-to-limit-union-political-donations-in-california.html.
[71] *Stop Special Interest Money Now Act*, LEGISLATIVE ANALYST'S OFFICE (Jan. 28, 2012), http://www.lao.ca.gov/ballot/2011/110309.aspx.
[72] *Id.*
[73] *Id.*
[74] *Id.*

V. CONSTITUTIONAL ISSUES

a. Preemption

Preemption is a doctrine derived from the Supremacy Clause of the United States Constitution.[75] Under the doctrine of preemption, federal law preempts state law when the two are in conflict. Preemption can be either express or implied. Express preemption occurs when a federal statute directly confirms the intent of Congress to preempt state law.[76] Implied preemption can occur in two ways, conflict or field preemption.[77] Conflict preemption applies if the state and federal statute are in direct conflict with one another, and thus it is impossible to follow both laws without violating one of them.[78] Field preemption is warranted if a court finds that the federal government "occupies the field" in the relevant area of law, and thus did not intend for the states to supplement it.[79]

The decision in *Buckley v. Valeo* "is authority for state limits on campaign contributions."[80] According to this United States Supreme Court decision, states can enact statutes that create different contributions limits than provided for by federal campaign laws. Specifically, *Buckley* held that comparable state limits on contributions to state political candidates are constitutional, "and those limits need not be pegged to the precise dollar amounts approved in *Buckley*."[81] Thus, the Court's decision in *Buckley* is direct authority for states' abilities to make laws regarding campaign contribution limits.

In *Davenport v. Washington Education Association*, the U.S. Supreme Court repeatedly emphasized that "states have broad discretion to tailor the benefit of allowing the union to take money from the paychecks of workers to support union activities so long as they do so in a manner that is above the "constitutional floor" established by cases like *Beck*, *Hudson*, and *Abood*."[82] In *Davenport*, the United States Supreme Court expressly gave states the latitude to make laws concerning union paycheck deductions.[83] Because of this express decision, states are free to enact paycheck deduction statutes as long as they do not contradict federal law regarding permissive amounts of payroll deductions.[84]

b. Freedom of Speech

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[75] U.S. CONST. art. VI. (The "Constitution and the laws of the United States...shall be the supreme law of the land...anything in the constitutions or laws of any State to the contrary notwithstanding").
[76] *English v. General Elec. Co.*, 496 U.S. 72 (1990).
[77] *Massachusetts Ass'n of HMOs v. Ruthardt*, 194 F.3d 176, 179 (1st Cir. 1999).
[78] *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992).
[79] *Id.*
[80] *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377 (2000).
[81] *Id.*
[82] BRIEF FOR PACIFIC LEGAL FOUNDATION, CENTER FOR CONSTITUTIONAL JURISPRUDENCE, MOUNTAIN STATES LEGAL FOUNDATION ET AL. AS AMICUS CURIAE SUPPORTING RESPONDENTS, *Knox v. SEIU*, 2011 WL 4352228 (U.S.) (Appellate Brief) Supreme Court of the United States.
[83] *Davenport v. Washington Education Association*, 127 U.S. 2372 (2007).
[84] *Id.*

The First Amendment states, "Congress shall make no law…abridging freedom of speech."[85] First, it is significant that both corporations and unions could bring First Amendment claims due to the decision in *Citizens United*. The First Amendment has been interpreted to have been written in terms of speech, not speakers, so there is no basis for excluding certain categories of speakers.[86]

The First Amendment claim could be related to the ban on candidate contributions. Limits on contributions to candidate campaigns have yet to be held unconstitutional.[87]

Bans on contributions to candidate campaigns, however, are another matter. The California Supreme Court has previously held that a ban on lobbyist contributions to candidates was unconstitutional.[88] While the Court's decision dealt with the rights of lobbyists, that right could be extended to corporations and unions as a result of *Citizens United*. An interest in anti-corruption is valid, but limitations on contributions already further that interest.[89] Individuals have the freedom to symbolically associate with candidates through political contributions, and that right could logically include corporations and unions.[90]

State regulations imposing limits on the amount of money that PACs may contribute are subject to strict scrutiny. This requires such regulations to be narrowly tailored to serve a sufficiently compelling state interest.

Political contributions are a form of political free speech, as they represent a contributor's ability to freely associate with a political candidate or party. An express ban on political contributions would be a direct suppression of this political speech. Measure 1487 may represent an anti-corruption interest, but that interest is mitigated by campaign contribution limits already in place. Campaign contribution limits already ensure that political candidates do not receive large donations from a relatively small number of donors. Moreover, the *Buckley* court noted, "contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy."[91] An express ban would seriously hamper political candidates' abilities to raise enough funds to effectively run their campaigns. Thus, Measure 1487 could be interpreted as too broad and not serving an important state interest that would justify its restriction on First Amendment freedoms.

c. Severability

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[85] U.S. CONST. amend. I.
[86] *Citizens United v. Fed. Elections Comm'n*, 130 S.Ct. 876 (2010).
[87] *Buckley v. Valeo*, 96 S.Ct. 612 (1976) (holding that a limitation on contributions involves little direct restraint on political communication because it permits the symbolic expression of support while not infringing on the contributor's ability to discuss candidates and issues).
[88] *Fair Political Practices Comm'n v. Super. Ct.*, 25 Cal.3d 33, 53 (1979) (holding that a ban infringed on a lobbyists' freedom of association and a ban on all contributions was not narrowly directed to aspects of political association where political corruption could be identified).
[89] *Id.*
[90] *Id.*
[91] *Buckley v. Valeo*, 96 S.Ct. 612 (1976).

If a court finds a part of the initiative to be invalid or unconstitutional, it will apply the three-part *Gerken* test.[92] For an initiative to survive the *Gerken* test, the remaining parts of the measure must: make grammatical sense; be complete and functional in and of itself; and be something the electorate considered separately and would have adopted without the invalid provisions.[93] The third part of the *Gerken* test is a consideration of whether the electorate would have voted for the initiative if it were presented in its severed form.[94]

Measure 1487 covers two main prohibitions: a prohibition on corporations, unions, and government contractors from making direct contributions to political candidates; and a prohibition on corporations and unions from using payroll deductions for political purposes without voluntary written consent. While Measure 1487 is titled the "Stop Special Interest Money Now Act," its supporters also know it as the "Paycheck Protection Act". The act is recognized as both stopping the contributions to candidates, as well as giving greater control to employees and union members over what may be deducted from their paychecks. Thus, it seems very likely that the electorate would vote for both provisions if they were presented as separate initiatives.

Measure 1487 burdens both unions and corporations in participating in political campaigns. If 1487 passes, it is likely to be challenged on First Amendment grounds as a violation of free speech.

In *Citizens United*, the non-profit corporation Citizens United brought an action against the Federal Elections Commission regarding whether it was allowed to air a documentary critical of then-presidential candidate Hilary Clinton.[95] *Citizens United* brought the suit because it was afraid it would be violating 2 U.S.C. § 441b, which prohibited corporations and unions from using their general treasury funds to make independent expenditures for speech that expressly advocated the election or defeat of a candidate.[96]

The Supreme Court held that 2 U.S.C. § 441b was unconstitutional.[97] The Court evaluated the law under strict scrutiny, which requires the Government to prove that the restriction it created furthers a compelling interest, and that the restriction is narrowly tailored to achieve that interest.[98] The Court reasoned that laws enacted to regulate or control speech can operate at different points in the speech process.[99] Thus, a restriction on the amount of money a person or group can spend on political communications about a campaign reduces the quality of expression because it reduces the number of issues discussed, the depth of their exploration, and the size of the audience reached.[100] The corporate expenditures at issue in the case did not interfere with any government functions, but did interfere with voters' ability to obtain information from diverse sources in order to determine how to cast their votes.[101] Therefore, 2 U.S.C. § 441b violated the First Amendment.

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[92] *Gerken v. Fair Political Practices Comm'n*, 6 Cal.4th 707 (1993).
[93] *Id.*
[94] *Id.*
[95] *Citizens United v. Fed. Elections Comm'n*, 130 S.Ct. 876 (2010).
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Citizens United v. Fed. Elections Comm'n*, 130 S.Ct. 876 (2010).
[100] *Id.*
[101] *Id.*

Concurrently, the Supreme Court recognized that First Amendment rights extend to corporations and unions. Specifically, corporations could be considered individuals because political speech did not lose protection simply because its source was a corporation.[102] Like individuals, corporations fund their speech from money obtained through the economic market.[103] Moreover, there is no real difference between regular corporations and media corporations, so restrictions similar to 2 U.S.C. § 441b would allow the government to suppress political speech through media outlets.[104]

It is important to note, however, that the Supreme Court's opinion dealt primarily with electioneering communications. It did not deal with direct candidate contributions limits, which have been held as a constitutional means to prevent quid pro quo corruption.[105]

Measure 1487's second section seems to be a more explicit violation of the *Citizens United* decision. An express ban on using payroll deductions for political purposes violates a corporation's right to make independent expenditures, as political speech cannot be suppressed on the basis of corporate identity.[106] In addition, unions fund their general treasury funds with payroll deductions. A ban on the use of their funds is a violation of First Amendment political speech rights. Moreover, the Supreme Court has found that there is no overriding anti-corruption interest in regulating independent expenditures because there is a difference between speaking on issues of general public interest and incurring political debts from legislators.[107] By banning payroll deductions from being used for any political purposes, Measure 1487 infringes on a union's right to engage in political speech.

Conversely, it could be argued that the issue is not about a corporation or union's right to engage in political speech, but rather the money they use to fund that political speech. Thus, proponents of Measure 1487 could argue that corporations and unions are imposing their own political speech on their employees and members. In regards to payroll deductions, the Supreme Court has previously held in *Ysursa v. Pocatello Education Association* that an Idaho law that banned public state employee unions from using payroll deductions for political purposes was constitutional.[108] *Ysursa* was decided, however, before the *Citizens United* decision. Thus, *Ysursa* could conflict with a union's ability to make political expenditures in accordance with their First Amendment right.

More importantly, *Ysursa* created a critical distinction between private corporations and public employee unions. The Supreme Court declined to extend strict scrutiny to the Idaho unions because of the relationship between government and private corporations, versus the relationship between government and subordinate units of the government.[109] Specifically, the Court noted

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[102] *Id.*
[103] *Id.*
[104] *Id.*
[105] *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 136 (2003) (holding that contribution limits impose serious burdens on free speech only if they are so low that they prevent candidates and committees from amassing resources necessary to for effective advocacy).
[106] *Citizens United v. Fed. Elections Comm'n*, 130 S.Ct. 876 (2010).
[107] *Id.*
[108] *Ysursa v. Pocatello Educ. Ass'n.*, 555 U.S. 353 (2009) (holding the law was not subject to strict scrutiny because the government is not required to assist in funding expression for particular ideas and the law furthered the government's interest in distinguishing between internal operations and private speech).
[109] *Id.*

that a private corporation is subject to regulation, but a subordinate unit carries out delegated government functions and is subject to direct oversight.[110]

While both corporations and public unions are subject to the government's authority, only corporations have privileges and immunities that can be invoked in opposition to government regulation.[111] As a subordinate unit, a public employee union is subject to the government's will. Therefore, the constitutionality of payroll deductions may differ depending on who brings a First Amendment suit. It would seem that private corporations and private unions would have a much stronger claim under a strict scrutiny review, while public employee unions have fewer rights because of their subordinate relationship with the government.

One thing that *Ysursa* and *Citizens United* do not address, however, is an important fundamental difference that exists between corporations and unions. A union's general treasury consists of union dues paid by members. Federal law regulates the use of union dues by prohibiting unions from using an employee's dues for political purposes if that employee objects.[112] Conversely, corporations derive their general treasury funds from profits generated from shareholder investments.[113] Unlike unions, corporations are free to use their general funds however they may choose and shareholders cannot opt out.[114] Thus, while campaign finance law aims to treat corporations and unions evenhandedly, it results in an unbalanced treatment. This imbalance is created because *Ysursa* and *Citizens United* only addressed the ability to spend on political expenditures, not the ability to fund that spending. The law does not require that unions and corporations have access to a similar amount of funds for political expenditures. The law does, however, give corporations a legal advantage over unions because corporations can spend their general treasuries on politics even if individual shareholders object, while unions cannot do so. In a corporate setting, individual shareholders cannot opt out of financing political spending, while union members remain free to opt out.[115]

In addition, the Supreme Court is currently deciding a case that implicates a union's ability to make payroll deductions for political purposes from non-consenting non-members. In *Knox v. SEIU*, the Service Employees International Union ("SEIU") made a special assessment in 2005 in order to combat Proposition 75, which was aimed at restricting the use of union funds for political purposes.[116] While SEIU sent out the required legal notice to non-members explaining how the fees were calculated and would be used, it did not comport with legal notice requirements.[117] Non-union employees successfully brought a claim in District Court that their First, Fourth, and Fourteenth Amendment rights were violated.[118] The Ninth Circuit reversed in part, however, and the non-union employees subsequently appealed to the Supreme Court, where the outcome is still pending.[119]

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[110] *Id.*
[111] *Id.*
[112] Sachs, *supra* note 25.
[113] *Id.*
[114] *Id.*
[115] Sachs, *supra* note 25.
[116] Michael P. Tremoglie, *Supreme Court to Hear Union Dues Case Tuesday*, LEGAL NEWSLINE (Feb. 17, 2012), http://www.legalnewsline.com/news/234837-supreme-court-to-hear-union-dues-case-Tuesday.
[117] *Id.*
[118] *Id.*
[119] *Id.*

An argument can be made that *Knox* is moot because the non-union employees have already received their award from the district court and did not appeal from the district court ruling.[120] Moreover, SEIU has implemented new notice requirements that satisfied the employees' concerns.[121] The Supreme Court could still make a decision, however, based on the merits of the claim. Specifically, the question for the Court to decide would turn on whether state employees have the First Amendment right to decline to pay union dues used for political advocacy for the union. Ultimately, the Supreme Court's decision in *Knox* will have a direct impact on the eventual failure or success of Measure 1487.

VI. DRAFTING ISSUES

a. Severability Clause

Measure 1487 contains a severability clause that allows clauses of the initiative to be removed if they are found to be invalid. Specifically, it states that if any part is found to be invalid or unconstitutional, then, "…the remaining provisions, parts, and applications shall remain in effect without the invalid provision, part, or application."[122] Although the initiative has a severability clause, it is not determinative.

If a court finds a part of the initiative to be invalid or unconstitutional, it will apply the three-part *Gerken* test (outlined above on page 13). For an initiative to survive the *Gerken* test, the remaining parts of the measure must: make grammatical sense; be complete and functional in and of itself; and be something the electorate considered separately and would have adopted without the invalid provisions.[123]

While Measure 1487 is clearly drafted, it does contain several provisions that could be held unconstitutional. Both its prohibition of direct contributions to political candidates and its prohibition on the use of payroll deductions could come under strict scrutiny by the Court. If both parts of Measure 1487 were to be held unconstitutional, then the proposed initiative would not likely survive because both provisions are the substantive part of the petition.

Measure 1487 would likely survive if only one of the provisions was held to be unconstitutional. A prohibition on direct contributions to political candidates does not implicate a prohibition on using payroll deductions for political purposes, and vice versa. Thus, depending on whether both substantive provisions of the initiative are declared unconstitutional, Measure 1487 could survive the first two parts of the *Gerken* test.

VII. POLICY CONSIDERATIONS

a. Proponents' Main Arguments

i. Removal of Special Interests From Politics

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[120] *Id.*
[121] *Id.*
[122] Proposed Statewide Ballot Measure from Ashlee Titus to Krystal M. Paris, *supra* note 1.
[123] *Gerken v. Fair Political Practices Comm'n*, 6 Cal. 4th 707 (1993).

Measure 1487 is a project of the Howard Jarvis Taxpayers Association.[124] According to the official Measure 1487 website, the Stop Special Interest Money Now Act "removes Big Money Interests from politics so that public officials will pay more attention to the people who elected them."[125] Proponents also state in a video featured on the website that special interests dominate California, and the government is serving the "big special interests" instead of the people.[126]

Dan Walters, a political journalist for the *Sacramento Bee*, is quoted in the official website video as stating, "the Capitol's chief activity is, in fact, directly or indirectly taking money from someone and giving it to someone else. And one of its dirty little secrets is that the hundreds of millions of dollars spent on lobbying, contributions and other tools of persuasion pale in comparison to the many billions of dollars that politicians can dispense."[127] Essentially, the main argument is that with the passing of Measure 1487, government officials and politicians would no longer be influenced by any breed of special interest money.

The website video discusses how politicians in Sacramento do not have the best interests of California's residents at heart.[128] Instead, proponents of Measure 1487 argue that politicians in California are really working "for the special interests that bankroll their campaigns."[129] Proponents state that Measure 1487 "attacks at every point where money changes hands between special interests and California's politicians in three ways: (1) bans both corporate and labor union contributions to campaigns, (2) it stops government contractors from contributing to officials who can award them contracts, stopping pay-to-play, and (3) bars all employers and unions from taking money out of employees' payroll checks for political purposes."[130]

Proponents argue that California is broken. Themes such as California's high unemployment, failing schools, high taxation, billions in unfunded state employee pension debt, and the lack of politicians' ability to balance the state budget are all cited as reasons why California needs Measure 1487.[131] U.S. Secretary of State and longtime California resident George Shultz argues, "the initiative, which would enact progressive reforms to California's campaign finance system, seeks to end the toxic pay-for-play politics by which corporations and unions corrupt politicians in Sacramento and throughout California's cities and counties."[132] By weakening the effect of special interest persuasion, legislators will have more time to focus on the job at hand and accomplish something productive for California and its residents.[133] "The Stop Special Interest Money Now Act will fundamentally dilute the corrosive nature of this system by altering the relationship between politicians and their campaign contributors."[134]

ii. Equal Effect on Unions and Corporations

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[124] *Press Section Footnote*, STOP SPECIAL INTEREST MONEY NOW ACT! http://stopspecialinterestmoney.org/learn/?_c=10f8xw835qy1ic3 (last visited Wed. 14 Mar. 2012).
[125] STOP SPECIAL INTEREST MONEY NOW ACT!, http://stopspecialinterestmoney.org (last visited Fri. 30 Mar. 2012).
[126] *Id.*
[127] *Id.*
[128] STOP SPECIAL INTEREST MONEY NOW ACT!, http://stopspecialinterestmoney.org (last visited Fri. 30 Mar. 2012).
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Stop Special Interest Money Now Campaign Turns in More Than 900,000 Signatures,,Press Release*, STOP SPECIAL INTEREST MONEY NOW ACT! (07 Oct. 2011), http://stopspecialinterestmoney.org/press.
[133] *Id.*
[134] *Id.*

Michael D. Capaldi, a Southern California-based attorney, asserts that Measure 1487 curtails the actions of both unions and corporations, contrary to the claim of unions that they would be the ones disproportionately affected in a negative manner by this measure. Capaldi claims, "We can do both -- deal a blow to corporate and union power together. That's Stop Special Interest Money Now. It's tough on both sides, but it's good for California."[135]

In fact, corporations are asserted to feel more of a negative consequence from the measure than unions. Capaldi states, "when you do the math, it turns out the contribution ban hurts corporations far more than unions… not only will unions be fine because corporations will be no-shows, labor will dominate direct political contributions."[136]

iii. Protects Free Expression without Coercion

A central argument in support of Measure 1487 is that it would protect the right of union members and corporate employees to express their views and contribute to campaigns as they saw fit, if at all; and it is unquestionably unfair and coercive to force employees to contribute to these political causes automatically.[137] Most of all, proponents say that union political fundraising will not be affected because unions can still collect political contributions on an automatic basis.

The only difference is that with Measure 1487, labor unions and corporations cannot freely reach their powerful hands into an employee's paycheck coffer in order to further union or corporation's own political agenda. "First, unions will be free to ask their members to contribute. In fact, unions will be entitled to collect political contributions automatically, directly from any member's bank account or credit card, if they receive the member's permission. Every union will be able to raise political money, and the unions that promote causes their members actually support will raise more."[138] This ensures that employees are contributing to causes that they actually believe in, and are not simply being coerced into contributing blindly to a cause they may not agree with. After all, workers have "a constitutional right to be free from compelled speech", and this right should be vigorously protected.[139]

iv. Aligns State Law with Federal Law

Some proponents make the argument that the introduction and passage of Measure 1487 would simply be aligning California state law with existing federal law by taking "the rulings the Supreme Court made in the cases of *Communication Workers v. Beck* and *Chicago Teachers Union v. Hudson*, and [giving] them the force of law in California." This was said by Lew Uhler, head of the National Tax Limitation Committee ("NTLC"), one of the driving forces behind the almost-successful 1998 initiative.[140]

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[135] Michael D. Capaldi, *Michael D. Capaldi: Initiative Would Curb Corporate Influence as well as Unions, Special to the Mercury News*, SAN JOSE MERCURY NEWS (24 Feb. 2012), http://www.mercurynews.com/opinion/ci_20037613.

[136] Capaldi, *supra* note 135.

[137] *Id.*

[138] *Id.*

[139] BRIEF AMICUS CURIAE TO THE U.S. SUPREME COURT, *supra* note 82.

[140] John Gizzi, *Paycheck Protection Makes a California Comeback*, HUMAN EVENTS: POWERFUL CONSERVATIVE VOICES (citing *Communication Workers v. Beck*, 487 U.S. 735 (1988), and *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986)).

b. Opponents' Main Arguments

i. Payroll Deduction

Opponents argue that Measure 1487 has the practical effect of only limiting unions and is a veiled attempt to restrict organized labor's sources of funding. Through the payroll deduction system, unions are able to obtain funds from their members that they might not otherwise be able to if they were required to obtain yearly written consent.[141] Unions rely on member dues as the primary source for general funds, and Measure 1487 handcuffs their ability to pool money in order to make any sort of political impact akin to corporations.[142] As an example of the disparity in spending, as of 2008 numbers, corporations outspent unions 19 to 1.[143] The Center for Responsive Politics puts this number closer to 15 to 1, but regardless opponents point out that the disparity is substantial.[144]

Furthermore, opponents argue that corporations would have an easier time side-stepping Measure 1487's limitations as opposed to unions.[145] While corporations are restricted from using payroll deductions as a means to create funds for political contributions, corporations do not often use payroll deductions for that purpose.[146] Instead, corporations often dip into their profits for political contribution funds.[147] Measure 1487 may limit political contributions that stem from payroll deductions, but it does not restrict political contributions from other sources of funds. Corporations could turn to corporate rents, investment income, organizational dues from other corporations, and any other source of non-employee based revenues.[148] Thus, corporations would continue to make unlimited contributions from their profits without the need for consent from their employees.

Additionally, opponents point out that almost identical measures have been proposed twice in the past, and have failed on both occasions. The only difference between those past initiatives and Measure 1487 is the technical inclusion of corporations, presumably in order to appeal to a wider audience of Californians. In fact, the informational video on the proponent's official website is stated as being posted by "takebackca," but interestingly has no relation whatsoever to the California Democratic activist group with a similar name, "Take Back Red California."[149]

ii. Government Contractor Definition

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[141] MEMORANDUM FROM OLSON HAGEL AND FISHBURN LLP, ANALYSIS OF PAYCHECK DECEPTION MEASURE (Feb. 16, 2012) (on file with McGeorge California Initiative Review).

[142] California School Employees Association, *Corporate Deception Act*, CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION (Wed. 21 Feb. 2012), http://members.csea.com/memberhome/Issues/Election2012/CorporateDeceptionAct/tabid/1340/Default.aspx.

[143] United Steelworkers Political Action Committee, *Meeting the PAC Challenge*, UNITED STEELWORKERS POLITICAL ACTION COMMITTEE (Wed. 14 Mar. 2012), http://www.usw-608.com/pac.htm.

[144] Ron Lind, *Ron Lind: Special Interest Ballot Measure Really is Just Anti-Union. Special to the Mercury News*, SAN JOSE MERCURY NEWS (02 Mar. 2012), http://www.mercurynews.com/business/ci_20090322.

[145] California School Employees Association, *supra* note 142.

[146] MEMORANDUM FROM OLSON HAGEL AND FISHBURN LLP, *supra* note 141.

[147] California School Employees Association, *supra* note 142.

[148] *Id.*

[149] STOP SPECIAL INTEREST MONEY NOW ACT!, http://stopspecialinterestmoney.org (last visited Fri. 30 Mar. 2012).

Opponents also take issue with the government contractor provision. While the provision seems to be applicable to both unions and corporations, opponents argue it is specifically directed at unions because government contracts are defined as including collective bargaining agreements between public agencies and labor unions.[150]

By definition, collective bargaining agreements address the terms and conditions of services provided to employers. Unions in the state of California include public employee unions, the majority of which have collective bargaining agreements with administrative agencies. On the other hand, private corporations do not often contract with public agencies. Such private-public partnerships are rare and California has often reacted negatively to privatization, including recent efforts to privatize state water and parks. Thus, opponents argue that the government contractors provision is aimed almost exclusively at unions.

iii. Unaddressed PAC Problem

Opponents also point out that Measure 1487 does not address the real source of political contributions: independently run political action committees. Political action committees, or PACs, are independently run political committees that can represent business and labor interests, political candidates, and even ballot initiatives.[151] While Measure 1487 bans unions and corporations from making direct contributions to candidates, it does not ban contributions to PACs.

Unions would still be hindered in their ability to donate to PACs because of Measure 1487's payroll deduction ban. If unions wanted to create political action committees, their PAC would have to be funded by members by means other than a payroll deduction system, with yearly written consent.[152] Effectively, unions would have to rely on voluntary contributions from their members outside of the regular dues system.

On the other hand, corporations could continue to make contributions to PACs if those contributions were derived from sources other than employee-based deductions. In addition, PACs could use those funds to make direct contributions to candidates as long as donations were made from the individuals of the corporation and not from the corporation itself. Thus, PACs would remain a viable way for corporations to funnel money for candidate contributions.

Moreover, Measure 1487 does not address the growing super PAC problem. Super PACs are independent expenditure-only committees that are unaffiliated with political parties and candidates.[153] Corporations and unions are allowed to make unlimited contributions to super PACs, who in turn spend money advocating the election or defeat of specific candidates. Thus, a corporation could make unlimited contributions to super PACs, who in turn would independently campaign for candidates that the corporation supports.

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[150] MEMORANDUM FROM OLSON HAGEL AND FISHBURN LLP, *supra* note 141.
[151] *What is a Pac?*, OPENSECRETS.ORG (Feb. 11, 2012), http://www.opensecrets.org/pacs/pacfaq.php.
[152] MEMORANDUM FROM OLSON HAGEL AND FISHBURN LLP, *supra* note 141.
[153] *Outside Spending*, OPENSECRETS.ORG http://www.opensecrets.org/outsidespending/index.php?cycle=2012&view=A&chart=N (last visited March 14, 2012).

In the current election cycle as of March 14, 2012, outside groups have spent $92,085, 861 on both state and federal elections.[154] Organizations not affiliated with political parties have spent $88,284,926 of that amount, of which $77,481,361 was spent by super PACs.[155]

iv. Scope of Campaign Contributions

Opponents also point out that corporations do not devote a lot of funds contributing to political candidates. Typically, corporations focus their political expenditures on ballot measures, initiatives, and other independent campaigns.[156] This is significant because Measure 1487 specifically focuses upon donations to political candidates. Thus, Measure 1487 isn't as nearly as effective as it purports to be because it only addresses one area of political contributions, which attracts a small percentage of corporate political expenditures.

In particular, Altria, Chevron, and AT&T have spent around $19.4 million collectively in California politics in the last two years.[157] Of that amount, $2.7 million went to candidates or incumbents.[158] The other $16.7 million went towards ballot measures, initiatives, and political parties.[159]

Thus, opponents point out that corporations could still find other ways to make political contributions. Again, this goes back to the payroll deduction system. Many unions receive membership dues through a payroll deduction system, so they would be unable to make contributions towards ballot measures and independent campaigns. On the other hand, corporations do not rely as heavily on employee funds for political contributions and would still be able to fund political expenditures.

According to Thad Kousser, a political science professor at UC San Diego, unions need to devote a substantial amount of resources towards blocking this bill, or else "they could become almost extinct in California politics."[160] Additionally, opponent Ron Lind, President of the United Food and Commercial Workers Local 5, stated:

> [T]he measure is a wolf in sheep's clothing designed to fool voters into approving a corporate power grab that will lead to even more corporate influence over our political system. What the backers won't say publicly is that they've written 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.[161]

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[154] *Id.*
[155] *Id.*
[156] Dan Morain, *Reform' Initiative Wears a Soiled White Hat*, THE SACRAMENTO BEE (Jan. 29 2012), http://www.sacbee.com/2011/12/22/4139050/dan-morain-reform-initiative-wears.html#storylink=cpy.
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] Harmon, Steven. *High-Stakes Labor Battle Coming to California*. SAN JOSE MERCURY NEWS (29 January 2012), http://www.mercurynews.com/breaking-news/ci_19848968.
[161] Lind, *supra* note 144.

VIII. CONCLUSION

Measure 1487 represents the public's growing mistrust of special interest influence on government. If passed, Measure 1487 would create two new prohibitions on corporations and unions. First, corporations and unions would no longer be permitted to make direct political contributions to candidates for office or to candidate-controlled committees. Second, corporations and unions would no longer be able to use payroll deductions as a source of funding for political purposes.

Proponents argue that limiting the sphere of influence that special interests have on politics is always a good thing. Thus, there is a strong anti-corruption interest because a prohibition on contributions limits the leverage that special interests create and politicians no longer feel the need to reward their donors. Moreover, proponents argue that Measure 1487 helps protect the political rights of union members and employees. Instead of handing over money to their unions or employers, they are free to donate as they choose. As Gary Schultz notes, "it minimizes the influence of the well-funded few and empowers the nearly-silenced many."[162]

Opponents, on the other hand, point out that Measure 1487 is not as even-handed as it seems. Specifically, Measure 1487 attacks unions more so than it does corporations. Opponents point out that corporations do not rely on payroll deductions for political purposes, and often donate to political causes from their profits, investments, or other sources of independent revenue. Moreover, unions do not have access to other funds and rely solely on membership dues for their general treasury funds. "That's why the nonpartisan consumer advocacy group Public Citizen recently opposed the measure, saying it 'is little more than an attack on labor masquerading as campaign finance reform.'"[163] The direct result of Measure 1487 would be that of "depriving Democratic political candidates of a major source of campaign cash."[164] Opponents argue that since unions represent the interests of all workers, not just those of union members, it is imperative that they continue to have a voice in politics—and this voice will be drowned out if Measure 1487 is passed.[165]

Even if Measure 1487 is approved, it implicates several First Amendment issues. *Citizens United*, a Supreme Court case, gave corporations and unions the right to make independent political expenditures because it was deemed a form of political free speech. More importantly, the Supreme Court is currently deciding *Knox v. SEIU*, which could directly affect whether unions are allowed to make payroll deductions for political purposes.

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[162] *Comprehensive Campaign Finance Reform Measure Qualifies for November 2012 Ballot, Press Release,* STOP SPECIAL INTEREST MONEY NOW ACT! (06 Dec. 2011), <stopspecialinterestmoney.org/press>

[163] Lind, *supra* note 144.

[164] Judy Lin, *Measure to Curb Union, Corporate Clout Qualifies*, BUSINESS WEEK (08 Dec. 2011), http://www.businessweek.com/ap/financialnews/D9RGELUG1.htm.

[165] Lind, *supra* note 144.