

Paychecks Unprotected

Lessons Learned in California and Other States

By Michael Reitz, J.D.

Summary: On November 8, California voters rejected a “paycheck protection” measure that would have allowed union members to prevent use of their dues for political activity. In other states—including Washington, Idaho and Utah—paycheck protection has had mixed results.

What lessons can paycheck protection advocates learn?

In a special state election last November Californians voted down a series of ballot initiatives championed by Governor Arnold Schwarzenegger. The governor appealed unsuccessfully for laws that would control state spending, increase teacher accountability, and reduce the state legislature’s influence over redistricting. But it was Schwarzenegger’s position on a keystone measure, Proposition 75, popularly known as “paycheck protection,” that seemed to generate the most extraordinary opposition. By election day it rose to a fever pitch.

Union operatives dogged Schwarzenegger’s every campaign stop, and television ads paid for by the unions blasted him continuously for supporting Prop 75. The celebrity governor was denounced by



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California Gov. Arnold Shwarzenegger was all smiles just days before voters rejected “paycheck protection,” which he had endorsed.

a cadre of celebrity activists, including Warren Beatty and director Rob Reiner. National political heavyweights John Kerry and Hillary Clinton lent their voices in opposition.

On November 8 voters rejected Proposition 75 by a margin of 53.5 percent to 46.5 percent. It was only the latest in a series of setbacks for paycheck protection advocates. Paycheck protection legislation has also been curtailed in Washington state and Idaho, although it has enjoyed success in Utah.

What lessons can be learned from the defeat in California and the mixed results in the other Western states?

Paycheck Protection

Paycheck protection requires unions to get written authorization from members before spending collective bargaining dues on political activity. The policy, based on the First Amendment freedom from coerced speech, holds that no one should be forced to support candidates or causes against his or her will. As Thomas Jefferson once wrote, “To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical.”

When given a choice, union members (even those aligned with the union’s liberal agenda) overwhelmingly refuse to

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contribute to their union's political activity. In states with paycheck protection laws, 90 to 95 percent of union members opt out of political spending.

No one disputes that labor organizations annually dump hundreds of millions of dollars into state and national politics. For instance, the AFL-CIO and its then-affiliated Service Employees International Union spent a combined \$100 million to mobilize union household voters against President Bush in 2004, but surveys indicate that one-third of union members cast their vote for Bush in the last election. Yet unionized workers usually have no say in how their dues money is used.

In states without right-to-work protections, workers governed by collective bargaining agreements must join the union or pay hefty representation fees in order to keep their jobs. Unions then use the mandatory funding source to stock their political war chests. At every election cycle many union members suffer the indignity of having money taken out of their paychecks to support candidates they oppose.

The U.S. Supreme Court has recognized that union members have a right to obtain a refund for union political spending, but its rulings are not self-enforcing. It has been left up to the states to require unions to seek written authorization *before* spending dues on politics.

Unions will stop at nothing to deprive their members of this choice. The November special election in California is only the most recent example of organized

labor's hostility toward paycheck protection.

California Proposition 75

California's paycheck protection initiative was several years in the making. In 2002, Californians knew they had gotten a raw deal when then-Governor Gray Davis and the state legislature saddled citizens with multi-billion dollar budget deficits, corrupt corporate contracts, failing schools and rolling power blackouts. Hollywood movie action hero Arnold Schwarzenegger, star of "The Terminator" and "Total Recall," lived up to his billing when he announced, "I will go to Sacramento and I will clean house." On October 7, 2003, Davis was tossed out of office and Schwarzenegger selected to take his place in a special two-part recall election.

Schwarzenegger's stated mission during his first year in office was to "stop the bleeding" of an unsustainable state fiscal policy. He identified desperately needed reforms such as cutting pension payouts, changing an exorbitant education funding scheme, reforming the outrageously costly workers compensation program, and reducing government waste.

Schwarzenegger was unapologetic: "Taking money out of the private sector is a no-no because we don't want to feed the monster. We want to feed the private sector, and we want to starve the public sector."

Public sector labor unions interpreted these actions as a direct threat against them and they called in their campaign chits, spurring the Democrat-controlled legislature to take on the governor. But they underestimated Schwarzenegger's resolve when he decided to take his ideas directly to the people in a special election.

The showdown promised to be spectacular: Public sector unions are the 800-pound gorillas of California politics. Primarily responsible for the California legislature's Democratic majority, they had plenty of cash to spend to preserve the status quo. A review of campaign finance records shows union political action committees gave \$38 million in support of candidates and ballot measures in 2004.

Eighty-nine percent of partisan contributions went to Democratic candidates.

The California unions successfully used simple but brutal tactics to defeat paycheck protection.

Union Tactic #1: Destroy the Messenger and Confuse the Message

To distract voters from Proposition 75's issues of union representation and political spending, union officials first focused their attack on the personal character of the Governor. They knew Schwarzenegger would be the spokesperson for the campaign, and that he would capitalize on his action hero status to paint union bosses as the bad guys.

Proposition 75 had been filed by veteran California political activist Lew Uhler, head of the National Tax Limitation Committee. But even before Schwarzenegger formally endorsed it on September 17, the unions were portraying Schwarzenegger as a bully. The first union TV ads ignored the purpose of the proposition and instead described it as a strategy by Schwarzenegger and his corporate backers to silence "teachers and public workers" for blocking his fiscal reforms. The ads alleged Schwarzenegger was "targeting teachers and public workers, so they can't fight back—that's the hidden agenda!"

The unions also said Schwarzenegger was unfair because Proposition 75 targeted unions while leaving corporations unregulated. However, the opponents neglected to mention that, unlike unions, corporations cannot take employee wages for politicking without asking their permission. Customers are likewise free to boycott or patronize politically-active corporations. And shareholders enjoy voting rights that they can use if corporate managers overstep their bounds. Moreover, if shareholders don't like a company, they can sell their shares.

In a series of television ads, union officials also asserted that Proposition 75 was redundant because the U.S. Supreme Court in the 1986 *Hudson* case already ruled that workers could not be forced to make political contributions to unions. The ads, of course, did not mention that the *Hudson* case applied only to union nonmembers required to pay an "agency

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fee” in lieu of union dues, and that the unions had devised a maze of procedural rules and technical jargon to confuse and frustrate any workers who proposed to exercise their rights.

As Kevin Brown, webmaster for the state Department of Insurance, told the *Sacramento Bee* in October, the burden was on the workers to recover political refunds from their unions. Brown, a non-member agency fee-payer with the Service Employees International Union Local 1000, had to file an objection letter with

When given a choice, union members refuse to support union politics.

Under paycheck protection laws, voluntary contributions declined from 82 percent to 6.1 percent of membership in Washington, and from 68 percent to 6.8 percent of membership in Utah.

the union postmarked by July 25, in order to recover the \$235.71 that the union deducted from his paycheck for non-bargaining activities. “I think they should have to ask me for it,” he said. “They shouldn’t just take it out.”

Union Tactic #2: Silence Workers

Contrary to union polemics, union members have overwhelmingly supported the concept of paycheck protection. In early 1998, the California Teachers Association (CTA) polled its members on Proposition 226, an earlier paycheck protection measure that also was defeated after a costly and deceptive campaign. The CTA spent millions to “re-educate” its members when it found that 76 percent of them supported the idea. Proposition 75 enjoyed similar union member support; polls found a majority of union members supported the measure as late as October 26.

Unions created an oppressive climate

of fear to intimidate any member who dared speak out in favor of Proposition 75. In September, with the assistance of the National Right to Work Legal Defense Foundation, several teachers filed a class action lawsuit against the California Teachers Association, which had raised its dues to increase its resources for political spending. Dozens of union operatives surrounded the teachers and repeatedly screamed, “Shame on you!” as they announced their lawsuit at a Sacramento press conference.

Foundation spokesman Stefan Gleason observed, “Union officials seem to have little use for California’s educators, other than to serve as the union’s ATM machine.”

Union Tactic #3: Increase Political Spending at Any Cost

California public sector unions were able to exploit their own members in the fight against Schwarzenegger’s reforms. For example, the California Teachers Association imposed a \$180 special assessment on its 335,000 members to bring in \$60 million dollars over the next three years. In order to make the funds immediately available, the CTA mortgaged its headquarters; when those funds ran out, the CTA obtained an additional \$40 million line of credit.

Other unions quickly followed suit. The California State Employees Association collected \$12 million from its members, and the California Correctional Peace Officers Association imposed a \$33 per month political fee on its members, raising \$18 million for the fight.

While final numbers are not yet available, the “No on 75” campaign spent over \$41 million. By contrast, two “Yes on 75” committees spent only about \$2.6 million. These hard cash figures only paint a portion of the picture, as unions are able to spend tens of millions in unreportable “member communications” and get out the vote efforts.

On November 8, California voters rejected Proposition 75. The vote was 3,575,521 to 4,106,481. Voters turned thumbs down on the proposal.

All told, political experts estimate that union spending exceeded \$150 million to

defeat Proposition 75. No doubt the results of the special election would have been different if union members had a choice whether or not to fund the union’s campaign.

Washington: Ignore the Law

What would have happened had paycheck protection passed in California? We know that in states where paycheck protection has been enacted, unions have employed a number of methods to bypass the law, to avoid enforcing it and to challenge its constitutionality.

The nation’s first paycheck protection law was adopted by Washington state voters in 1992. Approved by more than 72 percent of voters, Initiative 134 included a requirement that employees must give their annual written consent before unions can make payroll deductions for political activity.

The law had an immediate and dramatic effect on unions’ ability to collect political dues. Before passage, approximately 82 percent of the members of the Washington Education Association (WEA) contributed to the union’s political action committee (PAC). After the first full year of implementation in 1994, only 11 percent of the membership voluntarily contributed to the PAC. Voluntary contributions have never exceeded 20 percent of the membership in ensuing years.

In order to deal with its funding crisis, the Washington Education Association made several attempts to sidestep the law. Before I-134 was implemented in 1994, the WEA’s political action committee was funded by a \$1.08 per month assessment from each member. Knowing that the law would go into effect, the WEA collected the upcoming year’s PAC assessment in advance.

After the law went into effect, the union then transferred \$162,255 of teachers’ collective bargaining dues from general funds to the PAC. The WEA characterized this transfer as a loan, but later “forgave” it. Throughout the year, the WEA paid an estimated \$120,000 for the PAC’s administrative costs without reporting the expenditures as contributions. The union also spent general treasury funds to support ballot measures, spending \$730,200

on two initiatives.

Additionally, the WEA instituted a mandatory dues increase of \$12 a year for its new, ambiguously-named “Community Outreach Program.” All told, COP raised and spent for essentially political activities \$2.6 million without member permission.

Even though it had less than \$12,000 per month in income authorized for political purposes, WEA then devised a \$1.5 million political plan for the 1996 election cycle. Shocked by the union’s blatant political activity, several teachers appealed for help to Washington State’s Evergreen Freedom Foundation, a public policy organization. After conducting an independent investigation, the Foundation filed a complaint with the Public Disclosure Commission (PDC), the state’s campaign finance compliance agency.

The PDC found the WEA guilty of multiple violations of campaign finance law, describing the WEA’s activities as “the most serious campaign finance violations in state history.” Concerned that its regulatory powers would not allow for a severe enough penalty, the PDC referred the case to the state attorney general, who filed a lawsuit against the WEA on February 12, 1997.

Sadly, state courts never heard the case. Following secret negotiations with the union, then-Attorney General Christine Gregoire announced a settlement on February 27, 1998. It dismissed all charges against the teachers’ union. In return, the WEA paid a \$100,000 penalty (funded, of course, by union members), reduced dues by \$5 for each member the following year, and agreed to abide by campaign finance “guidelines” drafted by the attorney general’s office.

Unfortunately, Attorney General Gregoire’s settlement with the WEA gave Washington unions a free pass to violate the intent of the paycheck protection law. The settlement “guidelines” suggested that rather than rely on political funds collected by voluntary member contributions, unions could use collective bargaining dues for political purposes by transferring general funds to union PACs.

As a result, while its members continue to refuse to support union political activ-

ity, union officials circumvent member preferences by supplementing their political committees with general treasury funds. For example, the WEA transfers hundreds of thousands of dollars from general dues to its PAC—even though nearly 95 percent of teachers refuse to contribute to the PAC.

In June 2005, after two separate recounts, a judge decided that Attorney

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General Gregoire should be certified as having been elected Governor of the state in November 2004 by 133 votes. Gregoire’s final recount effort was underwritten by \$720,000 in union contributions.

Idaho: Court Challenge

Idaho lawmakers passed a paycheck protection law in 1997, requiring political committees to get annual written consent before obtaining contributions through automatic payroll deduction. According to news accounts, the number of union members contributing to union PACs dropped by 75 percent.

In 2003 the Idaho Legislature passed the Voluntary Contributions Act (“VCA”), intended to close loopholes in the 1997 law that unions were able to exploit. The VCA banned the use of payroll deductions for political purposes and required unions to segregate political expenditures so that there would be no co-mingling with general treasury funds.

The Voluntary Contributions Act was immediately challenged in federal court by

the Idaho Education Association, firefighters unions, the service employees union and the Idaho State AFL-CIO.

During the legal challenge to the VCA, the unions resorted to what was for them a novel argument. They said union members are not forced to finance political activities against their will because Idaho was a right-to-work state, and therefore “membership in labor organizations is entirely voluntary.” Consequently, the unions argued, “Every penny that a labor organization receives from an employee represents the employee’s voluntary choice.”

Of course, unions can force their members support for political activity, even in right-to-work states. Union membership may be voluntary, but unions still negotiate collective bargaining agreements that cover all employees in the bargaining unit, whether or not the employees want them. Unions then reserve representation “benefits” for the employees who join and pay full membership dues, while denying non-members a voice in decisions affecting their workplace environment.

In the lawsuit against the VCA, the unions argued that it would be more coercive to approach members face-to-face for political contributions rather than use automatic payroll deductions. This seeming admission of union strong-arm tactics ignores the reality that every other political entity must collect its contributions from individuals one at a time.

Unfortunately, Idaho Attorney General Lawrence Wasden did not offer a vigorous defense of the VCA. He made huge concessions to the union in the State’s brief, asserting that the VCA’s definition of “political activities” was unconstitutionally broad and that the section requiring segregation of political expenditures should be declared unconstitutional.

The U.S. district court in Idaho handed down its decision in November 2005. The sections of the law abandoned by the Idaho attorney general were struck down as unconstitutional. Judge B. Lynn Winmill also ruled that the state cannot ban local governments from using payroll deductions for political funds. While the state can prohibit payroll deductions for state agencies, the court created an enor-

mous loophole by stipulating that the state has no reason to deny payroll deduction of political contributions if the union covers the administrative cost of the deductions.

Utah: When It Works

Utah is a model for what can be expected when paycheck protection is properly implemented. Passed in 2001, the Utah Voluntary Contributions Act was challenged in court by the Utah Education Association and the Utah Public Employees Association. After a two-year legal battle and legislative modifications, the Utah VCA went into effect in 2004.

The Utah VCA is the most comprehensive paycheck protection law. It bans public employers from diverting employee wages to political entities, and it requires public sector unions to collect funds through voluntary member contributions. Furthermore, all political funds must go into and out of a segregated fund; no general member dues can be transferred into the political fund.

Utah's law improved earlier paycheck protection models such as those in Washington and Michigan, which regulate the union's *collection* of political dues. Laws there prohibit the employer from diverting a portion of the employee's salary to a political action committee. By contrast, the Utah model regulates union political *spending* and is more resistant to union efforts to bypass the clear intent of the law.

After a full year in effect, the law's impact is clear. Before passage, about 68 percent of Utah Education Association (UEA) members made annual contributions to its PAC. After implementation, the number of contributors fell to 6.8 percent—a 90 percent drop-off in teacher contributions. The actual amount contributed also fell from \$155,000 to \$40,000—a 75 percent drop.

In 2001, the UEA had over \$600,000 in its PAC. In every election year since then, UAE has been forced into deficit spending. The Utah Public Employees Association was forced to zero out its PAC and suspend fundraising at the end of 2004 after spending the \$431,000 it had at the start of 2002.

This is particularly significant because Utah is also a right-to-work state. The union free-to-choose argument that was made in Idaho hasn't worked here. Union members in Utah overwhelmingly refuse to contribute even one dollar to their union's political spending.

In fact, the funding crisis is so serious that union officials resort to apocalyptic predictions and absurd stunts to cajole members into contributing. At the UEA's 2005 annual House of Delegates meeting, UEA president Pat Rusk rode into the auditorium on a motorcycle, dressed in leather pants and vest. Her t-shirt was emblazoned with "Girls Just Want To Have Funds." The UEA director of political action warned that without more money, the union would cease to be a major player in Utah politics. What he failed to realize, however, is that members ought to dictate the union's involvement in politics, and they clearly have stated their preference.

Less political funding—and its impact on union monopoly power—has had a direct effect on Utah public policy. In early 2005, the Utah Legislature passed a bill providing for special needs tuition tax credits. Royce Van Tassell, executive director of Education Excellence, Utah's leading parental choice group, credits the VCA for making it possible to pass the tuition tax credit bill.

Lessons Learned

This summer there were many predictions that the breakup of the AFL-CIO would cripple labor's political power. The election results in California show that those predictions were premature or unfounded.

Union officials clearly recognize that they need to use coercion to raise the money that funds their political efforts. Robert Chanin, general counsel for the National Education Association, once said in U.S. District Court, "It is well recognized that if you take away the mechanism of payroll deduction, you won't collect a penny from these people, and it has nothing to do with voluntary or involuntary. I think it has to do with the nature of the beast, and the beasts who are our teachers.... [They] simply don't come up with the money regardless of the pur-

pose."

Union officials clearly understand that paycheck protection legislation is a direct threat to their political power. That's what sparked organized labor's all-out assault against Proposition 75 and their unyielding resistance to laws passed in Washington and Idaho. Advocates of worker freedom must be prepared to carefully craft future paycheck protection measures to withstand even the most tortured forms of constitutional scrutiny. Michigan and Wyoming both passed paycheck protection laws in the 1990s, but their measures have been largely ineffective because of weak language. More recently, in Ohio and Idaho aggressive litigation by unions has managed to overturn paycheck protection provisions.

There is no silver bullet. Crafting a good law is a start. But unions will brazenly flout paycheck protection laws without strong enforcement mechanisms, the dedication of public officials and the pressure of public opinion. Public policy organizations can make a difference, as I learned in Washington state, by vigilantly policing both union political activities and the enforcement activities of elected officials.

The attorneys general in both Washington and Idaho severely weakened their paycheck protection laws by capitulating to union pressure. In Washington, the attorney general's settlement with the teachers union encouraged unions to ignore member preferences in order to preserve their political power. The Idaho attorney general's half-hearted defense of the law guaranteed that the unions would prevail in a court challenge.

In 2006 several states are expected to introduce paycheck protection legislation. At the very least, the failure of California Proposition 75 demonstrates why paycheck protection is essential: Without it unions are able to use forced dues to defeat a ballot initiative even when it enjoys initial widespread support—even among union households.

Michael Reitz is director of the Labor Policy Center for the Evergreen Freedom Foundation in Olympia, Washington. Ryan Bedford, labor policy analyst, also contributed to this article.

Labor Notes

Labor Activists Arrested During Christmas Wal-Mart Stunt

Two labor activists—one a Unite-Here organizer and the other a South Florida campaign director for the radical Jobs With Justice organization—were arrested for allegedly striking a Wal-Mart security guard and manager during a December protest in Broward County, Florida. They were part of a group of protesters who sang Christmas carols while two dressed as Santa Claus and an elf entered the store to distribute “gift” boxes labeled “health care.”

‘Nutcracker’ Holiday Tradition Canceled in Labor Dispute

Several performances of the Washington Ballet’s “Nutcracker,” a holiday tradition for more than 40 years in Washington, D.C., were canceled because of labor strife. Instead of taking to the stage, dancers belonging to the American Guild of Musical Artists picketed outside the Warner Theatre claiming the excessive demands of the ballet company’s artistic director resulted in too many injuries. The dancers received substantial raises in 2004.

Wal-Mart Faces Threat from Maryland Legislature

Union opponents of Wal-Mart have found strong allies in the Maryland state legislature, which this month will attempt to override Gov. Robert Ehrlich’s veto of a bill that would effectively force the company to increase spending on employee medical benefits. The bill requires all companies with more than 10,000 employees to spend at least eight percent of their payrolls on health benefits, but Wal-Mart is the only known business to be affected by the bill.

NYU Threatens Striking Graduate Teacher Assistants

New York University president John Sexton told striking teacher assistants that they would lose their assignments and stipend as of December 5 if they did not return to the classroom, but no sanctions had yet been imposed when this issue of *Labor Watch* went to press. NYU said it was considering new proposals from the United Auto Workers which represents the graduate students. Classes have been interrupted since November 9. To avoid crossing picket lines, some professors have moved classes off campus—even to the nearby Communist Party USA headquarters.

Automakers, Airline Seek to Avert Strikes

Financially troubled companies that are struggling with union opposition to personnel and budget cuts worked frantically before Christmas to avert strikes. Delphi Corp., the nation’s largest auto parts maker, extended a December deadline for one month to continue union negotiations before asking a judge to impose wage and benefit cuts. Ford Motor Co. and the United Auto Workers forged a tentative agreement to cut health care benefits, similar to the deal UAW made with General Motors Corp. in October. Delta also reached a tentative agreement with its pilots union for a 14 percent wage reduction as well as additional cuts amounting to another 1 percent wage reduction.

Border Patrol Union Protests Uniforms Made in Mexico

While the President and Congress wrestle with immigration control and national security issues, the National Border Patrol Council, a 6,500-member union representing U.S. border patrol agents, is protesting the origin of agents’ uniforms. For more than a year, border agents have been wearing uniforms with made-in-Mexico labels. The union wants a law requiring the federal government to purchase uniforms from U.S. companies.

NEA Looks to Organize Non-Permanent College Faculty

In the *NEA 2005 Almanac*, a former higher education coordinator for the National Education Association and University of Arizona professor argue for collective bargaining for adjunct faculty and other non-permanent professors in America’s colleges and universities. “The rapid pace of unionization places contingent faculty at the forefront of the academic labor movement,” write Christine Maitland and Gary Rhoades. They argue for union organizing because higher education institutions “are becoming academic capitalist enterprises, seeking to generate revenues and reduce production labor costs”—goals of any nonprofit organization.