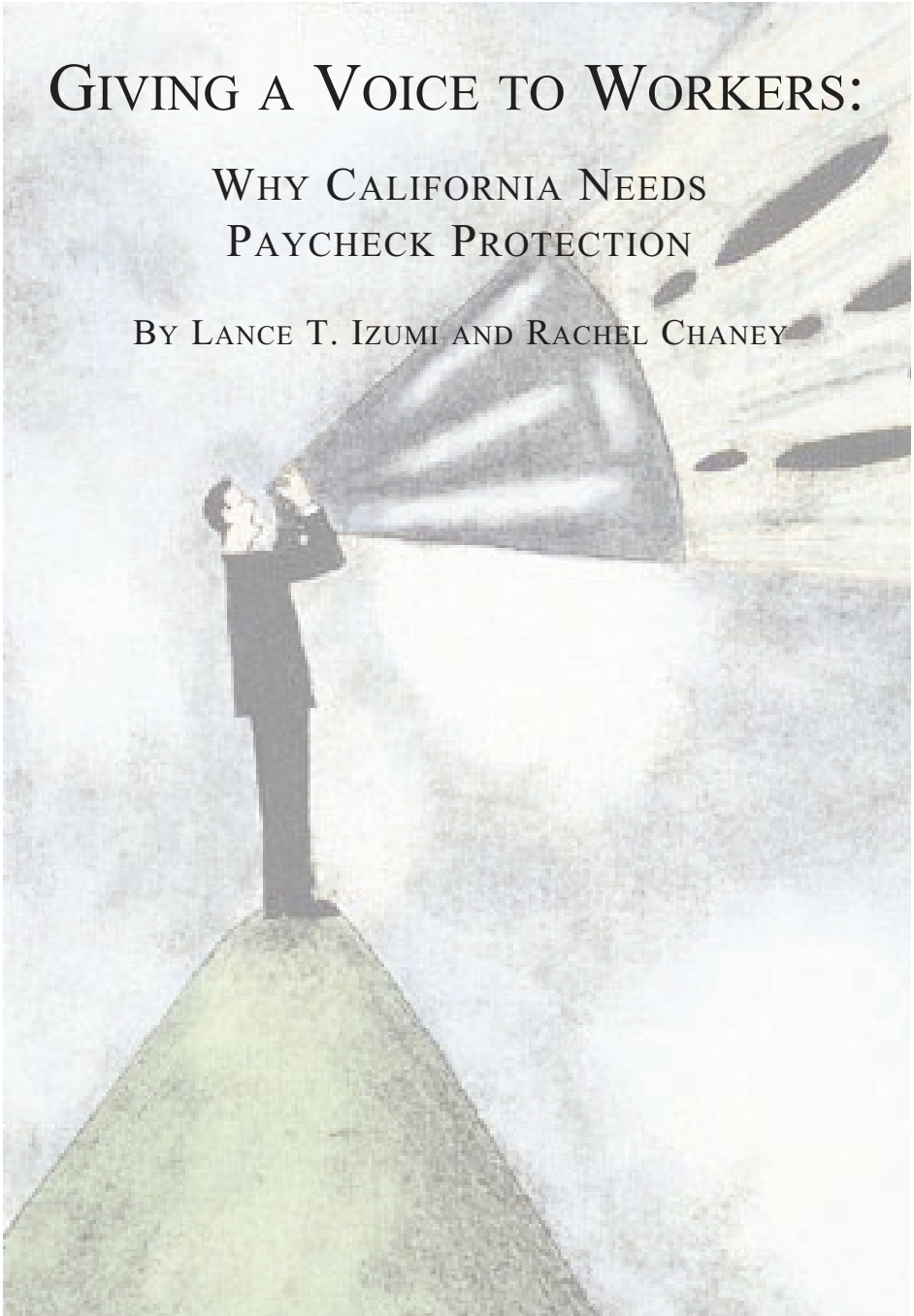


GIVING A VOICE TO WORKERS:

WHY CALIFORNIA NEEDS PAYCHECK PROTECTION

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*“Such is the irresistible nature of truth
that all it asks, and all it wants, is the
liberty of appearing.”*

— Thomas Paine

INTRODUCTION

It is the inevitable tendency of government, in all places and at all times, to grow. To resist its encroachment on individual freedom and initiative requires eternal vigilance and vigorous public debate. To promote such informed and focused debate, and to provide private alternatives to government intervention, is the role of the Pacific Research Institute.

The Institute addresses the critical issues of our day, including one that is particularly glaring and urgent in California—paycheck protection. The power of the public-employee unions to spend their members' hard-earned money has been unchecked for far too long. Californian public servants have been left with fewer of their hard earned dollars to spend as they choose—and more important, their rights of political free speech are curtailed when their unions seize their paycheck money. If left unchecked, this trend poses a grave threat to the state's future and the rights of those Californians who serve the public.

These times call to mind a more dramatic, but highly relevant, episode in history. In January 1776, Thomas Paine's pamphlet "Common Sense" was released among an oppressed populace that was, nevertheless, still loyal to its king. This scant 46-page work argued for what would become the bedrock principles of American democracy: sovereignty of the people and checks and balances on the government. In doing so, it lit a fire to a movement and produced a revolution.

PRI's ambitions are not as dramatic. But no less lofty is our aspiration to empower the people. No less fervent is our passion for liberty. And no less determined is our commitment to reaching and inspiring the everyman—the California voter.

In launching a new series of PRI Pamphlets, our purpose is to reinvigorate public debate and to ensure that more policy decisions are made by people than governments. While we do not suffer the tyranny of a king, the state has grown far beyond its original scope and is testing the means of its taxpayers. PRI seeks to restore the proper limits on government growth. Most important, we aim to remind Californians, and all Americans, that the power to govern rests squarely with them.

The ideals of 1776 are as valid and precious today as they were then, and the results are as important to every individual.

EXECUTIVE SUMMARY

Public-employee unions spend their members' dues money to support political candidates and ballot measures. If members disagree with that political spending, they must ask the union to give back their money. Paycheck protection empowers union members by requiring that their union obtain permission prior to funds being deducted from the members' paychecks for political purposes. In other words, unions must ask for the consent of the governed.

Paycheck protection is critical for a variety of reasons:

- Paycheck protection guarantees fundamental fairness to workers to be able to direct how their union dues are spent.
- Paycheck protection enhances First Amendment rights of workers since political contributions are an important part of free speech.
- Workers will have a greater voice in their relationship with their union and in the political process.
- Paycheck protection favors neither Republicans nor Democrats, liberals or conservatives. It is up to the individual teacher, police officer, firefighters, nurse, or other public employee to make his or her own decision as to how dues money is spent.
- To the extent that individual public employees are prevented from making their own decision about how

their dues dollars are spent and are simply conduits for union political treasuries, the taxpayer, in essence, is directly subsidizing the political activities of public-employee unions.

- The U.S. Supreme Court ruled in the *Abood* case that the First Amendment requires that public-employee union political expenditures be financed from dues or fees paid by “employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.”
- Although the Supreme Court’s *Abood* and *Hudson* decisions gave public employees the right to control use of their dues money, the enforcement mechanism for this right is weak and gives too much discretion to the unions. Thus, while *Abood* and *Hudson* did advance the First Amendment rights of individual public employees, experience has shown that they do not go far enough to guarantee those rights, which is why paycheck protection is so vitally needed.
- A large percentage of workers remain unaware of their rights. By requiring that unions seek permission to use their dues for political purposes, all members would be informed of their rights.
- In 2002 public-employee unions gave \$18.4 million to Democratic candidates for the Legislature and statewide office in California, while Republican candidates received \$900,000. This disparity does not mirror the actual partisan breakdown of union members.

- Many public-employee union members do not want to resign or, realistically, cannot resign from their union. They either need the non-political benefits such as legal representation or feel heavy-handed peer pressure to belong to the union.
- Public employees, even if they drop out of the union, must still be represented by the union for collective bargaining purposes under state law. This “forced marriage” environment under which even non-members must contribute agency shop fees to the union belies any argument that employees are free to disassociate with the union.
- Public-employee unions have been increasing the amount of dues spent for political purposes, including a recent \$60 increase in dues for the California Teachers Association.
- Union members who try to change union policies from within are often met with abuse and persecution.
- Paycheck protection would create a better playing field for unions, not an uneven one. By making political contributions voluntary, unions would have to persuade their members of the merit of their political choices. After paycheck protection was passed in Michigan, the state teachers union increased its PAC spending through better communications with its members.

INTRODUCTION

This paper examines the various aspects of the paycheck protection issue, including the history of union political involvement and court cases protecting workers' political choice. It includes first-hand testimony from union members, the current status of union political spending, and the paycheck protection laws passed by other states.

What is Paycheck Protection?

Currently, public-employee unions spend the money they receive from the dues of their members to support political candidates and ballot measures. As the Institute of Governmental Studies (IGS) at the University of California at Berkeley notes: "The legal presumption in California is that the political spending of union dues is permitted unless union members explicitly opt out."¹ In other words, public-employee union members who object to the way in which their unions spend their dues dollars for political purposes must go through an often burdensome administrative process of asking their union for part of their money back. Paycheck protection is designed to make it easier for individual union members to retain their compensation rather than having union leaders seize those funds to bankroll political activities.

Under paycheck protection, such as the laws in a number of other states and the proposed Proposition 75 on California's November 2005 ballot, union members would

have to “opt in.” As the IGS says when discussing Prop. 75: “The legal presumption would be that political spending is not permitted unless specifically authorized by union members.”² In other words, unions would have to get the permission of union members first in order to spend part of their dues money for political purposes.

Paycheck protection is pro-worker, not anti-union. Under paycheck protection, while workers can voluntarily contribute or withhold dues money for political purposes, unions still maintain the right to represent workers, to collect dues or fees for representation costs, and can spend the money given to them freely in the manner in which they see fit. The only thing that changes is that unions must ask for the consent of the governed.

Paycheck protection favors neither Republicans nor Democrats, liberals or conservatives. It is up to the individual teacher, police officer, firefighters, nurse, or other public employee to make the decision as to how their dues money is spent. The issue, therefore, is one of fundamental fairness.

What is at Stake?

Because it is easier for workers to opt in than to opt out, opting in gives individual workers a better opportunity to decide for themselves whether they support the political activities of their union and whether they want to allocate part of their wages for those purposes. The requirement that unions secure the annual permission of members would empower workers in their relation with their union. The major consequence of worker empowerment would be that unions would have to stop taking their members for granted.

Instead of just seeing them as cash cows to be milked to underwrite the political whims of the union leadership, unions would have to communicate with workers, persuade them of the merit of their candidates and causes, and convince them to make voluntary contributions to the union treasury. Experience has shown that unions that successfully make their case to their members can expect strong support for their political agenda.

No public employee wants to be taken for granted, and paycheck protection is especially important for individuals in large and powerful unions. For example, the California Teachers Association has 335,000 members and is the wealthiest and most powerful lobby in Sacramento. Because its political activities have such an effect on public policy in the state, it is particularly imperative that individual teachers to have a better mechanism for directing their dues money and motivating the union to listen to their views.

Paycheck protection gives individual workers a true and powerful voice over how their union dues are directed. Unions that want to keep the opt-out status quo are intent on stifling, not enhancing, the voice of workers. That voice, it must not be forgotten, is protected by the First Amendment right of free speech.

Paycheck Protection and Public Employees

Paycheck protection is particularly important to individual public employees because government in California has given public-employee unions the monopoly right to bargain collectively on their behalf. Individual workers do not have a choice among a variety of unions to bargain for them. Under state law, employees are denied the

right to bargain on their own behalf. Workers must therefore belong to one particular union or pay an agency fee to the union that supports the collective bargaining process.

Opponents of paycheck protection argue that workers who do not like their union's political activities can leave the union and become an agency-fee payer. According to federal and state court decisions, agency or fair-share fees charged to non-union members cannot be used for political purposes.

However, for many union members, the decision is not that simple. Many public employees who wish to retain union membership do so because of the various non-political benefits they receive such as legal representation and workplace assistance. Because they don't want to lose these benefits, leaving the union is not a good option. They want to be members, but do not want their dues money spent on political candidates and causes with which they may disagree. For this reason, many support the reform of paycheck protection.

The wages of public employees, it should be noted, are paid by taxpayers. To the extent that individual public employees are prevented from making their own decision about how their dues dollars are spent, and are simply conduits for union political treasuries, the taxpayer is directly subsidizing union political activities. Individual taxpayers, like individual union members, may hold political views very different from those of the public-employee union leadership. Thus, as in the case of union members, it is unfair to force taxpayers to fund union political spending with which they may disagree.

DISPARITY AND IMBALANCE: THE NEED FOR PAYCHECK PROTECTION

A small elite dominates union political discourse. They demand ever-higher dues from members, not for representation, but to fund political causes. Union members—the nurses, teachers, firefighters, and service employees who work every day to make America better—are losing their voice. The very organizations meant to protect and amplify that voice instead take money from hard-earned paychecks and funnel it into political campaigns that members themselves may not support.

At the national level, for example, labor unions spent more than 95 percent of political money on Democrats, even though 38 percent of union members voted for President Bush in 2004.³ More than one-third of the political funds used by labor unions to fund Democrats came out of the paychecks of union members who voted Republican. This use of their dues violated the members' basic right to support the candidate of their choice. The situation in California is no different.

Union leaders use funds from paycheck deductions for political purposes, even as many members disagree with their leaders' political stance. For example, polling data shows that in California's 2003 gubernatorial recall election, nearly 50 percent of union members voted for the recall. However, most of the political contributions from public-employee unions went to oppose the recall.

According to the Institute on Money and State Politics, in 2002 public-employee unions gave \$18.4 million to Democratic candidates for the Legislature and statewide office in California. In contrast, unions gave Republican candidates \$900,000. This disparity occurred even though a significant percentage of public-employee union members are Republicans. It must be noted that the problem would be the same if the unions disproportionately contributed to Republican candidates over Democrats. In either case, a significant percentage of union members would have part of their dues money funneled to candidates and causes they do not support.

All Americans have the right to support the candidates and the issues they choose. They should not be forced to fund political activities against their will and conscience. Thomas Jefferson articulated this principle more than 200 years ago when he said that to compel a man to furnish contribution of money for the propagation of opinions he disbelieves is sinful and tyrannical.

A fair and balanced electoral system depends on an independent electorate that can vote for, and fund, the political candidate and issue of its choice. Anything less endangers the very foundation of American government.

NOT ENOUGH: THE *ABOOD* AND *HUDSON* CASES

Many people have heard of the U.S. Supreme Court's landmark case *Beck v. Communications Workers of America*. In that case, the high court ruled that unions could not force unionized workers to pay dues to support political activities unrelated to collective bargaining and union representation. The Beck decision, however, applied only to private-sector unions. For Californians interested in Proposition 75, which applies only to public-sector unions, a different line of cases are relevant.

In 1977, the Supreme Court handed down its decision in *Abood v. Detroit Board of Education*. The *Abood* case involved teachers who challenged Michigan's agency fee law. The challenge was based partly on the teachers' opposition to the various political activities of their union that were not related to the collective bargaining process.

The Supreme Court ended up upholding the validity of the agency fee law. However, it also ruled that public employees who were not union members and who paid agency fees to help offset union collective bargaining costs could not be forced to contribute to union political activities that they opposed. "[The plaintiffs] specifically argue," noted the court, "that they may Constitutionally prevent the Union's spending a part of their required service fees to contribute to political candidates and to express political views unrelated to its duties as exclusive bargaining agent."

In response, the court declared, “We have concluded that this argument is a meritorious one.” The basis of that merit lay with the First Amendment.

The fact that the teachers in the *Abood* case were “compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their Constitutional rights.”⁶

“For at the heart of the First Amendment,” wrote Justice Potter Stewart for the court, “is the notion that an individual should be free to believe as he will, and that in a free society one’s beliefs should be shaped by his mind and his conscience rather than coerced by the State.”⁷

The court stated that a public-employee union may Constitutionally spend the money it collects from workers on political candidates and ballot measures. The Constitution, though, requires “that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.”⁸

This seemingly momentous declaration was undermined in practice by public-employee unions. Calculating the union expenditures for political activities was left up to the unions themselves. The result, not surprisingly, was that many unions calculated that only tiny percentages, between one and five percent, of agency fees went to political or non-representational purposes. Labor commentator David Denholm pointed out that the unions “continued to insist that the agency fee be 100 percent of the amount of union dues and set up elaborate, time consuming processes for nonmembers to request a rebate of the non-representation cost, if they wanted it.”⁹ One union local in New Jersey

decided that only \$0.01 was rebatable and insisted that the request be sent by certified mail.¹⁰ No wonder most public employees concluded that the small amounts were not worth the time and trouble.

The Supreme Court tried to correct this situation in *Chicago Teachers Union v. Hudson*. In its ruling, the court stated that “the Constitutional requirements for the Union’s collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending.”¹¹ In other words, public-employee unions now had to give an accounting of how they spent their income and give agency fee payers the opportunity to get back any disputed dollars.

This procedural advance was once again followed by poor implementation. David Denholm has noted: “Compliance with the Hudson decision was spotty and sloppy. Many arbitrators and local courts, perhaps for political reasons, were reluctant to provide teachers with full protection of their due process rights.”¹²

The practical problems with the implementation of the Hudson decision can be seen in California. In October 2005, the *Sacramento Bee* newspaper published an article that focused on Kevin Brown, a state worker at the California Department of Insurance. Brown pays an agency fee to the Service Employees International Union (SEIU) Local 100. He never joined the union because, he says, “I’m concerned about the power they wield.”¹³

Opponents of paycheck protection argue that public employees who do not support union political activities can resign from or choose not to join the union and pay an

agency fee for collective bargaining costs. They claim that getting money back from the unions is an easy and simple procedure. That is not always true.

In June 2005 SEIU Local 1000 supposedly mailed out its *Hudson* accounting notice, which, according to the *Bee*, “informed its agency fee payers that last year—an active year politically for the union—only 56.35 percent of the money taken from their paychecks was ‘chargeable’ to them as ‘germane to collective bargaining.’”¹⁴ The notice included non-germane spending items such as, “partisan political or ideological causes only incidentally related to the terms and conditions of employment.”¹⁵ Based on this notice, agency fee payers had to send in an “objection letter” requesting reimbursement for the non-germane amount automatically taken from their paychecks and funneled to the union. The union says that the notice was sent out in June 2005 and the objection letter had to postmarked no later than July 25, 2005.

For Kevin Brown, this seemingly “simple” procedure ended up not being so simple. The *Bee* reports: “In Brown’s case, the remaining percentage amounted to \$235.71 of the \$540 in fair share fees he paid last year. But Brown said he doesn’t recall ever receiving the notice and that he did not mail in his objection letter by July 25—all of which he said begs a question: ‘Why place that burden on me to get back what’s rightfully mine to begin with?’”¹⁶

The *Bee* article also states: “The process, [Brown] thinks, is an outrage, and it’s the main reason Brown is voting yes on Proposition 75, the union dues measure on the Nov. 8 special election ballot.”¹⁷

“I think they should have to ask me for it,” says Brown, “they shouldn’t just take it out.”¹⁸

The *Bee* article concludes by observing: “If Proposition 75 passes, unions such as SEIU 1000 would no longer be able to spend the money of fee payers such as Brown on politics. Nor could it similarly spend the dues money of even the most ardent activists who support the union’s causes without first getting them to sign the annual permission forms first. For Brown, that would mean that his \$235.71 never would have been deducted.”¹⁹

The legacy of *Abood* and *Hudson* is far from perfect. Agency fee payers like Kevin Brown must still jump through an assortment of hoops in order to ensure that their fees are not being used for non-collective bargaining purposes. Further, the facts in both *Abood* and *Hudson* dealt with agency fee payers, not union members who did not want their dues money to go to union political activities.

Many union members want to remain in their unions because of non-political union benefits such as legal representation and insurance, but do not want their dues going to politics. Also, for a variety of reasons, such as peer pressure, many union members feel that resigning from the union and becoming an agency fee payer is not a realistic option. Thus, while *Abood* and *Hudson* did advance the First Amendment rights of individual workers, experience has shown that they do not go far enough to guarantee those rights. This is why paycheck protection is so vitally needed.

A VOICE FROM THE CLASSROOM: A TEACHER'S STORY

Lisa Disbrow is a K-1 teacher in Richmond, California. A veteran of almost 20 years, Lisa is bilingual certified and one of the most effective teachers in her school. By knowing what works, focusing on results and maintaining high expectations, she has been able to lift the achievement of her mostly low-income minority students.

For all her success in the classroom Lisa Disbrow is angry. In her career, she has endured tough assignments. She taught in an independent study program at one school where most of her students were either in gangs or considered high-risk teenagers. Yet, such difficult challenges were nowhere near as frustrating as her ongoing experience with her own union, the United Teachers of Richmond. One of her chief exasperations is the size of her monthly union dues. She says: “My dues have gone up \$12 since last year, so I was kind of shocked. I heard dues were going up but \$12 a month was huge. . . . I pay \$92 a month in union dues.”

For a single mother, the sole breadwinner for her family, a nearly triple-digit union-dues bill every month is a taxing burden. It is currently possible for her to resign from the union and pay a lower agency fee, but as with many other teachers, this is not a realistic option.

When she was hired by her current school district, the West Contra Costa Unified School District, she was told that

she had to join the teachers union as a condition of employment. According to Lisa: “Initially there was no option. There was no option because I asked. I asked when I was signing my papers to accept my job and the clerk said ‘absolutely not,’ if you don’t join the union you don’t get your job.” Afterward she became aware that she could become an agency-fee payer, but conditions and circumstances at her school make that move impossible.

“The drawback to that is that it leaves you vulnerable,” says Lisa. She explains:

Given the political climate in Richmond, I don’t fit the mold. I’m a bilingual teacher who is Anglo, politically conservative, pro-America, and Christian. I have all these factors that make me an oddity. Plus I believe in hard work, performance and merit accomplishments. I don’t believe in just saying ‘I like you so you should get an A.’ I don’t fit their mold. I have become quite a target lately. Since I’m the primary breadwinner for my home, I don’t have the luxury of not having the protection of the union.

By “protection,” she means avoiding being made an absolute pariah. Even with her union membership, she has experienced ostracism: “Oh my gosh, I have been ostracized. I could probably write a book. I’ve been told I don’t belong. I’ve been treated as though I don’t have a voice. I’ve been put on the spot. I’ve been ridiculed in public. My parents have been harassed.” She indicates that this ostracism would become intolerable if she did not at least belong to the union.

Lisa’s perception of her situation is no illusion.

“Peer pressure and bullying from within union ranks often discourages members from exercising their rights,” observes Robert Hunter, a former member of the National Labor Relations Board,²⁰ “Employees who object to paying full union dues may experience an uncomfortable working environment and tension among co-workers who support the union’s political and ideological causes.”²¹

Since Lisa has already been victimized because of her political, cultural and educational views, leaving the union would make her already bad situation untenable. Union officials would argue that Lisa could ask for a rebate on the amount of her dues spent for political purposes. Again, it is not that simple.

Lisa says that she is not aware of ever receiving information about her rights from the union. According to her, “The only means I have of knowing about that is through, for example, other organizations, like listening to talk radio, but not through my union.” Lisa’s experience, sadly, is a national phenomenon.

Kenneth Boehm of the National Legal and Policy Center testified to Congress that data shows that workers face a myriad of obstacles: “Workers complained of not being informed of their rights, not being given accurate financial information, being told they must go physically to union offices to get information, not providing underlying financial information supporting claimed amounts due for core activities, and simply ignoring requests by workers.”²²

Lisa says that teachers also fear retribution: “They’re afraid to even initiate that process for fear of drawing attention to themselves.” Again, Lisa’s fears are justified. Congressman William F. Goodling, then chairman of the House Education and Workforce Committee, summarized

the testimony on unions and worker paycheck rights delivered to his panel saying that it depicted “stonewalling, harassment, coercion, and intimidation of workers who tried to recover what is rightfully theirs.”²³

Since it is in the interest of the union to keep members like Lisa in the dark, it is not surprising that she does not know how much of her union dues go to political purposes. “I don’t know the breakdown,” she says, “but the reason that the breakdown doesn’t matter to me is that I don’t think they are honest about reporting it. I read my journals thoroughly and I notice they are always involved in political issues and campaigns and I know that isn’t cheap.”

Union defenders of the status quo claim that if individual members want to change the union’s political course, they should work internally to do it. When she went to local union meetings, Lisa found that this is hardly a simple matter: “I’ve tried to speak up at the local level on a couple of issues and gotten nothing favorable.” She has tried to effect change, “but it’s going nowhere.”

“After a while,” she laments, “you see that and you learn as a teacher to ‘close the door’—you learn to live within your four walls and hope that nobody says anything to you.” Lisa holds strong views on the powerful state teachers union. Of the California Teachers Association (CTA) she observes: “I don’t see them being tolerant or even respectful of other people’s political views. Whenever you see issues brought up in the California Teachers Association, my perspective is always demeaned, ignored, not well presented, or distorted. It’s not fair.” When asked about the CTA’s current political ad campaigns, she replies: “I know they don’t speak for me and I know they did not survey us as teachers. I know that their leadership feels like that, but

that is not reflective of the entire membership. . . . I think that CTA reduces discussion and makes it appear that there's only one right answer.”

Speaking slowly and with emotion, Lisa sums up her views:

I think that as a teacher I want the union out of what goes on in the classroom and out of limiting the progress that could go on in my classroom by being basically, and this is kind of a crude way to say it, being in bed with the Legislature. I feel that I don't have a professional union, I have a political union. That greatly disturbs me. I didn't come into teaching for the politics, I came in to teach children how to read so they can have a new life.

Lisa Disbrow is not alone in her feelings. Other teacher union members have begun to decry the injustice of involuntary political contributions from their union dues.

In a July 2005 article in the *Los Angeles Daily News*, teachers Ari Kaufman and Aaron Hansom exposed the misuse of funds by United Teachers of Los Angeles. They explained: “[A]s employees of the Los Angeles Unified School District...we are required to pay a monthly fee to United Teachers of Los Angeles, regardless of whether or not we want to become members of the union...Our teachers union banks on the assumption that its members are too foolish or lazy to research where, in fact, their dues are being allocated.”²⁴

In response, teacher Sally Budd wrote a letter to the editor celebrating their opinion: “Hurrah! Teachers are dissing their union. There are many teachers who (surprise,

surprise) are Republicans and feel we are not represented while our dues are distributed to fight for causes we do not believe in.”²⁵

According to these teachers, their unions are not representing them. Rather, union bosses are using members’ money to further a political agenda the union deems correct, regardless of the opinions of the workers they are supposed to represent.

A VOICE FROM THE SHERIFF'S OFFICE: A DEPUTY'S STORY

Lon Jacobs has seen a lot, both on the streets and in the station house. He has been a police officer for 25 years, 20 of those with his current employer, the San Bernardino County Sheriff's Department. He is now a patrol sergeant serving in the Victor Valley station in southern California's high desert. Almost as long as he has been fighting criminals, he has also been battling his union, the Safety Employees Benevolent Association (SEBA), which is the sole bargaining entity for any sheriff's deputy in the county.

Jacobs has spent much of his career in the Sheriff's Department as a member of SEBA. He notes that from 1992 to 2004, when the union allowed sheriff's deputies to resign from the union and pay an agency fee to cover collective bargaining costs, deputies had to join the union. In 2001, after he was promoted to sergeant, he did drop out of the union for a few years. Sergeants are considered management and are not required to join the union or pay an agency fee. He rejoined in 2004 because he wanted to effect change within the union, but was expelled from the union in 2005 for creating a watchdog website dedicated to exposing questionable union activities.

Sheriff's deputies receive two paychecks a month. SEBA union dues are \$80 a month. From December, dues money set aside for political purposes will total \$20 a month. Jacobs says that there are several problems with the way union

leadership uses his \$20. For instance, he cites the union's decision to contribute to politicians in cities such as Redlands that do not have a contract with the Sheriff's Department for policing. He asks: "Why do we want to influence what the city of Redlands does? Redlands isn't our concern."

If an officer like Jacobs thinks that funneling dues money to local politicians is wasteful and irrelevant, then SEBA does have a procedure, which Jacobs acknowledges is easy, to prevent the money from going to political purposes. The downside is that the money does not come back to the member. Rather, the union channels it into one of several union-endorsed charities. According to Jacobs, unless one has a certifiable religious objection: "You cannot get that \$20 back. It either goes to political action or if you opt out it will go to a benefit. There's no way you can get that money back." Members cannot even direct their money to a non-union-endorsed charity.

Over a period of a deputy's career, the \$20 a month requirement adds up. In one year, the union will be able to take \$240 from a member's paycheck. In a 30-year career, a deputy would fork over \$7,200 to his union for political purposes. Of course, that \$7,200 total is understated since the \$20 a month requirement would surely increase over the years because of inflation and union political demands.

Jacobs believes that rather than the current opt-out requirement, it is much more fair for union members to opt into the union's political activities by giving yearly written permission to use their dues money for political purposes.

Jacobs says:

By putting the responsibility on the union to obtain everyone's signature, you are absolutely going to get

the individual's permission and they will be voluntarily giving you this money for their beliefs. And if they believe that the union should be strong politically and they want to support the political goals of the union all they have to do is sign up and off they go.

Union officials argue that it would be a burden for unions to get the permission of every member to use dues dollars for political purposes. Jacobs notes, however, that a union is a well organized, well structured entity. He points out that unions already engage in a wide variety of activities, have the resources to handle these tasks, and that getting individual member permission would just be one more. He says that whatever extra burden a union must shoulder should be viewed against the current burden on individual union members:

Granted it would be one more, but that's all it would be. One entity coordinating who wants to donate and who doesn't, versus thousands of individuals having to figure out how to opt out and having the gumption to persevere to make sure they do opt out. The union has resources and they also have, in my experience, the ability to disseminate information or not to.

Jacobs asks people to consider where the true burden lies. His conclusion is based on fairness: "If you put the responsibility on the union to obtain a signature you are assured that the member that signed wanted to sign. It is a burden, but I think that the greater wrong would be to place the burden on the individual employee who is by himself

alone, not knowing all the facts, versus the union that has everything in their hip pocket.”

Another union argument is that paycheck protection would create an uneven playing field between unions and business when it comes to political contributions. This is not necessarily true, observes Jacobs. He says that paycheck protection will “make the unions more responsive to their members to get the money for the political purposes they want to support.” Unions “will have to cater to the member.”

With paycheck protection, unions will have to convince members of the merit of their political choices. This will hardly doom the unions. Although he has been at odds with his own union over the years, Jacobs still says:

If I had the ability to control those funds [the \$20/mo] I could retain the money in my own paycheck, or voluntarily, willingly, gladly give it to the union to support either political contributions or re-direct it to charitable campaigns or whatever. If SEBA had their eyes on some political candidate who wanted to eliminate cop-killing bullets, I would be all over that. I'd be donating hundreds of dollars. If he was supporting legislation to make possession of a ballistic vest by person committing a felony a more serious crime, I'd be all over that. That's what my sheriff's union should be funneling their efforts—to protect me on the job or stiffen penalties for criminals, that is what cop unions should be all about.

Unions claim that members should try to effect change by participating in union affairs rather than paycheck protection. That recommendation is much more beguiling in

theory than in practice. Anyone who wants to change union policy must be ready for the hardest of hardball tactics. When Jacobs obtained a list of his fellow sergeants from the county, a list that had always been freely available to deputies to send Christmas cards, etc., the SEBA boss wrote a letter to the county charging that Jacobs had stolen a computerized list and accessed a sheriff's file improperly to get the list. This letter prompted an investigation by the department's internal affairs unit that ended in complete exoneration for Jacobs. Despite being cleared, the incident demonstrates the lengths that unions will go to destroy their perceived enemies.

Like other members who have battled their unions, Jacobs says that there is a price for dropping out. When he left his union for several years: "I lost legal defense provided by the Peace Officers Research Association of California. . . I lost insurance benefits provided by SEBA. . . I also lost the fraternal relationship with my peer deputies, the brotherhood of being a union member. Most of our senior staff are still union members."

At its core, notes Jacobs, paycheck protection is about fairness and freedom. What this protection will do "is give me, the union member, the right to decide where my money goes." He asks a question that all Californians should contemplate: "Do I want my money to go to things I am vehemently opposed to?"

A VOICE FROM THE FIREHOUSE: A FIRE FIGHTER'S STORY

Jim (not his real name) is a veteran fire fighter in southern California. After stipulating anonymity, he talked to the Pacific Research Institute about his union and its political workings. He has always belonged to his union and says, “Basically, I’m like most fire fighters. I read the union papers and I try to follow their advice.” However, like many public employees, Jim is not enamored by the political positions of his union.

For example, he supported George W. Bush in 2000, but his union was in Al Gore’s camp. He says: “The [local] union advice is basically following what the California Professional Fire Fighters suggest, and then they follow what the International Association of Fire Fighters suggest, such as in the Bush-Gore election when they sent quite a bit of money towards Fire Fighters for Gore.” While attending an event for then—Governor Bush, he recalls, “all my colleagues were there with signs saying ‘Fire Fighters for Gore,’ and I didn’t agree with that one percent.”

When asked if fire fighters know that they have the right to get back that part of their dues money spent on union political purposes, Jim flatly states: “Not at all. I think that the U.S. Supreme Court allows us to make statements about where our money goes, but nobody follows that.” He says that the all the dollars drained from fire fighters’ wallets adds up:

“It’s only a few dollars a month, but it tends to be hundreds of dollars for the year and it adds up for fire fighters and for the fire department. And yes, nobody really understands that.”

Jim believes that there is an obvious reason why his union leaders fail to inform their members of their rights: “They’ve been enjoying a good life for years, so why should they?” Since fire fighters are not informed, no one exercises their right to opt out of the union political activities. “I don’t know of anybody,” he says, “who has received that money back or has asked for it.” Paycheck protection, because it requires unions to get the yearly permission of union members to spend dues money for political purposes, is therefore preferable to the current situation that relies upon union officials to go against their own selfish interests.

Summarizing his union’s thinking, Jim explains: “You have to go with the union, that way we are stronger, that you have more rights if you stay with the union. They feel that if you went against the union or if you wanted to put your money in other areas there would be unrest at the fire station level.” Yet it is this mentality that promotes turmoil and unrest at firehouses.

Citing firefighters who refused to join the union because of the union’s political activities, Jim says these agency-fee payers felt the heat: “They were ostracized for a while, but they waived some of the [union] benefits because they don’t believe in what the union stands for.” According to Jim:

When you first get on the fire department, they hand you numerous pay deduction cards, one being the union or the relief association, United Way, whatever. You really don’t know what you’re signing up for. Those people who decided to wait a while to

get to be a fireman first before they get into these programs, they're considered not good employees so through the years when they have union meetings and union events, you don't go and you don't participate because you're not a union member, even though you receive the benefits, you're considered an outsider. You're not really part of the fire department.

Jim's comments show that, for many fire fighters, leaving or resigning from the union and becoming an agency-fee payer is not a viable option. That, of course, makes paycheck protection more important.

The fire fighters unions have gone to great lengths to convince members to oppose paycheck protection. That includes breaking workplace rules. Jim says that anti-Proposition 75 material "is passed out at work where it wasn't supposed to."

"We're supposed to be non-partisan," he notes, "but when it affects [the union] so much they bend the rules and they say let's get fire fighters to donate their time, talk about it, talk about it at coffee in the morning, on duty."

The union not only bends rules, it bends the truth. The fire fighter unions tell their members that Proposition 75 will adversely affect their pension. The union reasoning is that if the unions do not raise a lot of political funds, then it will not be in a strong position to fight for the best pensions for its members. Jim says that this argument resonates with fire fighters: "When you say pensions to fire fighters, you're talking to their heart. Anything against your pension you got to fight against."

Yet if the pension argument is so effective in mobilizing fire fighters, then the union could certainly use this

argument effectively to elicit voluntary contributions from firefighters to protect their interests. Paycheck protection would not necessarily diminish the union war chest or influence. Unions in other states that have paycheck protection have demonstrated that by appealing to their real interests, the membership is more than willing to support the unions politically.

GIVING VOICE TO WORKERS: THE PAYCHECK PROTECTION INITIATIVE

On November 8, Californians will vote on Proposition 75, a Paycheck Protection Initiative which states, “It is the intent of the people of the State of California to guarantee the right of public employees to have a say whether their dues and fees may be used for political campaign purposes.”

Proposition 75 prohibits public-employee unions from deducting dues or fees from members’ paychecks without annual written consent from each member. The measure does not interfere with collection of dues, donations to charities, or plans for health care or retirement. In addition, the proposition requires unions to keep careful records of written consent forms to verify that they are not violating members’ rights.

Similar laws have been passed in five other states—Utah, Washington, Idaho, Wyoming, and Michigan—and results indicate that employees jump at the opportunity to make their own decisions about their paychecks. For example, in 2001 the state of Utah passed a paycheck protection initiative, under the title of the Voluntary Contributions Act (VCA). As in the proposed California initiative, the VCA requires that union members either send a check directly to the union, or give permission for direct withdrawal.

The Utah Education Association (UEA), one of the most politically powerful unions in the state, especially felt the

effects of the VCA. As M. Royce Van Tassell noted in a November 2004 editorial in the *Deseret Morning News*, Utah teachers aren't exactly lining up to contribute to the union. According to the union's September 15 and pre-election disclosure reports, the UEA has received \$3,264 in small contributions so far this year. Accordingly, the union's war chest is shrinking. From a high of nearly \$680,000 in 2002, they now report just \$337,456 in the bank.²⁶ Because almost 80 percent of the union PAC's revenues came from payroll deductions, the choice of Utah teachers to withhold their money affected the political potency of the union.²⁷

The UEA episode frightens California's public-employee unions. So does the experience in the state of Washington where voluntary contributors among teacher union members amounted to small fractions of total membership. Because of the well-publicized dips in the union political treasuries in these states, public-employee unions in California have argued that passage of Proposition 75 would result in an uneven playing field for them. Other interests, they claim, would have more to spend on elections and other political activities, thereby disadvantaging them. Despite the obvious unfairness of the current opt-out status quo to individual workers, the unions claim that paycheck protection would be unfair to them. The example of Michigan, however, demonstrates that paycheck protection ensures fairness for both workers and unions.

According to Joe Lehman, Executive Vice President of the Mackinac Center for Public Policy (a Michigan think-tank that was a prime advocate for that state's paycheck protection law), the Michigan Education Association (MEA) did not content itself with throwing tantrums when

the law was passed.²⁸ Instead, the MEA accepted the challenge to communicate better its political agenda to members.

The Michigan law differs from Proposition 75 in that it only applied to union political action committee contributions taken by payroll deductions. Union dues used for other political purposes were unaffected. Further, the Michigan law applied to all unions, not just public ones. Nevertheless, it is instructive that the MEA initiated an aggressive marketing campaign designed to persuade members that the political candidates and causes supported by the MEA leadership should be supported by individual members through their voluntary contributions to the union's political action committee.

MEA members responded by increasing the size of their voluntary contributions to the point where the MEA-PAC actually raised more money after paycheck protection passed than before the law was enacted. While union opponents of paycheck protection will refuse to believe it, supporters of paycheck protection are happy to see the success of the MEA's political fundraising. The MEA accomplished its comeback through the voluntary actions of its members, and that is the type of outcome that paycheck protection is designed to spur.

A MILLION HERE AND A MILLION THERE ADDS UP TO REAL MONEY

Unions are willing to spend significant sums of money to back their political agenda and candidates. The issue is whether unions should be forcing members to fund these expensive political efforts despite the disagreement of individual members.

Should Proposition 75 pass in California, union leaders will have to respond to members' concerns. The 50 percent of members who voted for the recall will not face the possibility of once again having their own money used against them in an important election. As it stands now, unions in California wield political power, at the expense of their hardworking members. Consider the recent 2003-2004 election cycle, which included the October 2003 special elections to recall Gray Davis, the March 2004 primary elections, and the November 2004 general election.

Unions spent large amounts of money on both issues and candidates. The chart below shows the contributions and expenditures for the 2003-2004 election cycle for several major California unions. The contributions came from paycheck deductions from union members. Each union has several political action committees that are reported to the Secretary of State. The table below represents a combination of all the PACs reported for each union.

Union	2003-2004 Contributions	2003-2004 Expenditures
California Teachers Association (CTA) ²⁹	\$13,920,671.52	\$14,255,461.18
California Federation of Teachers (CFT) ³⁰	\$2,310,517.61	\$2,495,029.28
California State Council of Service Employees (CSCSE) ³¹	\$12,980,396.16	\$15,106,492.97
California Nurses Association (CNA) ³²	\$504,755.07	\$480,664.25
California Correctional Police Officers Association (CCPOA) ³³	\$3,271,960.98	\$3,589,404.69
California Teamsters ³⁴	\$178,354.90	\$939,859.03
California Professional Fire fighters ³⁵	\$877,713.08	\$885,825.04
Total	\$34,044,369.32	\$37,752,736.44

Source, California Secretary of State, www.ss.ca.gov.

These numbers, impressive as they are, do not reflect the full amount of union money spent for political ends. As education observer Mike Antonucci explains in a report on teacher-union political spending, union spending for ongoing lobbying, for “issue ads”, and for communication among union members is often not reported. Unions can circumvent campaign finance regulations by running “issue ads,” for example, that do not directly endorse a candidate, even if they clearly take a political stance. Intra-union communications, despite their overtly political messages, can also escape reporting requirements.

On a national level, this means that big labor’s expenditures could actually be three to five times the

amount reported by union PACs. Even at three times as large, California unions would have spent more than \$100 million for political purposes during the 2003-2004 election cycle alone.

Whether one focuses on the \$34 million figure or the \$100 million amount, the point is that these totals are important as indicators as to just how large and intrusive is the union hand in the worker's pocket. While public-employee unions opposing Proposition 75 make comparisons between their political spending and that of business entities, those comparisons are irrelevant. Because paycheck protection seeks fairness for individual workers and is based on First Amendment free speech concepts, political spending by business, whether it be large or small, is extraneous to the case for the reform. Businesses do not have the power to dock money from the paychecks of their employees, supposedly for some benevolent cause, then spend the money on partisan politics, all without the permission of the employees.

BUYING CALIFORNIA: EFFECTS OF UNION SPENDING ON POLITICAL CAMPAIGNS

Unsurprisingly, the ability of unions to draw on huge political war chests appears to influence the outcome of campaigns. By outspending their opponents, sometimes by as much as ten to one, unions can give candidates or issues significant advantages. Often by cloaking their self-interested political motives in the “good of the state,” California unions can generate public sympathy through television ads, billboards, protesting, and direct lobbying. That unions may spend their way to victory ignores the reality that many union members oppose what is supposedly won on their behalf.

In 1998, for example, California voters were presented with a paycheck protection initiative for the first time. Proposition 226 differed from the current Proposition 75 only in that it covered all union members rather than the current proposal restricted to public-employee unions. Initial polls indicated strong support for the measure, including support from union members, but union spending to fight the measure ended in its narrow defeat, 47 to 53 percent, with more than \$22 million spent to defeat the initiative, while proponents spent just over \$6 million.

Teacher unions attacked Proposition 38, the School Voucher Initiative, in the 2000 election cycle especially hard. The proposition aimed at legalizing vouchers for

public schools and, as opponents of educational choice, teacher unions attacked hard. In 2000, the California Teachers Association Issues PAC spent more than \$21 million of its \$31 million total expenditures to fight Proposition 38. The National Education Association supported its California branch by contributing \$5 million.³⁸ To fund this enormous arsenal, the CTA turned to its members. According to the CTA's newsletter, the CTA's State Council on Education considered the political activity of the past year and approved a \$17 dues increase that raised the CTA's initiative fund from \$19 to \$36 a month. The fund was used to fight the new voucher initiative.³⁹

The Council voted on these dues increases, not the members from whose paychecks the dues would be drawn. Though almost doubling the amount of money deducted each month, the act occurred without the input of union members. In addition to raising dues, the CTA's Council "approved a recommendation by its Political Involvement Committee to authorize the expenditure of up to \$18 million of the fund to defeat Draper's voucher initiative."⁴⁰ Not surprisingly in the face of this kind of political backing, the voucher initiative did not pass.

The CTA was also instrumental in electing its endorsed candidates at the local, state, and federal level and in putting California squarely in Al Gore's column in the 2000 presidential race. Of the 122 candidates the CTA recommended for California Assembly, Senate, and congressional races, 80 percent won election. Fifty-three of the 68 CTA-recommended candidates for Assembly seats won, as did 13 of the 15 recommended candidates for state Senate seats and 32 of the 39 recommended candidates for congressional seats.

While the CTA can boast of its massive success in electing its chosen candidates, it cannot claim that these candidates necessarily reflected the spectrum of political opinion among its membership. A teacher who disagrees with the political positions of the union would rightfully be distressed to see part of his or her dues money used to ensure the election of vast numbers of candidates with whom he or she likely disagrees.

The *Los Angeles Times* reports that as of the end of September 2005, the CTA has put in \$45 million to oppose the paycheck protection initiative and Gov. Schwarzenegger's three initiatives for the November special election ballot, including a measure to reform California's teacher tenure policies.⁴¹ The CTA raised part of their war chest from a \$60-per-year increase in union dues for three years. Many teachers may support the governor's initiatives or paycheck protection, but that matters not at all to the CTA.

Worse for CTA members who do decide to opt out of the union's political activities, the CTA is not expected to refund the \$60 to objecting members until after the special election. Saying that the dues increase amounts to a coerced political loan, a number of teachers have recently sued the CTA. It is sadly ironic that at a press conference announcing the lawsuit, the CTA organized demonstrators who shouted down their fellow teachers participating in the press conference. Quashing the free speech of teachers is a despicable tactic for an organization that masquerades as the voice of teachers.

PROTECTING THE RIGHTS OF WORKERS

Proposition 75, California's Paycheck Protection Initiative, does not seek to strip unions of their power. It does not seek to deprive unions of the right to be politically involved. It recognizes the important contributions that unionized workers make to California, and seeks to protect them. Teachers, nurses, fire fighters, policemen, and public service employees deserve the right to paycheck protection. They deserve the right that other Americans enjoy—the right to support the political causes and candidates in which they believe.

If Proposition 75 passes, union members will enjoy a greater voice in the political process, and will not be silenced by a leadership determined to further their own political purposes at the expense of their hard-working members.

MYTHS ABOUT PROPOSITION 75

1) Workers will lose their voice and influence in the political process.

Individual workers will actually gain a greater voice in the political process since they will control when and where their hard-earned money is spent. Unions will have a greater incentive to seek the input of union members in order to convince them to make voluntary contributions to their political efforts. Given that unions in states with paycheck protection have been able to keep up their political spending through voluntary contributions, the voice of individual workers is being heard much better after passage of paycheck protection.

2) Paycheck protection is unfair because the same standards are not applied to businesses and corporations, who do not have to ask their shareholders for permission to use funds for political purposes.

This is comparing apples to oranges. Government has granted public-employee unions an exclusive monopoly right to bargain collectively for workers. Because of the importance of various non-political union benefits, such as legal representation and insurance, plus subtle and overt coercion in the workplace, many workers feel they must be

full members of the union, not just agency-fee payers. In contrast, corporations cannot force people to buy their stock or prevent stockholders from selling their stock if they disagree with the corporation's political activities. In any event, to truly make a more accurate comparison, one would have to look to see if California businesses can deduct money from employees' paychecks to spend on politics. Of course, they cannot and would be subject to immediate legal action if they ever tried.

3) Paycheck protection will interfere with other payroll deductions like healthcare, 401K plans, and charitable contributions.

Proposition 75 will have no effect on voluntary contributions or any other payroll deduction other than mandatory dues used for political purposes.

4) Paycheck protection is prohibitively complicated.

Proposition 75 will give public-employee unions added responsibilities when it comes to dues collection, but unions in other states with similar statutes have managed to comply with the procedures. Simply because unions will have to work harder is not sufficient justification for robbing union members of the right to make their own political choices.

5) Unions will find a way around paycheck protection.

It is true that under Proposition 75 public-employee unions can still spend dues dollars on so-called issue advocacy without obtaining the permission of members. Thus, the ability of unions to spend dues money on ads criticizing

state and local policies would be unaffected. Only union spending on candidates and ballot measures would come under the provisions of Proposition 75. Although unions may push more money into issue advocacy, they would still want to put some significant money into candidate and ballot measure races. Paycheck protection, therefore, would still benefit workers and have an effect on unions.

6) Proposition 75 is unfair because it only applies to public-employee unions.

Public-employee union officials claim they are being singled out unfairly because Proposition 75 applies to their unions and not private-sector unions. However, the reason the proposition focuses on public-employee unions is because taxpayers pay the wages of all public employees. Taxpayers are forced to pay taxes by the government, unlike the voluntary transactions they engage in with private enterprise that provide the latter with the funds to pay private-sector workers. To the extent that individual public employees are prevented from making their own decision about how their dues dollars are spent and are simply conduits for union political treasuries, the taxpayer, in essence, is directly subsidizing union political activities. Individual taxpayers, like individual union members, may hold political views very different from those of the public-employee union leadership and should not have to subsidize union political spending.

WHY PAYCHECKS NEED PROTECTION

The core issue of paycheck protection is the fundamental fairness of giving union members a better opportunity to decide how, and if, their dues money should be spent for political purposes. Union bosses avoid that issue and put up smokescreens claiming that paycheck protection is a ploy by business interests or other union opponents. They propagandize by claiming that they are the “voice” of the worker, ignoring paycheck protection’s goal of giving true voice to workers. These diversionary arguments underscore that the unions and their political allies really cannot argue directly against fairness for their own members.

The fundamental fairness for union members at the heart of paycheck protection is based on the fundamental freedom embodied in the First Amendment. Political speech has always been viewed by our courts as the paramount type of speech protected by the Constitution. Political contributions and the ability to make or not make them is part of political speech. Taking money from people for political purposes without first asking their permission is compelled speech, not free speech. Taking money from people in this fashion is therefore a violation of free-speech rights.

By requiring unions to ask for worker permission first, paycheck protection ensures that the free-speech rights of workers are respected. As a consequence, workers are empowered to take control of their own political decisionmaking. Different groups, including their own

unions, will have to compete for their allegiance and political donations.

Paycheck protection therefore promotes the fairness, freedom, and choice that underpin our American democracy and that will allow it to function more effectively for all its citizens.

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²⁹ The numbers for the California Teachers Association represent a combination of contributions and expenditures of their two reported Political Action Committees— CTA Issues Political Action Committee (PAC); CTA Association for Better Citizens;

³⁰ CFT COPE; CFT COPE Proposition/Ballot Committee

³¹ CSCSE Issues Committee; CSCSE Political Committee; CSCSE Small Contributor

- ³² California Nurses Association (CNA) PAC; CNA Initiative PAC
- ³³ CCPOA Independent Expenditures Committee; CCPOA Issues Committee; CCPOA Local PAC; CCPOA PAC
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