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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DIANNE KNOX; WILLIAM L.
BLAYLOCK; ROBERT A. CONOVER;
EDWARD L. DOBROWOLSKI, JR;
KARYN GIL; THOMAS JACOB HASS;
PATRICK JOHNSON; JON JUMPER;
and R. PAUL RICKER, On Behalf
of Themselves and the Class
They Seek to Represent,

Plaintiffs,

NO. CIV. S 05-2198 MCE KJM

v.

TEMPORARY RESTRAINING ORDER

STEVE WESTLY, Controller,
State of California; and
CALIFORNIA STATE EMPLOYEES
ASSOCIATION, LOCAL 1000,
SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO-
CLC,

Defendant.

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The above matter came before the Court upon Plaintiffs' Ex
Parte Application for entry of a Temporary Restraining Order,
filed on November 2, 2005. Following its review of the papers
submitted on behalf of Plaintiffs, the Court conducted a hearing

1 at 4:30 p.m. that afternoon. W. James Young appeared on behalf
2 of Plaintiffs; Jonathan Weissglass and Jeffrey B. Demain appeared
3 telephonically on behalf of Defendant California State Employees
4 Association, Local 1000, Service Employees International Union,
5 AFL-CIO ("CSEA"). No appearance was made on behalf of Defendant
6 Steve Westly.

7 Issuance of a temporary restraining order, as a form of
8 preliminary injunctive relief, is an extraordinary remedy, and
9 Plaintiffs have the burden of proving the propriety of such a
10 remedy by clear and convincing evidence. See Granny Goose Foods,
11 Inc. v. Teamsters, 415 U.S. 423, 442 (1974). In order to warrant
12 issuance of such relief, Plaintiffs must demonstrate either: 1) a
13 combination of probable success on the merits and the possibility
14 of irreparable injury; or 2) that serious questions are raised
15 and the balance of hardships tips sharply in favor of granting
16 the requested injunction. Stuhlbarq Int'l Sales Co., Inc. v.
17 John D. Brush & Co., Inc., 240 F.3d 832, 839-40 (9th Cir. 2001).
18 These two alternatives represent two points on a sliding scale,
19 pursuant to which the required degree of irreparable harm
20 increases or decreases in inverse correlation to the probability
21 of success on the merits. Roe v. Anderson, 134 F.3d 140-0, 1402
22 (9th Cir. 1998); United States v. Nutri-cology, Inc., 982 F.2d
23 1374, 1376 (9th Cir. 1985). Under either formulation of the test
24 for granting a preliminary injunction, however, Plaintiffs must
25 demonstrate a significant threat of irreparable injury. Oakland
26 Tribune, Inc. v. Chronicle Publ. Co., 762 F.2d 1374 (9th Cir.
27 1985).

28 The propriety of a temporary restraining order, in

1 particular, hinges on a significant threat of irreparable injury
2 (Simula, Inc. v. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir.
3 1999)) that must be imminent in nature. Caribbean Marine Serv.
4 Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

5 Having considered the documents presented, and after hearing
6 arguments of counsel, the Court finds that Plaintiffs have
7 demonstrated a significant threat of irreparable injury given the
8 particular circumstances present in this case. Plaintiffs have
9 claimed, and Defendant CSEA has not controverted, that a
10 temporary assessment was made against union nonmembers for the
11 express purpose of defeating ballot initiatives to be determined
12 through the State of California's November 8, 2005 special
13 election. CSEA's August 31, 2005 letter (attached to Plaintiffs'
14 Complaint as Exhibit "D") makes it clear that the sole rationale
15 for said special assessment was to undermine the political
16 objectives encompassed by Propositions 75 and 76. Plaintiffs
17 have asserted that said deductions were taken without proper
18 notification and/or consent, and hence violated their First
19 Amendment rights by forcing them to support political and
20 nonbargaining activities at odds with their own personal
21 preferences.

22 Given the temporal proximity of the special election, any
23 monies that may have been improperly deducted from Plaintiffs'
24 paychecks may well be spent in a matter of days. In light of the
25 serious constitutional questions that are raised, this presents
26 an imminent risk of harm that will be irreparable if nonmembers'
27 deductions are used in contravention of their rights and wishes.
28 This imminent danger of irreparable harm tips the balance of

1 hardships in favor of granting emergency relief before said
2 relief may effectively become moot in the wake of the November 8,
3 2005 election. Plaintiffs' Application for Temporary Restraining
4 Order is consequently GRANTED. It is hereby ordered as follows:
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6 A. Defendants, their officers, representatives, and all
7 persons acting on their behalf, and all of them, are hereby
8 temporarily restrained from taking payroll deductions from,
9 or in any other way collecting that portion of agency fees
10 seized from State of California employees employed in
11 Bargaining Units 1,3,4, 11, 14, 15, 17, 20, and 21, who are
12 represented exclusively for purposes of collective
13 bargaining by Defendant CSEA, but who are not members of
14 CSEA, as a result of the "temporary dues increase (1/4 of 1
15 percent of salary)" or assessment, approved by a vote of the
16 CSEA General Council delegates on or about August 27, 2005,
17 and effective September 1, 2005 ("Special Assessment");
18

19 B. Defendants, their officers, representatives, and all
20 persons acting on their behalf, and all of them, are hereby
21 ordered to place that portion of agency fees seized from
22 nonmembers by Defendant Westly on or about Friday, September
23 30, 2005, and Monday, October 31, 2005 (state payroll
24 dates), as a result of CSEA's special assessment, into the
25 registry of the Court or a Court-supervised escrow account,
26 until further order of the Court.
27

28 This Order shall remain in full force and effect pending

1 further order of this Court. Given the time constraints imposed
2 by the proximity of the November 8, 2005 special election, a
3 hearing on Plaintiffs' request for a preliminary injunction is
4 scheduled for Friday, November 4, 2005 at 10:00 a.m. Opposition
5 to Plaintiffs' request for injunctive relief in that regards
6 shall be filed by Defendants not later than Thursday, November 3,
7 2005 at 2:00 p.m. Plaintiffs' reply, if any, is due at 4:00
8 p.m., also on November 3, 2005.

9 Because no bond is necessary for purposes of effecting
10 justice between the parties, and would cause undue hardship to
11 the nonmembers, Plaintiffs shall not be required to post any
12 additional bond in this case.

13 IT IS SO ORDERED.

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15 DATED this 3rd day of November, 2005 at 10:00 a.m.

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19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE
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