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21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA

23 MERCER, FRASER Co., a California  
24 corporation; and O & M INDUSTRIES, a  
25 California corporation,  
26  
27 Plaintiffs,  
28  
29 vs.  
30  
31 COUNTY OF HUMBOLDT, CALIFORNIA, a  
32 political subdivision of the State of California,  
33  
34 Defendant.

35 Case No.: CV 08-4098 SI

36 **DEFENDANT'S OPPOSITION TO**  
37 **PLAINTIFFS' APPLICATION FOR**  
38 **TEMPORARY RESTRAINING**  
39 **ORDER AND ORDER TO SHOW**  
40 **CAUSE RE: PRELIMINARY**  
41 **INJUNCTION**

42 **Date: September 12, 2008**  
43 **Time: 9:00 a.m.**  
44 **Dept: 9**  
45 **Judge: Hon. William H. Alsup**

46 **Complaint Filed: August 27, 2008**  
47 **Trial Date: Not Set**

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**I. INTRODUCTION**

Plaintiffs are corporations that seek to challenge an initiative ordinance (“Measure T”) adopted by Humboldt County voters in 2006 that prohibits non-local corporations and organizations from making campaign contributions or expenditures in connection with local elections. More immediately, Plaintiffs seek a temporary restraining order against enforcement of Measure T, claiming that it will prevent them from making contributions and expenditures in connection with the November 2008 election of candidates to the Humboldt County Board of Supervisors. Because Plaintiffs have failed to sustain their burden of justifying the extraordinary relief they seek, the Court should deny the application for a temporary restraining order.

To obtain temporary injunctive relief, Plaintiffs must demonstrate that absent an immediate injunction, they will suffer irreparable harm pending a hearing for a preliminary injunction, and that they are likely to prevail on the merits of their action. Plaintiffs cannot satisfy either of these requirements.

As a threshold matter, Plaintiffs have not demonstrated that they face irreparable harm in the event that the Court declines to issue a temporary restraining order. Plaintiffs’ own inaction during the past two years precludes the extraordinary, last-minute relief they seek here. Humboldt County voters enacted Measure T in June 2006. Plaintiffs’ officers testify that since then, Measure T has inhibited them from making campaign contributions and expenditures in local elections. Yet, they took no action to challenge Measure T.

Indeed, had Plaintiffs filed this action as recently as four weeks ago, they could have sought a preliminary injunction through a regularly noticed motion. Instead, Plaintiffs waited until the eleventh hour to challenge Measure T. They now breathlessly claim that the election is upon them and, with virtually no notice to the Court and the County, demand immediate and extraordinary ex parte relief. As other courts have properly recognized in similar circumstances, Plaintiffs’ unjustifiable delay in seeking relief undermines their claims that they face immediate, irreparable injury. On this basis alone, the Court should deny the temporary restraining order.

Moreover, Plaintiffs face no interim harm during the short period between now and the time this Court hears and rules on Plaintiffs’ request for a preliminary injunction, as the

1 November 2008 election is two months away. Indeed, there is no evidence before the Court that  
2 Plaintiffs intend to make contributions or expenditures during this brief interim period. If the  
3 Court were to grant a preliminary injunction after a more complete presentation and  
4 consideration of the facts and law, Plaintiffs would still have several weeks to make  
5 contributions and expenditures in connection with the November 2008 Board of Supervisors  
6 election. The Court should deny the temporary restraining order for lack of irreparable harm.

7       Second, Plaintiffs have failed to demonstrate that they are likely to prevail on the merits.  
8 At this stage, the sole issue before the Court on the merits is whether Plaintiffs are entitled to an  
9 order temporarily restraining enforcement of the prohibition on contributions to, and  
10 expenditures on behalf of, County Board of Supervisors candidates. This is because, according  
11 to their own supporting declarations, that is the only specific race regarding which they seek to  
12 make contributions and make expenditures. Accordingly, at this time, the Court need not and  
13 should not reach the provisions of Measure T pertaining to ballot measures.

14       Plaintiffs cannot prevail on their challenge to the ban on corporate spending on candidate  
15 elections. Federal and state prohibitions on corporate campaign contributions and expenditures  
16 have been in existence for over a century. The United States Supreme Court has upheld laws  
17 prohibiting corporate contributions to candidates, as well as independent expenditures on behalf  
18 of candidates. Moreover, the Supreme Court has recognized that the government may validly  
19 impose those prohibitions against corporations, even if they do not extend them to labor unions,  
20 and even if some types of corporations are exempt from regulation.

21       Indeed, the primary premise of Plaintiffs challenge – that Measure T treats for-profit  
22 corporations less favorably than “labor union corporations” formed under the National Labor  
23 Relations Act (“NLRA”) – is fatally flawed. The undisputed evidence before the Court  
24 demonstrates that NLRA unions do not incorporate, but rather operate as unincorporated  
25 associations. Accordingly, the disparate treatment Plaintiffs allege at the hands of the County is  
26 entirely illusory.

27  
28

1 Plaintiffs have not satisfied their burden of demonstrating that they are likely to prevail  
2 on the merits of their challenge to these provisions. The Court should deny the temporary  
3 restraining order, and set an expedited hearing on Plaintiffs’ request for preliminary injunction.

4 **II. FACTUAL BACKGROUND**

5 On June 6, 2006, the voters of Humboldt County adopted Measure T, the “Humboldt  
6 County Ordinance to Protect Our Right to Fair Elections & Local Democracy” (“Measure T”).  
7 First Amended Complaint (“FAC”), Exhibit A. The stated purpose of Measure T is “to prohibit  
8 non-local corporations from making direct or indirect contributions and independent  
9 expenditures in all elections within the jurisdiction of Humboldt County, including candidate  
10 campaigns, initiatives, referendums and recalls.” *Id.*, § 4. Measure T took effect 30 days after  
11 its adoption by the voters, or July 6, 2008. *Id.*, § 15.<sup>1</sup>

12 The Findings and General Purpose section of Measure T sets forth the impetus for  
13 Measure T. “Corporate contributions in electoral politics interfere with the right of the people to  
14 create and maintain the institutions needed for democratic self-governance.” *Id.*, § 3, ¶4. The  
15 section further states that “[t]he people of Humboldt County make the affirmative legislative  
16 finding that corporate contributions [in elections] are undermining our democratic processes,  
17 creating the appearance of impropriety and corruption, and are causing the people of Humboldt  
18 County to lose confidence in the integrity of our elections and in our government.” *Id.*, ¶7.  
19 Measure T states that it prohibits non-local corporate campaign contributions or expenditures  
20 because corporations with non-local owners and comprised of non-local employees “should not  
21 be allowed to use their positions of corporate control and ownership to influence or undermine  
22 local elections through their corporate financial resources.” *Id.*, at ¶8.

23 To achieve its goals of promoting self-governance and protecting the integrity of local  
24 elections and government, Measure T prohibits non-local corporations from “paying or  
25 contributing, directly or indirectly, any money, property, compensated service of its officers or

26 \_\_\_\_\_  
27 <sup>1</sup> In this brief, the provision of Measure T that regulates corporate contributions to candidates will be identified as  
28 the “Candidate Contribution Provision,” while the provision that regulates corporate expenditures on behalf of  
candidates will be identified as the “Candidate Expenditure Provision.”

1 employees, independent expenditures, or any other thing of value for the purpose of: a)  
2 Promoting or defeating the candidacy of any person for nomination, appointment or election to  
3 any political office within the jurisdiction of Humboldt County; or b) Promoting or defeating any  
4 initiative, referendum or recall election within the jurisdiction of Humboldt County. . . .” *Id.*,  
5 § 5. Significantly, Measure T does not preclude employees, trustees, directors, or shareholders  
6 of non-local corporations from voluntarily contributing their own money or uncompensated  
7 services in county elections to the extent allowed under state and federal law. *Id.*, § 9.

8 Measure T defines a “Corporation” generally as any organization incorporated under  
9 California law or the laws of any other state, or holding a Certificate of Authority to do Business  
10 in California. *Id.*, § 11. The definition includes within its scope limited liability partnerships and  
11 limited liability companies, as well as groups operating as nonprofits as defined by the Internal  
12 Revenue Service Code and Regulations, with the exception of political parties. *Id.*

13 Measure T specifically exempts from its reach three categories of organizations: local  
14 corporations, local labor organizations, and local nonprofit organizations. *Id.*, § 10. By  
15 implication, then, non-local labor organizations are subject to the measure’s prohibitions,  
16 notwithstanding the fact that they are not corporations.

17 To qualify as a local corporation under Measure T, all of a corporation’s employees must  
18 reside in Humboldt County, the corporation’s principal place of business and corporate  
19 headquarters must be located in the County, all shares of stock (if any have been issued) must be  
20 owned by individuals in the County, and no portion of the corporation may be owned by another  
21 corporation. *Id.*, § 11.

22 To be considered a local labor organization, a labor organization must meet the definition  
23 set forth in the NLRA, and must have at least one member who resides in Humboldt County. *Id.*  
24 To qualify as a local nonprofit organization, an organization must be classified as a nonprofit  
25 organization under the Internal Revenue Service Code and Regulations and all of the members of  
26 its board of directors must reside in Humboldt County. *Id.* Any corporation not meeting the  
27 requirements of a local corporation, a local labor organization or a local nonprofit organization is  
28 considered a non-local corporation for purposes of Measure T. *Id.*

1 **III. ARGUMENT**

2 **A. LEGAL STANDARD**

3 Federal Rule of Civil Procedure 65(b) provides that a court may issue a temporary  
4 restraining order on an ex parte basis where “specific facts in an affidavit or a verified complaint  
5 clearly show that immediate and irreparable injury, loss, or damage will result” to the applicant.  
6 The underlying purpose of a temporary restraining order is to preserve the status quo and prevent  
7 irreparable harm during the abbreviated period before a preliminary injunction hearing may be  
8 held. *Granny Goose Foods, Inc. v. Bd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439  
9 (1974); *see also Reno Air Racing Assn. v. McCord*, 452 F.3d 1126, 1130-1131 (9th Cir. 2006).

10 To obtain a temporary restraining order, the applicant must demonstrate “either: (1) a  
11 combination of probable success on the merits and the possibility of irreparable harm; or (2) that  
12 serious questions are raised and the balance of hardships tips in its favor.” *A&M Records, Inc. v.*  
13 *Napster, Inc.*, 239 F.3d 1004, 1013 (9th Cir. 2001). “These two formulations represent two  
14 points on a sliding scale in which the degree of irreparable harm increases as the probability of  
15 success decreases.” *Id.*, *see also State of Alaska, Yukon Flats School Dist. v. Native Village of*  
16 *Venetie*, 856 F.2d 1384, 1389 (9th Cir. 1988). In addition, within the Ninth Circuit, a court must  
17 also consider the public interest when it assesses the propriety of issuing injunctive relief.  
18 *Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir. 2002).

19 **B. PLAINTIFFS HAVE FAILED TO DEMONSTRATE A “GREAT AND**  
20 **IMMEDIATE” THREAT OF IRREPARABLE HARM**

21 According to Plaintiffs, unless a temporary restraining order is immediately issued  
22 precluding the County from enforcing Measure T, they will suffer irreparable harm because they  
23 will not be allowed to contribute monies in the November 2008 Board of Supervisors election, a  
24 violation of their constitutional rights. This argument does not withstand scrutiny.

25 The Ninth Circuit has made it clear that a concrete showing of immediate irreparable  
26 injury is essential for prevailing on a temporary restraining order. *Caribbean Marine Services*  
27 *Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). “Speculative injury does not constitute  
28 irreparable injury sufficient to warrant granting a preliminary injunction.” *Id.* Indeed, where a

1 federal injunction is sought against a state or local government entity, the party requesting relief  
2 must show a threat of “great and immediate,” not conjectural or hypothetical, irreparable harm.  
3 *City of Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983); *Midgett v. Tri-County Met. Transp. Dist.*,  
4 254 F.3d 846, 851 (9th Cir. 2001).

5 Plaintiffs cannot meet this standard for several reasons. First, Plaintiffs sat on their  
6 claims for more than two years before bringing this action. The citizens of Humboldt County  
7 adopted Measure T on June 6, 2006. Since then, there have been four elections: (1) the general  
8 election in November 2006; (2) a special election in May 2007; (3) the local district elections in  
9 November 2007; and (4) the June 3, 2008 California primary, which included elections for the  
10 County’s Board of Supervisors for the first, second and third districts. Cikes Decl., ¶3. Only  
11 now – 26 months after it became effective – do Plaintiffs seek to avoid the regular judicial  
12 procedures that govern the conduct of this Court’s business, and obtain immediate relief, with  
13 little notice to the County, to preclude enforcement of Measure T. Plaintiffs’ own unjustifiable  
14 delay reveals a lack of any genuine urgency and irreparable harm, particularly during the short  
15 period of time until the Court hears and rules on Plaintiffs’ request for a preliminary injunction.  
16 *See Oakland Tribune, Inc. v. Chronicle Publishing Co., Inc.* 762 F.2d 1374, 1377 (9th Cir. 1985)  
17 (“Plaintiff’s long delay before seeking a preliminary injunction implies a lack of urgency and  
18 irreparable harm”); *Markowitz Jewelry Co., Inc. v. Chapal/Zenray, Inc.*, 988 F. Supp. 404, 406  
19 (S.D.N.Y 1997) (delay of 13 months after learning of alleged infringement precluded plaintiff  
20 from obtaining preliminary injunction). On this basis alone, the Court should deny Plaintiffs’  
21 application for a temporary restraining order.

22 Second, Plaintiffs have failed to show that they will likely suffer irreparable injury if  
23 Measure T is not enforced until the preliminary injunction hearing. Instead, Plaintiffs submit  
24 two conclusory declarations containing the same boilerplate statement that they “would, directly  
25 and indirectly, expend and contribute money and other things of value in the Humboldt County  
26 Board of Supervisors election for the Second District in November, 2008, were it not for  
27 Measure T’s prohibitions.” *See* McBeth Decl., ¶4; Zabel Decl., ¶4. However, nowhere in their  
28 moving papers do Plaintiffs attempt to establish why it is necessary for a temporary restraining

1 order to issue before the parties’ preliminary injunction hearing, which can be conducted well  
2 before the November election. If they prevail at the preliminary injunction stage, Plaintiffs will  
3 still have ample time to make contributions and expenditures in connection with the November  
4 election. Thus, any injury Plaintiffs might suffer in the next few weeks is entirely reparable,  
5 rendering their request for a temporary restraining order untenable.

6 Finally, even if Plaintiffs had demonstrated irreparable injury, their application still fails.  
7 As noted above, the established purpose of a TRO is to preserve the existing status quo pending a  
8 preliminary injunction hearing. The “status quo” is defined for these purposes as “the last,  
9 uncontested status preceding commencement of the controversy.” *Washington Capitols*  
10 *Basketball Club, Inc. v. Barry*, 419 F.2d 472, 476 (9th Cir. 1969); *Mississippi Power & Light Co.*  
11 *v. United Gas Pipe Line Co.*, 609 F. Supp. 333, 343 (S.D. Miss. 1984) (the status quo “is  
12 universally defined as the last uncontested status which preceded the pending controversy.”).  
13 Here, Plaintiffs seek a TRO altering, not preserving, the status quo. The “last uncontested  
14 status” that preceded this action was that the County uniformly enforced Measure T, including its  
15 prohibitions against campaign contributions and expenditures made by non-local corporations.<sup>2</sup>

16 In addition, it is well settled that temporary injunctive relief which would alter, rather  
17 than preserve, the status quo is especially inappropriate where, as here, the effect of the TRO is  
18 to grant a party the ultimate relief sought in the case prior to a decision on the merits. *Senate of*  
19 *State of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992) (“In general, that kind of judgment  
20 on the merits in the guise of preliminary relief is a highly inappropriate result.”); *GTE Corp. v.*  
21 *Williams*, 731 F.2d 676, 679 (10th Cir. 1984); *Prairie Band of Potawatomi Indians v. Pierce*, 253  
22 F.3d 1234, 1247 (10th Cir. 2001). If the Court grants Plaintiffs’ application for a temporary  
23 restraining order, it would effectively provide Plaintiffs with all the relief sought in their request  
24 for a preliminary injunction – the ability to make contributions to and expenditures for the Board

25 \_\_\_\_\_  
26 <sup>2</sup> Compare *Viacom Int'l, Inc. v. FCC*, 828 F. Supp. 741, 742 (N.D. Cal. 1993) (plaintiff sought temporary injunctive  
27 relief against enforcement of federal "must carry" requirements before federal regulations implementing these  
28 requirements became effective, and relief was designed merely to "preserve[e] the status quo" pending further  
judicial review); *Sable Communications of Cal., Inc. v. FCC*, 692 F. Supp. 1208 (C.D. Cal. 1988) (plaintiff filed suit  
immediately upon amendment of Telephone Decency Act that affected plaintiffs' existing activities).

1 of Supervisors candidates in the 2008 election. Moreover, once these contributions and  
2 expenditures are made, they cannot be undone, even if the Court subsequently determines on a  
3 more complete record that Plaintiffs are not entitled to a preliminary injunction. Accordingly,  
4 for this separate, independent reason, Plaintiffs' application for a temporary restraining order  
5 should be denied.

6 **C. PLAINTIFFS HAVE NOT SUSTAINED THEIR BURDEN OF**  
7 **DEMONSTRATING THAT THEY ARE LIKELY TO PREVAIL ON THEIR**  
8 **CLAIM THAT THE CANDIDATE PROVISIONS OF MEASURE T VIOLATE**  
9 **THE FIRST AMENDMENT**

10 At the outset, it is important to recognize that the only issue before this Court is whether  
11 Measure T's prohibitions on *contributions to individual candidates* irreparably harm Plaintiffs.  
12 Although Measure T regulates contributions to and expenditures for both candidates and ballot  
13 measures, Plaintiffs allege only that they seek to make campaign contributions and expenditures  
14 in connection with candidates seeking election to the County Board of Supervisors in the  
15 November 2008 election. *See* McBeth Decl., ¶4; Zabel Decl., ¶4. Accordingly, they face no  
16 irreparable harm from the ballot measure provisions of Measure T.

17 Plaintiffs grudgingly acknowledge that the United States Supreme Court has upheld the  
18 validity of statutes that prohibit corporations from making independent expenditures on behalf of  
19 candidates, as well as statutes that prohibit corporations from making contributions to candidates  
20 for elective office. *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990); *Fed.*  
21 *Election Comm. v. Beaumont*, 539 U.S. 146 (2003). But Plaintiffs fail to recognize the breadth  
22 of the government's authority to regulate corporate campaign spending under *Austin* and  
23 *Beaumont*.

24 Indeed, the *Austin* and *Beaumont* Courts expressly recognize that the campaign finance  
25 activities of corporations pose a special danger to the integrity of the electoral process, and that  
26 government efforts to curb this danger serve a compelling governmental interest. *See Austin*,  
27 494 U.S. at 655-659. Moreover, the *Beaumont* Court recognized that "[w]ithin the realm of  
28 contributions generally, corporate contributions are furthest from the core of political  
expression." 539 U.S. at 161 n.8. That Court also recognized that "[a] ban on direct corporate

1 contributions leaves individual members of corporations free to make their own contributions,  
2 and deprives the public of little or no material information.” *Id.* (internal citations omitted). And  
3 the same can be said about a ban on *expenditures* by corporations.

4 Moreover, in examining whether challenged laws are narrowly tailored to further this  
5 interest, the Supreme Court has been particularly deferential to the government in choosing the  
6 means to combat the danger posed by unregulated corporate campaign spending. In *Austin*, the  
7 Court upheld a law that regulated the campaign finance activities of corporations more strictly  
8 than other types of entities; that regulated some categories of corporations more stringently than  
9 others; and that regulated nonprofit corporations and closely held corporations as well as  
10 publicly traded corporations. Given this deferential approach, the provisions of Measure T  
11 related to candidates are valid.<sup>3</sup>

12 **D. THE CANDIDATE EXPENDITURE PROVISION SATISFIES THE**  
13 **REQUIREMENTS OF THE FIRST AMENDMENT**

14 **1. The Candidate Expenditure Provision of Measure T Further the Compelling**  
15 **Government Interest in Curbing Corporate Corruption of the Electoral**  
16 **Process**

17 Plaintiffs argue that the Candidate Expenditure Provisions violate the First Amendment,  
18 asserting that it does not further a compelling governmental interest. Plaintiffs’ argument cannot  
19 be squared with *Austin v. Michigan State Chamber of Commerce, supra.*<sup>4</sup>

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21 <sup>3</sup> Plaintiffs make frequent reference to *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652  
22 (2007). That case addressed the federal government’s express efforts to regulate “issue advocacy,” communications  
23 that refer to, but do not expressly advocate the election or defeat of, a candidate for elective office. Measure T does  
24 not purport to regulate issue advocacy. Rather, it expressly limits itself to spending to promote or oppose local  
25 candidates and measures. Because Measure T only reaches express advocacy, *Wisconsin Right to Life* has no  
26 application here.

27 <sup>4</sup> In asserting that Measure T does not further a compelling interest, Plaintiffs conflate this issue with whether  
28 Measure T is sufficiently narrowly tailored to satisfy the First Amendment. Plaintiffs argue that Measure T is  
underinclusive, because it regulates labor unions and local corporations differently than non-local corporations.  
That issue, however, is appropriately addressed when considering whether Measure T is sufficiently narrowly  
tailored, not the threshold question of whether the County has a compelling government interest in prohibiting non-  
local corporate contributions and expenditures.

1           In *Austin*, the Court upheld a Michigan law prohibiting corporations<sup>5</sup> from making  
2 expenditures in connection with state candidate elections.<sup>6</sup> After referring to the “financial *quid*  
3 *pro quo*” corruption that supports limits on contributions to candidates, the Court recognized that  
4 “Michigan’s regulation aims at a different type of corruption in the political arena: the corrosive  
5 and distorting effects of immense aggregations of wealth that are accumulated with the help of  
6 the corporate form and that have little or no correlation to the public’s support for the  
7 corporation’s political ideas.” 494 U.S. at 659-660.

8           The Court noted that Michigan law grants corporations special advantages that increase  
9 their ability to attract capital and to deploy their resources to maximize the return on their  
10 investments. The Court explained that “these state-created advantages not only allow  
11 corporations to play a dominant role in the Nation’s economy, but also permit them to use  
12 resources amassed in the economic marketplace to obtain an unfair advantage in the political  
13 marketplace.” *Id.* at 659 (internal quotations omitted.) After noting that the Michigan law  
14 “ensures that expenditures reflect actual public support for the political ideas espoused by  
15 corporations,” the Court held that the Michigan law furthers a compelling government interest:

16                     Corporate wealth can unfairly influence elections when it is  
17                     deployed in the form of independent expenditures, just as it can  
18                     when it assumes the guise of political contributions. We therefore  
19                     hold that the State has articulated a sufficiently compelling  
                          rationale to support its restriction on independent expenditures by  
                          corporations.

20 *Id.* at 660.

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22 <sup>5</sup> In contrast to *Austin*, in *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court invalidated provisions of a federal  
23 statute that broadly imposed limits on independent expenditures on behalf of candidates for federal office. The  
24 Court concluded that such independent expenditures do not pose the same type of quid pro quo dangers as  
contributions to the candidate, and therefore no compelling government purpose was furthered by the prohibition.  
*Id.* at 45. Such contributions are not at issue here.

25 <sup>6</sup> The Michigan law also prohibited corporations from making contributions to state candidates, but that provision  
26 was not challenged. *Austin*, 494 U.S. at 655. Similarly, federal law prohibits corporations from making both  
27 contributions and expenditures in connection with some federal elections. 2 U.S.C. § 441b(a). Accordingly, the  
28 suggestion by Plaintiffs that laws that prohibit corporate contributions as well as expenditures are invalid is  
misguided. Indeed, it would be nonsensical to suggest that the government must choose between curbing the  
corruption posed by corporate expenditures, or the danger threatened by corporate contributions, but may not attach  
both evils.

1 Measure T furthers the same compelling interest that was at stake in *Austin*. As was true  
2 in *Austin*, state law grants extensive advantages to corporations, allowing them “to use resources  
3 amassed in the economic marketplace to obtain an unfair advantage in the political marketplace.”  
4 *Austin*, 494 U.S. at 659. In California, these advantages include a corporation’s limited liability  
5 and its potential for perpetual life. *See, e.g., Merco Constr. Engineers, Inc. v. Municipal Court*,  
6 21 Cal. 3d 724, 729 (1978) (stating the “fundamental” principle that a “corporation is a distinct  
7 legal entity separate from its stockholders and from its officers”); *see also Miller v. McColgan*,  
8 17 Cal. 2d 432, 436 (1941) (stating that corporation “has a personality distinct from that of its  
9 shareholders”); Cal. Corp. Code § 200(c) (stating “[t]he corporate existence begins upon the  
10 filing of the articles and continues perpetually, unless otherwise expressly provided by law or in  
11 the articles”).

12 Given this reality, in adopting Measure T, Humboldt County voters expressly found that  
13 “corporate contributions in elections are imminently undermining our democratic processes . . . ,  
14 pose a genuine threat to the confidence of the citizenry of Humboldt County in our government, .  
15 . . [and] are causing the people of Humboldt County to lose confidence in the integrity of our  
16 elections and in our government.” Measure T, § 3 (uncodified). These concerns were also  
17 expressed in the ballot arguments submitted in support of Measure T. *See Cikes Decl., Exhibit*  
18 *A*. Accordingly, the Candidate Expenditure Provisions are intended to, and do, prevent “the  
19 corrosive and distorting effects of immense aggregations of wealth that are accumulated with the  
20 help of the corporate form and that have little or no correlation to the public’s support for the  
21 corporation’s political ideas.” As such, they further an established compelling government  
22 interest.

23 **2. The Candidate Expenditure Provision Is Narrowly Tailored to Further the**  
24 **County’s Compelling Government Interest to Combat Corporate Corruption**  
25 **of Candidate Elections**

26 Measure T prohibits all non-local corporations from making independent expenditures for  
27 or against local candidates, while allowing all local corporations to make such expenditures. In  
28 doing so, Measure T recognizes three types of local corporations, and defines each differently,

1 based on its unique purpose and structure: (1) for-profit corporations; (2) nonprofit corporations;  
2 and (3) labor unions subject to the NLRA.<sup>7</sup> Plaintiffs argue that because Proposition T does not  
3 regulate incorporated labor unions in a manner similar to for-profit corporations, Measure T is  
4 not narrowly tailored.<sup>8</sup> Plaintiffs also take issue with the Measure T's different treatment of local  
5 and non-local corporations. Plaintiffs' arguments fail under the *Austin* Court's deference to the  
6 means chosen by government agencies' efforts to curb the corrosive effect of corporate spending  
7 on candidate elections.

8 To begin with, the underlying premise of Plaintiffs' argument with respect to "corporate  
9 unions" is demonstrably false.<sup>9</sup> Plaintiffs assume that some labor organizations subject to the  
10 NLRA are incorporated, and with respect to those incorporated unions, Plaintiffs argue Measure  
11 T is invalid because it regulates them differently than other corporations. Plaintiffs, however,  
12 provide no factual support for their assumption that some unions incorporate.<sup>10</sup> To the contrary,  
13 as one expert on labor unions testifies, NLRA unions do not, in fact, incorporate. Bodine Decl.,  
14 ¶2. In fact, in his decades of work with labor unions, he has never encountered an incorporated  
15 union. *Id.*, ¶3. Accordingly, Plaintiffs entire "union corporation" argument fails. As the *Austin*  
16 Court held, distinguishing between corporations on the one hand, and unincorporated unions on  
17 the other, is entirely valid. 494 U.S. at 665-666.

18 But Plaintiffs' argument would still fail even if incorporated unions actually existed.  
19 Plaintiffs' desire for absolute symmetry between the treatment of unions and for-profit  
20 corporations ignores the Supreme Court's observation that "sometimes the grossest  
21

22 \_\_\_\_\_  
23 <sup>7</sup> Although Measure T does not expressly refer to for-profit corporations, the measure's definitions lead to that result.  
24 Measure T broadly defines "corporation," and then separately defines and regulates nonprofit corporations and labor  
25 unions, leaving for-profit corporations subject to the strictest regulation.

26 <sup>8</sup> Plaintiffs do not address the issue of narrow tailoring in a distinct section of their brief. Rather, it is addressed both  
27 in the section dealing with the County's compelling governmental interest, and the section asserting that Measure T  
28 violates Equal Protection.

<sup>9</sup> Measure T makes no reference to incorporated unions. As the proceeding discussion makes clear, there is a  
compelling reason for this omission.

<sup>10</sup> Plaintiffs cite 29 U.S.C. § 152(5), which defines "labor organization" for the purpose of the NLRA. While stating  
that it applies to a labor "organization of any kind," that section does not make specific reference to corporations.

1 discrimination can lie in treating things that are different as though they were exactly alike.”  
2 *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). Indeed, this principle was no doubt in play when  
3 the *Austin* Court determined that the Michigan law was narrowly tailored, even though it treated  
4 corporations such as the Chamber of Commerce differently than other types of entities. 494 U.S.  
5 at 665-666.

6 Critically, the *Austin* Court recognized that in seeking to prevent the corrupting  
7 influences of corporate funding of campaigns, the Court must grant deference to the government  
8 to make distinctions between different types of corporations, and may aim precisely at those  
9 types of corporations that present the most serious corrupting threat.<sup>11</sup> Accordingly, the Court  
10 rejected the Chamber’s argument that the Michigan law was invalid because it treated media  
11 corporations differently than other types of corporations. “Although all corporations enjoy the  
12 same state-conferred benefits inherent in the corporate form, media corporations differ  
13 significantly from other corporations in that their resources are devoted to the collection of  
14 information and its dissemination to the public . . . . A valid distinction thus exists between  
15 corporations that are part of the media industry and other corporations . . . .” 494 U.S. at 667-  
16 668; *see also Fed. Election Comm. v. National Right to Work Committee*, 459 U.S. 197, 210  
17 (1982) (in reviewing restrictions on corporate campaign spending, Court would not “second  
18 guess a legislative determination as to the need for prophylactic measures where corruption is the  
19 evil feared”).

20 Similarly, Humboldt voters have chosen to make a distinction between labor unions and  
21 for-profit corporations, based on the substantial differences between those two types of  
22 organizations, and their considered judgment that the latter poses a more significant risk than the  
23 former. Again, the *Austin* decision supports the ability of voters to make that judgment.

24 \_\_\_\_\_  
25 <sup>11</sup> In discussing *Austin*, Plaintiffs note that Justice Scalia has expressed his displeasure with the result reached by the  
26 majority. Indeed, at times Plaintiffs' brief reads as though it were premised on Justice Scalia's dissent, rather than  
27 the majority decision in *Austin*. Compare Plaintiffs' Brief at p. 12 (“[B]arring nonlocal voices from local elections  
28 only serves to narrow the public debate.”) with Justice Scalia's *Austin* dissent (“[T]he Court today endorses the  
principle that too much speech is an evil that the democratic majority may proscribe”), 494 U.S. at 679 (Scalia, J.,  
dissenting). The *Austin* decision remains binding precedent, the wishes of Justice Scalia and Plaintiffs  
notwithstanding.

1           There, the Chamber of Commerce argued that the Michigan law was not narrowly  
2 tailored because it does not regulate the independent expenditures of unincorporated labor  
3 unions. In language that applies equally regardless of whether a union is incorporated, the Court  
4 concluded that Michigan law permissibly distinguished between labor unions and corporations:

5                     [L]abor unions differ from corporations in that union members  
6 who disagree with a union’s political activities need not give up  
7 full membership in the organization to avoid supporting its  
8 political activities . . . . An employee who objects to a union’s  
9 political activities can decline to contribute to those activities,  
10 while continuing to enjoy the benefits derived from the union’s  
11 performance of its duties as the exclusive representative of the  
12 bargaining unit on labor-management issues. As a result, the funds  
13 available for a union’s political activities more accurately reflect  
14 members’ support for the organization’s political views than does a  
15 corporation’s general treasury. Michigan’s decision to exclude  
16 unincorporated labor unions from the scope of § 54(1) is therefore  
17 justified by the crucial differences between unions and  
18 corporations.

19 494 U.S. at 665-666.

20           Moreover, the *Austin* Court recognized that corporations, with their state-conferred  
21 advantages of corporate structure are “by far the most prominent example of entities that enjoy  
22 legal advantages enhancing their ability to accumulate wealth.” *Id.* at 665, citing *Fed. Elections*  
23 *Comm.*, 479 U.S. at 258, n. 11. The Court determined that “excluding from the statute’s  
24 coverage unincorporated entities that also have the capacity to accumulate wealth does not  
25 undermine its justification for regulating corporations.” *Id.*

26           That principle would also justify the difference in treatment between incorporated unions  
27 – if they in fact existed – and for-profit corporations. Humboldt County voters made the  
28 considered determination that for-profit corporations were those most likely to be able to  
leverage the legal advantages corporations are granted by California law to enhance their  
accumulation of wealth, and the corresponding potential to corrupt the political process. This  
further supports the conclusion that the Candidate Expenditure Provision is narrowly tailored.

          Similarly, under the deferential *Austin* approach, Measure T’s exemption of local  
corporations from its coverage does not alter the conclusion that the measure is narrowly

1 tailored. Just as the legislature in *Austin* made the determination that corporations posed a more  
2 serious risk of harm than unions, that closely held corporations should be treated the same as  
3 publicly held corporations, and that media corporations should be regulated differently than other  
4 corporations, Humboldt County voters made the considered determination that non-local  
5 corporations are less accountable and more likely to present a corrupting influence on local  
6 elections than corporations located within the County’s boundaries. The fact that the County has  
7 taken this additional step in an effort to more precisely target the specific category of enterprise  
8 that the voters have determined to be the most serious threat of corporate corruption does not  
9 render Measure T invalid. *See Fed. Election Comm. v. National Right to Work Committee,*  
10 *supra*, 459 U.S. at 209 (“This careful legislative adjustment of the federal elections laws, in a  
11 cautious advance, step by step, to account for the particular legal and economic attributes of  
12 corporations warrants considerable deference . . . . [I]t also reflects a permissible assessment of  
13 the dangers posed by those entities to the electoral process.”) (Internal quotations and citations  
14 omitted.) Indeed, federal law makes a similar distinction with respect to contributors residing  
15 outside the boundaries of the United States. *See* 2 U.S.C. § 441e (prohibiting foreign nationals  
16 from making contributions to federal and local candidates.)

17       Indeed, the *Austin* Court makes clear that to justify Measure T’s focus on non-local  
18 corporations, the County need only demonstrate that they “present the potential for distorting the  
19 political process.” 494 U.S. at 661 (upholding application of challenged law to closely held  
20 corporations based on potential that their potential to distort the electoral process). As Plaintiffs  
21 recognize, given the definition of “local corporation,” the “vast majority” of corporations are  
22 subject to Measure T. (Plaintiffs’ Brief at p. 13.) Indeed, under that definition, only very small  
23 corporations with few employees will likely qualify as local corporations. Under *Austin*, the  
24 Court should uphold the voters’ judgment that these small, locally located corporations pose the  
25 least danger of utilizing their corporate status to amass wealth and corrupt the County’s political  
26 system.

27       Finally, the conclusion that Measure T is narrowly tailored is supported by an additional  
28 feature of Measure T. The measure expressly provides that it does not prevent “individual

1 corporate employees, trustees, directors, or shareholders from voluntarily and without coercion  
2 by the corporation contributing their own personal money or uncompensated services in elections  
3 to the extent allowed under state and federal campaign finance laws.” Measure T, § 9.  
4 Accordingly, despite Plaintiffs’ suggestions to the contrary, those individuals who collectively  
5 comprise officers, shareholders and employees of the non-local corporation are free to make  
6 contributions to candidates, or independent PACs formed to support candidates. *See Austin*, 494  
7 U.S. at 660-661 (“Because persons contributing to [a PAC] understand that their money will be  
8 used solely for political purposes, the speech generated accurately reflects contributors’ support  
9 for the corporation’s political views.”)<sup>12</sup> Plaintiffs’ ominous rhetoric about non-local  
10 corporations being left without a voice is without merit.

11 **3. The Candidate Contribution Provisions of Measure T Easily Satisfy the First**  
12 **Amendment**

13 Although recognizing that the government’s ability to regulate campaign contributions is  
14 significantly broader than its authority to regulate expenditures, Plaintiffs nonetheless argue that  
15 the Candidate Contribution Provisions violate the First Amendment. Just five years ago,  
16 however, the United States Supreme Court upheld a federal prohibition on corporate  
17 contributions to candidates. *Fed. Election Comm. v. Beaumont*, 539 U.S. at 146. Under  
18 *Beaumont*, the Candidate Contribution Limit is valid.

19 The *Beaumont* Court, recounting the long history of bans on corporate contributions,  
20 began by noting that “[a]ny attack on the federal prohibition of direct corporate political  
21 contributions goes against the current of a century of congressional efforts to curb corporations’  
22 potentially deleterious influences on federal elections . . . .” 539 U.S. at 152. The Court  
23 recognized that “[w]ithin the realm of contributions generally, corporate contributions are  
24 furthest from the core of political expression,” and accordingly rejected the argument that  
25

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26 <sup>12</sup> The Michigan law challenged in *Austin* permitted corporations to form and control PACs that could accept and  
27 expend funds contributed by third parties. Measure T neither expressly authorizes nor prohibits the formation of  
28 such PACs. To the extent that the constitutionality of Measure T turns on the ability of corporations to form such  
PACs, the Court should construe the measure to permit such PACs. *See Buckley v. Valeo*, 424 U.S. at 43-44  
(construing federal campaign finance law to avoid invalidity on vagueness grounds).

1 regulations on contributions are subject to strict scrutiny, instead noting that restrictions on  
2 contributions are “subject to relatively complaisant review under the First Amendment.” 539  
3 U.S. at 161-162 and n.8. The Court emphasized that “deference to legislative choice is  
4 warranted particularly when Congress regulates campaign contributions, carrying as they do a  
5 plain threat to political integrity and a plain warrant to counter the appearance and reality of  
6 corruption and the misuse of corporate advantages.” 539 U.S. at 155.<sup>13</sup>

7 Indeed, the Ninth Circuit has gone further in upholding laws banning corporate  
8 contributions. In *Jacobus v. Alaska*, 338 F.3d 1095 (2003), the court upheld a state law ban on  
9 corporate “soft money” contributions, funds contributed to a political party that are not expressly  
10 earmarked to influence the election of candidates. *Id.* at 1121-22.

11 These established principles apply with equal force here. The Candidate Contribution  
12 Provision is aimed at curbing non-local corporations’ improper influences on County candidate  
13 elections. Accordingly, that provision – like the bans in *Beaumont* and *Jacobus* – serves a  
14 sufficiently strong government interest to satisfy the First Amendment. And for the reasons  
15 discussed above with respect to expenditures, the Candidate Contribution Provisions are  
16 sufficiently tailored to achieve that goal.

17 **E. MEASURE T DOES NOT VIOLATE EQUAL PROTECTION**

18 Finally, Plaintiffs argue that Measure T violates their rights under the Equal Protection  
19 Clause. In doing so, they do no more than simply recast their First Amendment argument, again  
20 attacking the distinction Measure T draws between for-profit corporations and nonexistent  
21 incorporated labor unions. Once again, *Austin* defeats Plaintiffs’ argument.<sup>14</sup>

22  
23 \_\_\_\_\_  
24 <sup>13</sup> The Court’s deference to legislative judgments in selecting the proper means for guarding against corruption of the  
25 electoral process has been extended beyond contributions by corporations. *Nixon v. Shrink Missouri Government  
PAC*, 528 U.S. 377 (2000) (declining to second guess voter approved initiative that severely restricted the  
permissible amounts of contributions to state office).

26 <sup>14</sup> To the extent that Plaintiffs suggest that the candidate contribution provisions of Measure T are subject to strict  
27 scrutiny under the Equal Protection Clause, when they are subject to a much more lenient standard under the First  
28 Amendment, Plaintiffs are mistaken. *Jones Intercable of San Diego v. City Chula Vista*, 80 F.3d 320, 327 (9th Cir.  
1996) (because challenged statute was content-neutral, it did not “trigger strict scrutiny under either the First  
Amendment or the Equal Protection Clause”).

1 In *Austin*, the Michigan Chamber of Commerce argued that the challenged law violated  
2 its rights under the Equal Protection Clause because of the distinctions drawn by the statute. The  
3 Court gave the argument short shrift, noting that it had already decided in its First Amendment  
4 analysis that the distinctions drawn by the statute were valid. That conclusion is a specific  
5 application of the more general recognition that when a statute is challenged on both First  
6 Amendment and Equal Protection grounds, resolution of the First Amendment issue usually  
7 dictates the outcome of the Equal Protection Challenge. *Morales-Santiago v. Hernandez-Perez*,  
8 488 F.3d 465, 471 (1st Cir. 2007) (declining to apply equal protection analysis in light of overlap  
9 between plaintiffs' First Amendment and Equal Protection claims). Given that Plaintiffs merely  
10 repeat their union corporation argument in the Equal Protection analysis, that principle applies  
11 here.

12 As discussed above, the alleged disparate treatment of for-profit corporations and  
13 "corporate labor unions" is wholly illusory. Moreover, the distinctions drawn by Measure T are  
14 narrowly tailored to further a compelling government interest. That analysis applies with equal  
15 force to Plaintiffs' Equal Protection claims.

16 **IV. CONCLUSION**

17 For all the foregoing reasons, Plaintiffs' application for a temporary restraining order  
18 should be denied. Further, as Plaintiffs have failed to establish that, absent immediate injunctive  
19 relief, they would suffer immediate irreparable harm, their request for an order to show cause as  
20 to why a preliminary injunction should not issue should likewise be denied.

21  
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