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Undermining Popular Government: Tobacco Industry Political Expenditures in California
1993-1994

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Undermining Popular Government: Tobacco Industry Political Expenditures in California 1993-1994

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This report is the latest in a series of Institute for Health Policy Studies reports that analyze tobacco industry campaign contributions, lobbying, and other political activity in California. The previous reports are:

M. Begay and S. Glantz. Political Expenditures by the Tobacco Industry in California State Politics UCSF IHPS Monograph Series, 1991.

M. Begay and S. Glantz. Political Expenditures by the Tobacco Industry in California State Politics from 1976 to 1991. UCSF IHPS Monograph Series, 1991.

B. Samuels and S. Glantz. Tobacco Control Activities and the Tobacco Industry's Response in California Communities, 1990-1991. UCSF IHPS Monograph Series, 1991.

M.E. Begay and S.A. Glantz. Undoing Proposition 99: Political Expenditures by the Tobacco Industry in California Politics in 1991. UCSF IHPS, 1992.

S.A. Glantz and L.R.A. Smith. The effect of ordinances requiring smoke free restaurants on restaurant sales in California. UCSF IHPS Monograph Series, 1992.

M.E. Begay, M. Traynor, S. A. Glantz. Extinguishing Proposition 99: Political Expenditures by the Tobacco Industry in California Politics in 1991-1992. UCSF IHPS, 1992.

M.E. Begay, M. Traynor, S.A. Glantz. Tobacco Industry Political Expenditures in California State Politics, January-June, 1993. UCSF IHPS, 1993.

M.E. Begay, M. Traynor, S.A. Glantz. Tobacco Industry Political Expenditures in California in the 1991-1992 Election. UCSF IHPS, 1993.

M.E. Begay, M. Traynor, S.A. Glantz. The Twilight of Proposition 99: Reauthorization of Tobacco Education Programs and Tobacco Industry Political Expenditures in 1993. UCSF IHPS, 1994.

H. Macdonald and S. Glantz. Analysis of the Smoking and Tobacco Products, Statewide Regulation Initiative Statute. UCSF IHPS, 1994.

H. Macdonald, M. Traynor, S. Glantz. California's Proposition 188: An Analysis of the Tobacco Industry's Political Advertising Campaign. UCSF IHPS, 1994.

EXECUTIVE SUMMARY

The tobacco industry's total political expenditures in California increased during the 1994 election to \$24,662,674 compared with \$7,645,519 spent during the 1992 election.

Compared to the 1992 election, the tobacco industry contributions to the legislature and to political parties and committees decreased to \$723,542 and \$117,800 respectively, whereas lobbying expenditures increased to \$4,198,077.

Thirty current members of the Legislature (7 veterans and 23 freshmen) have never received tobacco industry money.

The top recipient of tobacco industry money in California Legislature is Assembly Speaker Willie Brown (and committees he controls), who received \$152,975 in 1994, for a total of \$659,492 since 1980.

Tobacco industry contributions appeared to shift away from Democrats to Republicans; contributions to Democratic legislative officeholders and candidates decreased 37% between 1992 and 1994, while contributions to Republican officeholders and candidates increased 5.7%.

Tobacco industry support for candidates challenging incumbents shifted to Republicans. In 1994, the tobacco industry supported 7 challengers, all of whom were Republicans, with contributions totaling \$128,000. This pattern contrasts with the 1992 election, when it supported 8 challengers, 6 of whom were Democrats, with contributions totaling \$4,424.

The industry raised \$18.9 million trying to pass Proposition 188. By defeating Proposition 188, California voters showed their strong and continuing support for tobacco control.

Proposition 188 was essentially the same as Assembly Bill (AB 996), which passed the Assembly in 1993. A comparison of Assembly member votes on AB 996 with Assembly district votes on Proposition 188 shows that 41 members of the Assembly voted against the views of their constituents while 35 voted with their constituents.

The implementation of Proposition 99's tobacco education program has cost the tobacco industry approximately 1.57 billion packs of cigarettes not sold, worth \$2.1 billion in lost sales through June 30, 1994.

Assembly Bill 816, which was the budget bill for Proposition 99 programs in the 1994-1995 fiscal year, reduced funding for tobacco education to 13.3% and the Research Account to 0.8%. These appropriations failed to meet the voter mandated 20% and 5% respectively. This failure to fully fund the Health Education programs can be expected to lead to 234 million additional packs of cigarettes being smoked.

Americans for Nonsmokers' Rights, American Lung Association and the American Cancer Society, filed and won a law suit, to end the diversion of Proposition 99 funds from tobacco education and research programs to medical care; Governor Wilson is appealing.

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INTRODUCTION

The tobacco industry spent \$24,662,674 on California state political activity in the 1994 election. These expenditures had a major impact on the balance of power within the State Legislature, particularly the Assembly. In addition, the tobacco industry mounted an unsuccessful effort to enact an initiative (Proposition 188) that would have overturned California's local tobacco control ordinances. The tobacco industry's political agenda continues to dominate the Legislature. The Legislature enacted, and the Governor signed, Assembly Bill 816 (AB 816), which illegally diverted \$132.3 million (over two years) from funds designated by the voters for anti-tobacco education and research in Proposition 99. A comparison of the popular vote on Proposition 188 with votes on an essentially identical measure in the Assembly (Assembly Bill 996) also demonstrates the continuing dominance of the tobacco industry's policy agenda in the Legislature; more members of the Assembly voted against their constituents than with them.

The total amount of tobacco industry campaign contributions made to legislative office holders and candidates (directly or through party-controlled committees) was \$841,342, a slight decrease compared to contributions made in the 1992 election. There was, however, a discernable shift in contributions away from the Democrats to the Republicans; contributions to Democratic legislative office holders and candidates dropped 37% compared to the 1991-1992 election, whereas contributions to Republicans increased 6%. Moreover, the tobacco industry's large, last-minute contribution to Republican Steve Kuykendall helped him defeat Long Beach Assembly Democrat Betty Karnette in the 54th Assembly District. Her defeat initiated a string of events that significantly weakened Democratic Assembly Speaker Willie Brown and may lead to him ultimately losing the Speakership. This situation is ironic, given the strong support for tobacco industry interests that have been manifest in the California Assembly under the leadership of Speaker Brown. Speaker Brown remains the leading legislative recipient of tobacco industry campaign contributions in the nation, \$152,975 (\$138,975 in direct contributions and \$14,000 in contributions to the Assembly Democratic Victory Fund).

Legislation to implement Proposition 99, the initiative enacted by voters in 1988 that increased the state tax on tobacco and allocated 20% of the additional revenues to anti-tobacco education and 5% to research on tobacco-related disease, continued to be a major focus of tobacco policy making in the California Legislature. From passage through June 30, 1994, the Proposition 99-mandated tobacco education programs reduced tobacco consumption by 1.57 billion packs of cigarettes below historical trends, worth \$2.14 billion in pre-tax sales to the tobacco industry. While this reduction in tobacco use represented a major public health accomplishment, it also represented a tremendous political challenge to the tobacco industry. Through major campaign contribution and lobbying efforts, together with *de facto* support from powerful interests in the medical industry, most notably the California Medical Association, the tobacco industry succeeded in getting one quarter of the tobacco education funds diverted into medical services. These diversions probably led to approximately 523 million extra packs of cigarettes being consumed, worth approximately \$713 million in pre-tax sales. These high potential losses to the tobacco industry help explain why the tobacco industry continues to spend more money (per member) on the California Legislature than it does on Congress.

Budget reauthorization of Proposition 99 programs was again before the Legislature in 1994.

The Legislature enacted AB 816 that further reduced Proposition 99 funds for tobacco education and research programs during the 1994-1995 and 1995-1996 fiscal years. Despite language in Proposition 99 specifying how the new revenues were to be spent, the Legislature only allocated 13.3% of revenues for tobacco education and 0.8% for tobacco research. Subsequent law suits by the American Lung Association, the American Cancer Society, and the Americans for Nonsmokers' Rights led to a ruling that the Legislature had illegally diverted \$128 million of Proposition 99 funds into medical services. Diversions of funds would significantly reduce the effectiveness of California's tobacco control program, with the attendant increase in tobacco consumption and, so, industry sales and profits. Governor Wilson is appealing this decision, and the California Medical Association has submitted an *amicus curiae* brief in support of the diversions.

In 1993, under Speaker Brown's leadership, the Assembly passed Assembly Bill 996 (AB 996), a tobacco industry bill that would have preempted all local tobacco control regulation in California and replaced it with a weak, unenforceable statewide standard. After AB 996 died in the Senate, Philip Morris and other tobacco companies spent \$18,944,675 in an unsuccessful effort to enact AB 996 through the initiative process as Proposition 188. It lost by 71% to 29% statewide and lost in every county in California. Proposition 188 only won (by 51.8%) in one Assembly District (Assembly District 48 in Los Angeles). Since Proposition 188 and AB 996 were essentially the same, it provided an opportunity to compare votes of legislators with their constituents on the same measure. Forty-one members of the Assembly voted against their constituents and 35 members of the Assembly voted with their constituents.

Assembly Bill 13 (AB 13), which restricted smoking in workplaces, was passed and signed by the governor. AB 13 enjoyed strong support from most, but not all, tobacco control organizations. Supporters stated that it created a strong statewide smoke free workplace standard. Critics objected to the fact that it preempted weaker local tobacco control ordinances and lacked meaningful enforcement provisions. The tobacco industry opposed AB 13, but did not appear to mount a major campaign against it. The Legislature also enacted Senate Bill 1927, non-preemptive legislation that restricts youth access to tobacco products.

The tobacco industry can be expected to continue as a major player in Sacramento, as the future of Proposition 99 continues to be debated as a result of the successful lawsuit that overturned AB 816.

TOBACCO INDUSTRY POLITICAL EXPENDITURES

We obtained data on tobacco industry statewide political expenditures from disclosure statements filed with the California Secretary of State's Political Reform Division. We included the following organizations as "tobacco industry" sources of funds: American Tobacco Company, California Distributors Association (formerly known as the California Association of Tobacco and Candy Distributors Political Action Committee), Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris USA and Philip Morris Management Corporation, RJR Nabisco Inc., Smokeless Tobacco Council, Tobacco Industry Labor and Management Committee, The Tobacco Institute, and U.S. Tobacco Inc. We did not include contributions to legislators, political parties, and legislator-controlled committees of some non-tobacco subsidiaries of these companies, such as Philip Morris' Kraft General Foods and Miller Beer. There is a possibility that

some tobacco-related contributions may have been made through these organizations. In addition, RJ Reynolds Tobacco Company lobbying statements for the third and fourth quarters of 1994 were not on file with the Secretary of State. The failure to include these lobbying expenses leads us to underestimate lobbying expenditures by approximately \$130,000.

Total tobacco industry political expenditures in California increased during the 1993-1994 election cycle to \$24,662,674 compared with \$7,670,520 spent during 1991-1992 cycle. The bulk of this increase was the \$18,944,675 the industry spent in its unsuccessful attempt to enact Proposition 188, which would have overturned local tobacco control efforts throughout California. Reported campaign contributions to members of the legislature (both directly and through political parties and committees) from the tobacco industry dropped in relation to the last election, totaling \$841,342 in 1993-1994, compared to \$1,274,287 in 1991-1992 (Table 1 and Figure 1). Reported expenditures for lobbying increased to \$4,198,077, a 20% increase over the \$3,504,037 spent in 1991-1992. (Adding an estimated \$130,000 from Reynolds to compensate for the missing lobbying expenditure reports for the third and fourth quarters would bring the total to \$4.3 million.)

Tobacco Policy Score for Legislators

We computed a “tobacco policy score” for current members of the Legislature, using the same approach as in our previous report [1]. Data from the 1991-1992 election demonstrated that

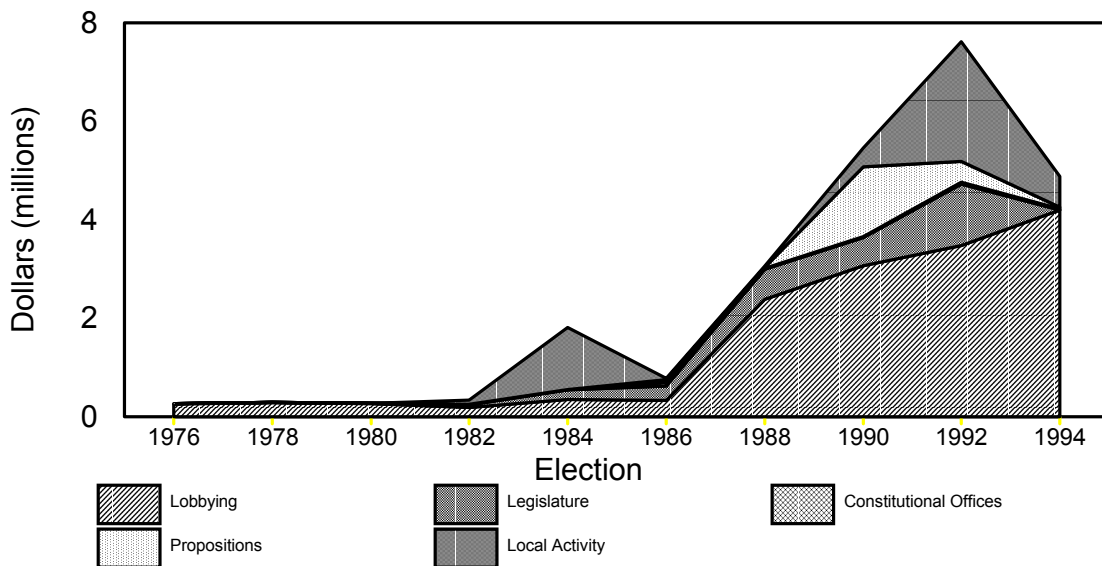


Figure 1. Tobacco industry lobbying expenditures continued to increase, while campaign contributions to legislators dropped, because of a large drop in contributions to Democrats. (The \$21.4 million the tobacco industry spent to fight Proposition 99 in 1988 and the \$18.9 million spent to enact Proposition 188 in 1994 are not included in this graph.)

TABLE 1. SUMMARY OF TOBACCO INDUSTRY POLITICAL EXPENDITURES IN CALIFORNIA, 1976-1994

	1976-1990	1992	B/W	PM	RJR	STC	CDAPAC	TI	UST	1994	Total
Legislature	\$1,585,630	\$925,099	\$1,500	\$442,725	\$131,017	\$23,000	\$27,550	\$72,750	\$25,000	\$723,542	\$3,234,271
Political Party	\$287,000	\$349,188		\$65,600	\$17,200		\$4,500	\$30,500		\$117,800	\$753,988
Constitutional	\$135,950	\$37,500	\$0	\$17,500	\$8,900	\$0	\$999	\$2,500	\$0	\$29,899	\$203,349
Local Activity (1)	\$1,771,490	\$2,425,540	\$0	\$150,622	\$107,971	\$0	\$0	\$83,749	\$1,500	\$618,681	\$4,815,711
Statewide initiatives (2)	\$31,748,447	\$409,156	\$1,305,195	\$12,603,957	\$3,395,656	\$0	\$0	\$30,000	\$0	\$18,974,675	\$51,132,278
Lobbying (3)	\$7,140,069	\$3,504,037	\$199,682	\$2,207,989	\$537,508	\$185,776	\$88,004	\$545,882	\$26,500	\$4,198,077	\$14,842,183
Other	\$10,000	\$20,000									\$30,000
Total	\$42,678,586	\$7,670,520	\$1,506,377	\$15,488,393	\$4,198,252	\$208,776	\$121,053	\$765,381	\$53,000	\$24,662,674	\$75,011,780
Total w/o Prop. 188	\$42,678,586	\$7,670,520	\$201,182	\$2,909,436	\$807,596	\$208,776	\$121,053	\$735,381	\$53,000	\$5,718,000	\$56,043,766

1. Other contributions to local activities include contributions made by Tobacco Consumers, Distributors and Producers Against Unfair Sales Taxes, the Oregon Executive Committee, Kraft Foods, Miller Brewery, Miller Brands, and loans from the Arizona Executive Committee. All aforementioned groups are associated with the tobacco industry.
2. Other contributions to Statewide Initiatives include the contribution of the National Smokers' Alliance, a smokers' rights group sponsored by Philip Morris.
3. Other contributions to Lobbying include lobbying expenditures of the Tobacco Industry Labor Management Committee.

legislators who received larger tobacco industry campaign contributions had more pro-tobacco policy scores and that more pro-tobacco legislators were rewarded with larger campaign contributions [2]. The score is obtained by polling individuals knowledgeable about the Legislature and tobacco policy to score each member on a scale of 0 to 10, with 0 being extremely pro-tobacco industry and 10 being extremely pro-tobacco control. The average for each individual legislator is reported. The newly elected legislators may not have received a score, depending on the scorer's knowledge of that person's position on tobacco policy.

Legislative Officeholders and Candidates

During the 1993-1994 election, tobacco industry contributions to 98 legislative officeholders and candidates totaled \$841,342 (\$723,542 made directly and \$117,800 made through political parties and committees). Table 2 presents the top 20 recipients of tobacco industry campaign contributions currently serving in the Legislature.

TABLE 2. CALIFORNIA'S TOP 20 RECIPIENTS OF TOBACCO INDUSTRY CONTRIBUTIONS CURRENTLY IN THE LEGISLATURE							
Legislator	Party	House	1976-1990	1992	1994	Total	Tobacco Policy Score
				\$221,36			
Brown, W.	D	A	\$240,150	7	\$138,975	\$600,492	0.67
Maddy	R	S	\$61,750	\$36,000	\$30,225	\$127,975	2.43
Kuykendall	R	A			\$125,000	\$125,000	2.00
Lockyer	D	S	\$27,000	\$5,500	\$17,475	\$49,975	4.29
Brulte	R	A	\$1,000	\$9,500	\$34,975	\$45,475	3.17
Johnson, Ross	R	A	\$20,750	\$8,500	\$9,000	\$38,250	1.75
Dills	D	S	\$16,250	\$10,500	\$10,250	\$37,000	5.00
Hannigan	D	A	\$23,000	\$12,250	\$0	\$35,250	6.29
Costa	D	A	\$9,500	\$15,000	\$8,000	\$32,500	4.33
Boatwright	D	S	\$30,100	\$1,500	\$0	\$31,600	7.00
Calderon	D	S	\$7,600	\$8,000	\$15,500	\$31,100	1.33
Alquist	D	S	\$23,650	\$5,000	\$2,000	\$30,650	5.67
Leslie	R	S	\$19,000	\$5,250	\$4,750	\$29,000	4.33
Polanco	D	A	\$6,250	\$14,150	\$7,650	\$28,050	2.50
Tucker, Jr.	D	A	\$2,000	\$7,000	\$18,000	\$27,000	0.83
Peace	D	S	\$6,000	\$4,500	\$14,500	\$25,000	4.33
Rogers	R	S	\$21,750	\$2,000	\$1,000	\$24,750	3.60
O'Connell	D	A	\$8,000	\$13,500	\$1,000	\$22,500	6.80
Beverly	R	S	\$14,500	\$7,000	\$0	\$21,500	2.00
Lewis, John R.	R	S	\$10,750	\$7,500	\$3,000	\$21,250	3.20
				\$394,01			
Total			\$549,000	7	\$441,300	\$1,384,317	

Probably because the successful implementation of Proposition 99's tobacco education program has cost the tobacco industry over \$1.1 billion in sales through June, 1992 [3] and \$2.1

billion in sales through June 30, 1994, the tobacco industry continues to make political contributions in California more intensively than in Congress. The California Legislature has authority over how Proposition 99 funds are expended and has diverted these funds from tobacco control to medical services.

Comparing contributions made to legislators in California to contributions made to current members of Congress since 1985 [4], the top three recipients in California are Assembly members Democrat Willie Brown and Republican Kuykendall (elected in 1994), and Republican Senator Maddy, who received \$600,492, \$125,000 and \$127,975, respectively. These amounts exceeded the amounts given to the top three recipients in Congress: Representatives Thomas Bliley (R-VA) and Charley Rose (D-NC), and Senator Wendell Ford (D-KY) who received \$111,476, \$96,800 and \$87,057 respectively, during the same time period. All three members of Congress represent tobacco states. (Of the top ten recipients of tobacco industry money in Congress, the first nine are from tobacco states). House Speaker Newt Gingrich received a total of \$41,000, compared to \$568,092 received since 1985 by Speaker Willie Brown.

Fifty current members of the Legislature did not receive any tobacco industry money during this election (Table A-1); 26 were incumbent legislators, 5 were challengers (i.e., running against incumbents), and 19 were running for open seats. These 26 incumbents received an average 7.0 tobacco policy score, signifying that they are more inclined to favor tobacco control policies. Thirty current members (7 veterans and 23 freshman) out of the 120 members of the Legislature have never accepted campaign contributions from the tobacco industry (Table 3). The legislators who had established a record on tobacco had an average tobacco policy score of 6.68, a pro-tobacco control position.

Legislative Leaders

Assembly Speaker Willie Brown is still the largest recipient of tobacco industry contributions in California. He received a total of \$138,975 in this election cycle, increasing his grand total to \$600,492 since 1980, when he accepted his first tobacco industry contribution. In addition, the Assembly Democratic Victory Fund, a committee controlled by Brown, received \$14,000 in 1994. This committee has received a total of \$59,000 in contributions from the tobacco industry, bringing the total amount of tobacco industry money controlled by Speaker Brown to \$659,492. Speaker Brown was also the legislator with the lowest tobacco policy score, 0.67, indicating that he is perceived as the most pro-tobacco industry member of the Legislature.

Republican Floor Leader, Assembly member Jim Brulte also received a significant amount of contributions from the tobacco industry, \$34,975, increasing his grand total to \$45,475. Brulte received a score of 3.17, indicating that he is also pro-tobacco industry. Democratic Floor Leader Tom Hannigan did not receive any tobacco industry contributions this election cycle; in the past, Hannigan had received a total of \$35,250. His score was 6.29, indicating a mild pro-tobacco control position.

TABLE 3. CURRENT LEGISLATORS WHO HAVE NEVER ACCEPTED TOBACCO INDUSTRY CONTRIBUTIONS					
Legislator	Status (1)	Year Elected	Party	House	Tobacco Policy Score
Battin	C	1994	R	A	
Bordonaro	C	1994	R	A	
Brewer	C	1994	R	A	
Campbell, R.	I	1980	D	A	7.75
Campbell, T.	C	1993	R	S	7.71
Cunneen	C	1994	R	A	6.50
Davis	C	1994	D	A	8.00
Escutia	I	1992	D	A	7.33
Figueroa	C	1994	D	A	
Firestone	C	1994	R	A	
Frusetta	C	1994	R	A	
Hawkins	C	1994	R	A	
Hayden	I	1982	D	S	10.00
House	C	1994	R	A	
Kallogian	C	1994	R	A	
Knox	C	1994	D	A	
Kuehl	C	1994	D	A	7.50
Machado	C	1994	D	A	
Mazzoni	C	1994	D	A	
McPherson	I	1993	R	A	4.00
Monteith	C	1994	R	S	2.00
Morrissey	C	1994	R	A	
Murray, K.	C	1994	D	A	7.00
Petris	I	1966	D	S	9.71
Poochigian	C	1994	R	A	
Sher	I	1980	D	A	8.83
Solis	I	1992	D	S	7.17
Thompson, B.	C	1994	R	A	5.50
Villaraigosa	C	1994	D	A	
Woods, T.	C	1994	R	A	1.17

1. I = Incumbent; C = Challenger

Senate President Pro-Tempore, Bill Lockyer, received \$17,475 in contributions from the tobacco industry this election cycle (and a grand total of \$49,975). Senate Majority Leader Henry Mello received \$500 (grand total of \$12,000) and Senate Minority Leader Ken Maddy (R) received \$30,225 (grand total of \$127,975). (Mello had previously made a public commitment not to accept any further contributions from the tobacco industry.) Lockyer and Mello received mildly pro-tobacco industry scores of 4.29; Maddy received a strong pro-tobacco industry score of 2.43. Democratic Caucus Chair Richard Polanco, who moved up from the Assembly, received \$7,650 (grand total of \$28,050) and Republican Caucus Chair Bill Leonard received \$1,000 (grand total of

\$16,500). Their scores were also pro-tobacco industry, 2.5 and 4.2 respectively.

Political Parties

In 1994, the tobacco industry contributed \$117,800 to political parties and party-controlled committees, a decrease from the \$349,188 contributed in the 1992 cycle. Of this amount, \$87,300 was given to Democrat committees and to the Democratic Party, and \$30,500 to the Republican Party and Committees. The Democratic amounts include the \$14,000 given to the Assembly Democratic Victory Fund, a committee controlled by Speaker Willie Brown, and \$9,200 given to the Assembly Democrat Statewide Voter Registration, a committee controlled by Assembly Member Phil Isenberg. (Table A-2). Overall, tobacco industry contributions to Democratic Legislative candidates decreased 37% between 1992 and 1994, while contributions to Republican candidates increased by 6%.

Incumbent vs Challenger

The pattern of tobacco industry contributions to candidates challenging incumbents reflected the shift in support towards the Republican party. In the 1992 election, the tobacco industry supported 8 challengers, 6 of whom were Democrats, with contributions totaling \$4,424. In the 1994 election, the tobacco industry supported 7 challengers, all of whom were Republicans, with contributions totaling \$128,000.

Probably the most significant contribution the tobacco industry made in the 1994 election was the \$125,000 Philip Morris gave the week before the election to Republican Rancho Palos Verdes Mayor Steve Kuykendall who challenged incumbent Democrat Betty Karnette for the state Assembly seat in Long Beach. The contribution enabled Kuykendall to maintain his direct mail strategy until the last day and was instrumental in turning the vote in his favor [5]. Karnette, who was elected in 1992 and had never accepted any tobacco industry contributions, had a pro-tobacco control policy score of 6.8 [1]. The fact that Republican registration in the 54th Assembly district exceeded Democratic registration by 5% meant that this would be a closely contested election for the Democratic incumbent [6]. The final vote was so close it was decided by the absentee ballots which favored Kuykendall [7].

With the Republican victory in Long Beach, Assembly Republicans gained 41 seats. Ironically, with its large donation to Kuykendall, Philip Morris gave Assembly Republicans the majority they needed to threaten Willie Brown's Speakership. Despite the gains by Assembly Republicans, Brown managed to retain his speakership by convincing Assembly member Paul Horcher (R-Whittier) to renounce his Republican party affiliation, declare himself an independent, and vote for Brown [7]. After Assembly member Richard Mountjoy (R-Arcadia) was forced to leave the Assembly to take the Senate seat he won in the fall election [7], Brown maintained a 40-39 majority. The Republicans immediately initiated a recall against Horcher [7]. A special election is being held to fill Mountjoy's Assembly seat, so the threat to Brown's speakership is far from resolved. It is not apparent what role the tobacco industry will play in the recall campaign and if Speaker Brown's position on tobacco policy issues in the 1995-1996 legislative session will be affected by Philip Morris' role in his near-loss of the Speakership, particularly in light of Brown's history of strong support for tobacco industry policies.

Constitutional Officers

Possibly due to the impending implementation of term limits in 1996, in the 1994 election 12 incumbent legislators ran for constitutional offices. Contributions made to these legislators are included in the total contributions to legislature, since until the results of the election is known, their decision making power still resides in the Legislature. It will be interesting to observe if previous acceptance of tobacco industry money will influence the behavior of the newly-elected constitutional officers. In addition, \$29,899 were contributed to other constitutional offices candidates (Table A-3).

Governor Pete Wilson, who is seeking the Republican Presidential nomination, recently announced that he was hiring Craig Fuller to have overall responsibility for running his campaign. Mr. Fuller, who had worked on former President Bush's campaign in 1988, was more recently the Senior Vice President for Corporate Affairs of Philip Morris Cos. in New York. He resigned that position to join Wilson's campaign team [8, 9].

Lobbying Expenditures

In contrast to legislative campaign contributions, the tobacco industry continued to increase its lobbying expenses rapidly. The tobacco industry spent a total of \$4,198,077 on lobbying, a 20% increase over the 1992 cycle. Of the total, \$2,464,299 were payments to lobbying firms and the rest of the money was spent on other lobbying activities to influence legislation. Philip Morris spent the most money, \$2,207,989, followed by the Tobacco Institute and R.J. Reynolds who spent \$545,882 and \$537,508 respectively. The R.J. Reynolds amount is probably about \$130,000 higher than reported, since the Secretary of State did not have its lobbying expenditures report for the 3rd and 4th quarter of 1994 on file. Including this \$130,000 would bring total lobbying expenditures to \$4.3 million.

Among the lobbying firms hired by the tobacco industry, Carpenter, Snodgrass and Associates received the largest tobacco payments in this cycle, \$456,000. This firm represented American Tobacco Company, Brown and Williamson, Lorillard, Philip Morris and R.J. Reynolds. Other top recipient firms include Lang & Mansfield and Governmental Advocates, both representing Philip Morris, and receiving, respectively, \$377,516 and 317,831. The firm Nielsen, Merksamer et. al who has represented tobacco companies for over twenty years, received \$236,787 this election cycle, raising its grand total of payments from the tobacco industry to \$1,897,147 since 1988 (Table A-4). In addition, Nielsen, Merksamer wrote Philip Morris' Proposition 188 and provided legal and political guidance for the campaign and were paid \$351,045 for their services, in addition to the amount received for lobbying reported in Table A-4.

Local Level

The total contribution to local candidates in this election cycle increased to \$40,250 from \$21,800 in the 1992 election cycle (Table A-5). Of the contributions to local candidates reported at the state level, the largest was \$10,000 to John Moriarty, who was running for Superior Court Judge in Los Angeles. Moriarty ran against and lost to Terry Friedman, the sponsor of Assembly Bill 13, the statewide clean indoor air bill (discussed later). Four successful candidates for Los

Proposition 99 Expenditures
AB 816 (FY 1994-1996)

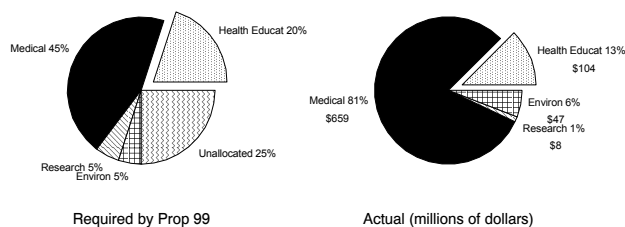


Figure 2. *AB816 did not allocate Proposition 99 revenues as specified by voters in the initiative. Medical services received more than permitted by law at the expense of education and research.*

Angeles City Council also received money in 1994: Richard Alatorre, John Ferraro, Nate Holden, and Hal Bernson. Bernson received \$1,000; the other three received each \$500. Jeff Kellogg, an unsuccessful candidate for mayor in Long Beach, received \$1,000. No other contributions to the local level were reported in the filing statements at the Secretary of State's office.

The pattern of local contributions is harder to document than at the state level, because there is not central reporting location. (For the most part, we only capture local contributions made directly by state-wide political committees; money funneled through local committees is much harder to track.) Nevertheless,

according to observers in some of California's larger counties, the American Lung Association, and Americans for Nonsmokers' Rights it appears that the tobacco industry seemed to be more focused at the state level in 1994 with the hope that AB 13, AB 996, or Proposition 188 which would eliminate the capability of local legislators to enact tobacco control ordinances. For example, in Long Beach, after spending approximately \$90,000 in 1993 to force a referendum on the new city ordinance, the industry did nothing to defeat the ordinance when it came to a public vote in April, 1994, a marked departure from its previous strategy [10]. The ordinance passed with 68% of the vote.

There were no reported contributions to local committees in 1994. However, contributions made in 1993 to the Los Angeles Hospitality Coalition, Californians for Fair Business Policy, Long Beach Business and Convention Coalition, and Against Laguna Hills Ordinance totaled \$578,431 (Table A-6) These groups were funded by the tobacco industry to fight local ordinances [1].

IMPLEMENTATION OF PROPOSITION 99: 1994-1995 AND 1995-1996 FISCAL YEARS: ASSEMBLY BILL 816

In 1988, California voters passed Proposition 99, the Tobacco Tax and Health Promotion Act, increasing the state tobacco tax by 25 cents on a pack of cigarettes and 42 cents on other tobacco products. The initiative established six separate accounts (Figure 2), specified the percentage of the new revenues to be allocated to each account, and earmarked the revenues for specific purposes in each account:

- 7 Health Education Account: 20% for community and school-based tobacco education and prevention programs

- 7 Hospital Account: 35% for treatment of indigent hospital patients
- 7 Physician Account: 10% for treatment of indigent patient by physicians
- 7 Research Account: 5% for research on tobacco-related diseases
- 7 Public Resources Account: 5% for public resources (i.e. conservation)
- 7 Unallocated Account: 25% to be distributed by the Legislature to the other account

The Health Education Account created the largest, most aggressive tobacco control program in the world [11]. Evaluation of the program demonstrates that through a combination of paid anti-tobacco media campaigns, community based interventions, and development of local tobacco control policies, California has experienced a decline in the prevalence of smoking that is approximately three times as fast as the rest of the country for the same time period [12]. These interventions combined to reduce total tobacco consumption by 1.57 billion packs of cigarettes from January 1, 1989 through June 30, 1994, worth approximately \$2.1 billion in sales to the tobacco industry (Figure 3; computations represent an extension of methods previously reported by Glantz [3]).

Research funded by Proposition 99 added important new information about the effects of involuntary smoking, the effectiveness of cigarette advertising, and the political activity of the tobacco industry.

Despite clear language in the initiative regarding the use of funds, the Proposition 99-funded tobacco control programs have been under attack by both the Legislature, which consistently failed to allocate 20% of the revenues to the Health Education Account, and by interest groups, particularly the California Medical Association and California Association of Hospitals and Health Care Systems, and the Western Center for Law and Poverty, who benefit from the diversion of funds from Health Education to pay for medical care expenses. The combination of pressure from the medical establishment with the tobacco industry - two of the wealthiest lobbies in Sacramento - has led to accelerating diversions of funds out of legitimate tobacco control activities [1, 14] to medical services. From passage of Proposition 99 through fiscal year 1994, the Legislature only allocated 14.6% of revenues to Health Education, underfunding the tobacco education program by 27%. These illegal diversions of revenues into medical services probably led to

**Tobacco Consumption in California
Effect of Proposition 99**

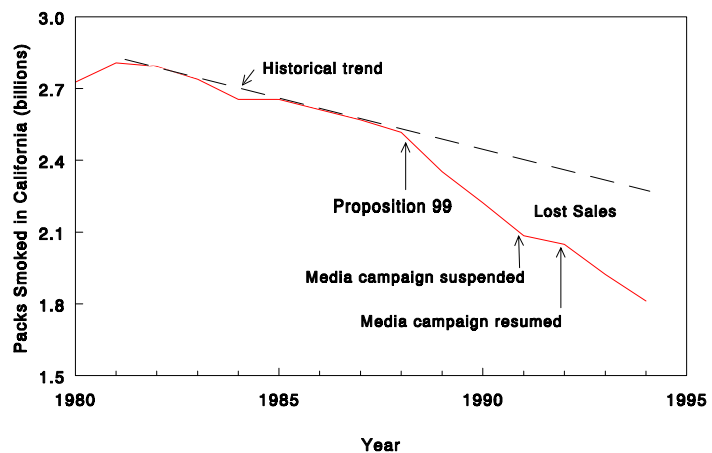


Figure 3. Between enactment in 1988 and June 30, 1994, Proposition 99's tobacco control program reduced total cigarette consumption in California by 1.57 billion packs of cigarettes, worth \$2.14 billion in lost sales to the tobacco industry.

While the debate over the diversion of Proposition 99 Health Education (and, later, Research) funds into medical services has been framed as an unfortunate necessity during difficult times, there has been little note taken of the fact that Proposition 99 permits using 70% of the revenues for medical services. Through fiscal year 1995-1996, Proposition 99 will have raised \$2.9 billion for medical services; the question is whether *all* the revenues should go to medical services.

This trend of shifting Health Education funds into medical services continued in 1994, when the Legislature passed AB 816, which only allocated 13.3% of revenues to tobacco education for fiscal years 1994-1995 and 1995-1996. This diversion of \$73.1 million in health education funds into medical services will probably lead to another 234 million packs of cigarettes being smoked. In addition, the Legislature virtually eliminated the tobacco research program, cutting its allocation to only 0.8% of Proposition 99 revenues (Figure 2).

Tobacco Politics: AB 816

Despite the fact that Proposition 99 is a state law enacted by the voters that spelled out how the funds were to be spent, the Legislature had to appropriate the funds. In doing so, the Legislature had passed a series of authorizing and appropriating legislation, each of which had a short "sunset" date. Each time Proposition 99 came before the Legislature for Reauthorization, opponents of tobacco control were given another opportunity to attack the program and divert the money to other purposes. Authority granted under AB 99, the then-current Proposition 99 authorization bill, was to due to expire on June 30, 1994, so Reauthorization of Proposition 99 programs was necessary during the 1993-1994 legislative session. The legislative vehicle for reauthorization was AB 816 authored by Democratic Assembly member Phil Isenberg. Similar to procedures followed to enact earlier Proposition 99 authorizing legislation, an Assembly-Senate Conference Committee would actually write the legislation. Isenberg chaired the committee, whose other members were Democratic Senators Mike Thompson, Diane Watson, and Republican Senator Ken Maddy and Democratic Assembly member Burt Margolin, and Republican Assembly member Curt Pringle. Assembly member Margolin later resigned from the committee and was replaced by Democratic Assembly member Barbara Lee. Table 4 presents the contributions and tobacco policy scores for committee members.

The issue of diversion of funds from health education to medical care generated many controversies, and received wide coverage by the press, both in support and against the diversions.[15-17] Diversions of Health Education Account funds had occurred in two previous Proposition 99 budget bills, AB 75 in 1989 and AB 99 in 1991. The amount of funds diverted under both bills was \$166.5 million: AB 75, \$35.7 million (two fiscal years), and AB 99, \$130.8 million (three fiscal years) (Table B-1) [14]. In negotiations surrounding these bills, the American Lung Association, American Cancer Society, and American Heart Association resisted the diversions at first but ultimately accepted them [18]. In contrast, in negotiations regarding AB 816, the public health community was convinced that continuing the pattern of accelerating diversions would eliminate the program altogether and adopted a position that AB 816 should appropriate Proposition 99 funds as the voters mandated.

The Tobacco-Disease Related Research Program (TRDRP), which is administered by the University of California and receives funds from Proposition 99's Research Account, also faced

major

TABLE 4. CONTRIBUTIONS AND TOBACCO POLICY SCORES OF LEGISLATORS IN THE AB 816 CONFERENCE COMMITTEE						
Legislator	Party	1976-1990	1992	1994	Total	Tobacco Policy Score
Isenberg	D	\$6,500	\$500	\$0	\$7,000	5.00
Lee	D	\$1,500	\$1,500	\$0	\$3,000	5.50
Maddy	R	\$61,750	\$36,000	\$30,225	\$127,975	2.43
Margolin	D	\$0	\$0	\$0	\$0	
Pringle	R	\$4,000	\$500	\$9,000	\$13,500	2.67
Thompson, M.	D	\$500	\$3,000	\$1,500	\$5,000	5.71
Watson	D	\$0	\$300	\$0	\$300	10.00
Total		\$74,250	\$41,800	\$40,725	\$156,775	

opposition, publicly led by the California Medical Association, in the reauthorization of Proposition 99. TRDRP critics in the public health community, while generally supporting the program, expressed concern that it sponsored too much basic biological research without devoting adequate resources to more applied problems, such as nicotine addiction, environmental tobacco smoke, and public policy issues related to tobacco [19]. By contrast, the medical establishment wanted the money put into provision of medical services. In September 1993, Governor Wilson vetoed legislation (SB 1088) that would have allocated \$20.9 million in funds earmarked for approved and ongoing tobacco research grants and reauthorized the entire program until 1997. The governor justified his veto upon the fact that "...this program should not be extended for four years when expenditure authority for all other Proposition 99 funded programs pertaining to health and research will be reviewed during the 1994 Legislative session. This program should be reviewed and re-evaluated in the context of all Proposition 99 funded programs and activities to insure the most effective use of those funds" [20]. The CMA argued in favor of delaying funding of medical research projects until July 1, 1994 and allocating these funds for other Proposition 99 medical programs (e.g., emergency and trauma networks, childhood immunizations and screens, and county medical services program for the indigent) [21].

The Passage of AB 816

Assembly member Phil Isenberg, chair of the Conference Committee on AB 816, was supportive of diversions of tobacco education funds to medical programs. Isenberg said that, "I don't doubt that some of those programs are effective, but it's very hard to prove it. To increase funding for health educators means taking it away from poor women and children" [22]. He also claimed that many tobacco education efforts bordered on the wasteful and frivolous, such as \$200,000 spent sponsoring race cars with anti-tobacco logos, and \$175,000 to promote tobacco-free skiing in the Sierra [22]. Tobacco control professionals responded that the state was simply modeling its anti-tobacco education efforts on successful promotional activities used by the tobacco industry itself [19, 23], and pointed out that the program was working -- tobacco consumption was falling in California much faster than in the rest of the country. In fact, these programs were widely viewed within the public health community as the most effective and innovative components of the Proposition 99

program.

Isenberg and the Conference Committee members accepted the CMA's contention that the funds were better spent on medical services and that physicians were conducting effective anti-tobacco education, despite the fact that the State's own formal evaluation of the Proposition 99 tobacco control program did not support this conclusion. The most comprehensive report of the California Department of Health Services concerning the effectiveness of the Proposition 99 tobacco control program, released in March 1994 [12] supported the conclusions that media and community programs, particularly related to environmental tobacco smoke, were the most effective means to reduce tobacco consumption and that physician-mediated interventions had no significant effect.

Nevertheless, the AB 816 Conference Committee voted 5 to 0 to pass its report to the Legislature, including major reductions in the tobacco education program. Only Senator Diane Watson did not vote. AB 816 passed the State Assembly on July 7, 1994 by a vote of 72 to 3. Assembly members Baca, Bates, and Eastin were the only members to vote against the bill. Other members did not vote on the bill: Assembly members Terry Friedman, Honeycutt, Margolin, McDonald, and Speier (Table A-7).

In the Senate, the bill initially failed by a vote of 20 to 11, falling well short of the four-fifths vote supporters of the bill stated it was necessary to divert funds out of health education and research into medical services. Senators Bergeson, Dills, Hayden, Marks, McCorquodale, Mello, Petris, Presley, Roberti, Torres and Watson were the eleven members who voted against the bill. In addition, nine other members did not vote: Senators Ayala, Beverly, Craven, Hart, Hill, Hughes, Killea, Leonard, and Lockyer. The bill was granted reconsideration by a vote of 39 to 0. After intense lobbying by its proponents, AB 816 passed the Senate by a vote of 32 to 6. Senators Hayden, McCorquodale, Petris, Presley, Torres, and Watson did not change their previous "no" vote. Only Senator Craven and Hill were either not voting or absent from the Senate floor. Senate President Lockyer, Senate Minority Leader Maddy, and Governor Wilson reportedly lobbied "heavily to get the bill passed in what some observers said became a test of Lockyer's control over the Senate" [24]. The deciding 32nd vote was cast by Senate Bergeson, "a staunch supporter of Proposition 99 who was brought into Wilson's office for some personal lobbying by the governor" [24] (Table A-8).

In AB 816, which was enacted into law in July 1994, the Legislature again failed to meet the Proposition 99 mandate and fully fund the Health Education and the Research Accounts. For the 1994-1995 fiscal year, the Legislature allocated only 13.3% of total tobacco tax revenues or \$54.2 million for tobacco education (Figure 2). Using Health Education Account funds, the Legislature allocated \$35.5 million to medical programs (Table B-2). The Legislature also diverted almost all funds from the Research Account for medical programs. Instead of the 5% mandated by Proposition 99, in the 1994-1995 fiscal year the Legislature allocated only 0.8% of total tobacco revenues or \$3.7 million for tobacco-related disease and tobacco policy research. The total amount allocated for non-tobacco research programs was \$31.5 million (Table B-3). AB 816 brought the total diverted funds from Proposition 99 to \$307.1 million (\$239.6 million from the Health Education Account and \$67.5 million from the Research Account; see Tables B-2 and B-3).

The public lobbying effort to divert funds out of tobacco education and research was led by the California Medical Association and the Western Center for Law and Poverty, both of whom

strenuously denied any connections with the tobacco industry. In addition, the Tobacco Institute's public position was that the tobacco industry did not care how Proposition 99 funds were expended [19]. In contrast, the lobbying expenditure report filed on behalf of Philip Morris indicates that it expended funds lobbying on AB 816.

ANR/SAYNO Lawsuit

On March 23, 1994, Americans for Nonsmokers' Rights (ANR) and Just Say No to Tobacco Dough (SAYNO), and a group of individual California taxpayers filed suit against Governor Pete Wilson, Treasurer Kathleen Brown, Controller Gray Davis, other Administration officials, Assembly Speaker Willie Brown, State Senate President Pro Tempore Bill Lockyer to order them to meet Proposition 99's 20% mandate for tobacco education and to repay the \$165 million that has been diverted prior to enactment of AB 816 from tobacco education to medical programs from passage of Proposition 99 through 1994 [25]. (Brown and Lockyer were later dropped as defendants.) The plaintiffs asserted that, while Proposition 99 does allow the Legislature to amend the initiative by a four-fifths vote in each house of the Legislature, these amendments do have to be "consistent with its purposes" [26]. The plaintiffs asserted that gutting the Health Education Account was not "consistent with the purposes" of Proposition 99.

Previous implementing legislation for Proposition 99 (AB 75 and AB 99) which diverted Health Education Account funds from tobacco education to medical programs each received four-fifths majorities. The key legal question has been whether those diversions were consistent with the purposes of Proposition 99. If not, they violated Article II, Section 10 of the California Constitution which prohibits legislative amendments to initiative statutes without voter approval. Plaintiffs in the ANR/SAYNO case alleged that the diversions by providing less than 20% required by Proposition 99 violated the provisions of the initiative.

In response to the lawsuit, the State Health and Welfare Agency stated that the diversions were consistent with Proposition 99 and legal since the initiative has provisions to permit flexibility in the use of these funds [18, 27]. It argued that the money used to fund the Child Health and Disability Prevention (CHDP) and the Maternal and Child Health programs was being used for tobacco education, not simply for direct medical services, since these programs included tobacco education components. The CHDP and perinatal programs have included nominal tobacco education components in their protocols. Thus, the CMA argued that the diversions were consistent with the intent of Proposition 99 [19]. However, the Tobacco Education and Oversight Committee, an independent oversight committee established by the Legislature to monitor the expenditure of Proposition 99 funds, reported in 1993 that CHDP "has contributed practically nothing to tobacco control" [28]. The March 1994 evaluation report on California's tobacco control program conducted by the University of California San Diego for the state Department of Health Services also found that there was little evidence to support the contention that physicians were doing tobacco control [12]. CMA spokesperson, Danielle Walters responded that the CMA "is willing to have the educational (component) examined. If it shows the protocol are not being followed as closely as they should be, there should be an effort to beef up the protocols" [18], but continued to insist, successfully, that the money go to medical services.

After passage of AB 816, ANR dropped out of this lawsuit and filed a new suit against AB

816 in September, 1994. SAYNO and the individual plaintiffs are pursuing the action, which was delayed pending the outcome of litigation concerning AB 816.

The ANR/ALA/ACS Lawsuits Against AB 816

The American Lung Association (ALA) and American Cancer Society (ACS) joined together in a lawsuit filed in September 1994 to challenge AB 816. (The American Heart Association briefly was involved in the suit, but dropped out because the AHA leadership felt that it was unlikely that they would win.) Like ANR, ALA and ACS contended that the state failed to meet the mandate of Proposition 99 to fund 20% of the tobacco tax revenues to the Health Education Account (HEA) for tobacco education programs and 5% for research. Both cases sought the return of Health Education Account funds diverted from tobacco education and research to medical programs by AB 816 which pertained to the two fiscal years, 1994-1995 and 1995-1996. The ANR and ALA-ACS lawsuits were consolidated in court. The SAYNO lawsuit, concerning past diversions of HEA funds, is being considered separately.

In December, 1994, Sacramento Superior Court Judge Roger K. Warren ruled that the state had illegally diverted \$128 million from the Health Education and Research Accounts for purposes inconsistent with Proposition 99. On February 16, 1995, the Judge finalized an earlier ruling (issued on January 19, 1995) that prohibited the state from further expenditures of the diverted tobacco funds [29]. On March 30, 1995 the Judge signed the final judgements, declaring that all diversions from tobacco education and research to medical care were inconsistent with the language of Proposition 99. The ALA/ACS ruling determined that no further diversions could occur after January 19, 1994, but it still allowed \$18.5 million of the money diverted in fiscal year 1994-1995 before that date to be used on CHDP programs, and \$4.25 million to be used on Comprehensive Outreach Perinatal Program. The ANR ruling determined that all funds should be returned to the Health Education and Research Account. Thus, the ALA ruling instructs the State to return \$102 million of unspent, diverted Proposition 99 funds to their respective Health Education and Research Accounts, and in the ANR ruling, to return \$128 million. Both rulings forbids the State to divert any funds from these accounts in the 1995-1996 fiscal year [30, 31].

While this ruling would be expected to settle the issue of illegal use of Proposition 99 funds, it still remains for the Legislature to appropriate the diverted funds back into tobacco education and research. A broad coalition formed by the voluntary health agencies, ANR, and other health groups is working on the passage of this legislation, Senate Bill 949 [32]. The CMA, other medical interests, and the tobacco industry are expected to oppose this effort. The Wilson administration has appealed the ruling, which may keep the tobacco education and research programs in limbo for some time, with the attendant increase in tobacco consumption and tobacco industry profits. The CMA has filed an *amicus curiae* brief in support of the diversions.

ASSEMBLY BILL 13 (AB 13)

One factor that distracted health lobbyists and the media from the AB 816 debate was the consideration and passage of AB 13, a law authored by Assembly member Terry Friedman (D-Santa Monica) that mandated most workplaces to become smoke free. The fight over AB 13, particularly the “hijacking” of the bill by the tobacco industry in the Senate Judiciary committee and the bill's

subsequent restoration in the Senate Appropriations Committee, occupied the time and attention of health lobbyists and the media at critical times during the debate over AB 816, the reauthorizing legislation for Proposition 99.

AB 13 was the source of much controversy within the health community of California because it contained a clause preempting the power of local governments to regulate smoking in places of employment as defined by the bill. When the bill was first introduced in December of 1992, it mandated that all California's workplaces become smoke free but preempted local authority over places of employment. The bill's supporters argued that because it created entirely smoke free environments local authority was unnecessary. AB 13 passed the Assembly on June 7, 1993 by a vote of 47 to 25.

Tobacco industry campaign contributions appear to have influenced how legislators voted on AB 13. The tobacco industry had contributed \$363,823 in campaign contributions between 1976 and 1993 to Assembly members who voted for AB 13 (average \$7,741 per yes vote), as opposed to \$711,405 to Assembly members who voted against it (average \$28,456 per no vote). AB 13 passed the Senate on 30, 1994 by a vote of 23 to 10. The tobacco industry had contributed \$386,141 in campaign contributions between 1976 and 1994 to Senators who voted for AB 13 (average \$16,789 per yes vote) and \$280,725 to Senators who voted against it (average \$28,073 per no vote). AB 13 was signed into law June 21, 1995, and took effect January 1, 1995. Provisions regulating smoking in bars go into effect January 1, 1997.

Because AB 13 lacks clear guidelines for statewide implementation and requires legislative action by local governments to designate an enforcing agency, its implementation has depended on local discretion. For example, several communities (such as Gilroy) have acted to make all workplaces smoke free, including those exempted from AB 13. Some communities have simply designated an enforcing agent for AB 13's provisions. Others, like Santa Monica, have used the designation of a local enforcement agency for AB 13 as an opportunity to weaken an existing ordinance by bringing it down to AB 13's standards. Opponents of strong local ordinances in Ventura have used the opportunity to try to weaken the existing law, while Santa Monica's new city council has overturned a newly passed local ordinance in favor of AB 13.

ASSEMBLY BILL 996 AND PROPOSITION 188

In response to AB 13, the tobacco industry supported a competing bill, Assembly Bill 996 (AB 996). Carried by Assembly member Curtis Tucker (D-Los Angeles), AB 996 proposed weak smoking regulations and contained a broad preemption clause to freeze progress in local tobacco control efforts. AB 996 passed the Assembly on June 3, 1993 by a vote of 42 to 34. Assembly members who voted for AB 996 had received \$964,740 (average \$22,970 per yes vote) in tobacco industry campaign contributions between 1976 and 1993. As with AB 13, tobacco industry campaign contributions appear to have influenced how legislators voted on AB 996. Assembly members who voted against AB 996 had received \$193,567 (average \$5,693 per no vote). Several pro-tobacco control Senators in the Senate Health and Human Services Committee were successful in killing the measure in August 1993 (Table A-9).

In January 1994 Philip Morris began the effort to qualify an initiative called the "California

Unified Tobacco Control Act." Virtually identical to AB 996, the initiative would have overturned all of California's 300 local laws regulating smoking, as well as the new state clean indoor air law AB 13, and the new non-preemptive state law (STAKE Act - Senate Bill 1927) that imposes tough restrictions on youth access to tobacco, and replaced them with a single weak, preemptive state standard.

The initiative was drafted by the law firm Nielsen, Merksamer et al., which has a long history of connections of the tobacco industry. The campaign to pass the initiative was coordinated by the Dolphin Group, a public relations firm that has previously acted on behalf of the tobacco industry to defeat local ordinances [10]. In order to gather the signatures required to qualify the initiative by April 22, 1994, Californians for Statewide Smoking Restrictions (CASSR - the group created to campaign for the initiative) began a deceptive petitioning campaign that was later criticized by the Secretary of State for possibly "misrepresenting [the initiative's] contents and effects" [33]. Despite this criticism, the measure qualified and was named Proposition 188.

The campaign to pass Proposition 188 was marked by similar deceptive practices that were used in the petition drive. Proponents of the measure refused most opportunities to debate the merits of Proposition 188 in a public forum [34]. The campaign relied primarily on direct mail advertisements to get out their message that the new law would be "tough but fair." The advertisements followed four major themes: restricting youth access, protection of nonsmokers, accommodation of smokers' rights, and voter dissatisfaction. In each case, the mailings distorted or exaggerated the proposition's effects on current local and state smoking laws [35]. Had it passed, Proposition 188 would have had serious negative impacts on the health of Californians, increasing active adult smoking, workplace exposure to environmental tobacco smoke, and subsequently increasing cigarette sales and tobacco industry profits. It would have also increased the direct health care costs to treat the consequences of tobacco use, as well as indirect costs caused by lost productivity, in addition to an increase in tobacco-related deaths [36].

In February 1994, in response to the threat of this tobacco sponsored initiative, California's health community revived the Coalition for a Healthy California. The Coalition had originally formed to pass Proposition 99 in 1988. They began an aggressive grassroots campaign to bring media attention to the deceptions practiced by CASSR. Once the initiative qualified for the November ballot, the Coalition centered their campaign against the measure around informing voters of the tobacco industry's sponsorship of Proposition 188. Their efforts were hampered, however, by limited campaign funds, over saturation of news media with competing political issues (particularly Proposition 187, the anti-immigrant initiative, and the Feinstein/Huffington senatorial campaign), and the low profile the "Yes on 188" campaign was maintaining by concentrating their efforts on direct mail.

In September 1994, the Wellness Foundation sponsored a public education campaign using print and electronic media to inform voters of the provisions of Proposition 188 as well as who supported and opposed the measure. The ads, designed by the Public Media Center, displayed the voter information pamphlet and listed the top 5 contributors to the Yes on 188 campaign (Philip Morris, RJ Reynolds, Brown & Williamson, American Tobacco, Lorillard Tobacco) and the top 5 contributors to the No on 188 campaign at that time (American Cancer Society, American Lung Association, American Heart Association, Kaiser Permanente, California Medical Association [37].

This advertising effort forced the Yes on 188 campaign to become more visible. Advertisements appeared on television and radio using the same themes as the direct mail campaign, but identified the backers of the measure as simply "Californians for Statewide Smoking Restrictions." ANR successfully forced CASSR to include the full tagline ("Californians for Statewide Smoking Restrictions - A Committee of California Hotels, Restaurants, Philip Morris, Inc., and other tobacco companies") by filing a complaint with the FCC. Subsequently, the Yes on 188 ads further advertised the fact that Proposition 188 was backed by tobacco companies. The tobacco industry spent \$18,944,675 (99.95% of total expenditures) between January and November 1994 in its unsuccessful campaign to pass the initiative (Tables A-10 and A-11). The Coalition raised \$1,333,543 to defeat Proposition 188 (Table A-12). Voters defeated the measure on November 8, 1994 by a margin of 70.7% to 29.3%.

While the public soundly defeated Proposition 188, AB 996 passed the Assembly 42-34. Proposition 188 was essentially identical to AB 996, it provides a unique opportunity to compare the constituents' votes with voting of their representatives on the same issue. Proposition 188 only carried a majority of voters (51.8%) in Assembly district 48 (Los Angeles); it failed everywhere else in the state. Thirty-five Assembly members voted with their constituents, 1 in favor of AB 996/Proposition 188, and 34 against it. The average tobacco industry campaign contribution to these legislators was \$6,609. Forty-one Assembly members voted for AB 996, against the preference of their districts as demonstrated when their constituents voted no on Proposition 188 a year later. These members received an average of \$29,588 from the tobacco industry (Table A-9). Thus, a majority of members of the Assembly voted for the tobacco industry's interests and against their constituents' interests.

CONCLUSION

The defeat of Proposition 188 shows that California voters maintained their strong anti-tobacco position. The differences between voting by the public and their representatives on Proposition 188/AB 996 illustrates the lawmakers' willingness to vote according to the interests of those contributing to their campaign, rather than their constituency. The dramatic contrast between the decisions of the voters and the behavior of their elected representatives is further evidence of the power of the tobacco industry's lobbying and campaign contribution efforts in the California Legislature.

The continuing failure of the Legislature and Governor to implement Proposition 99 as directed by the voters is another example of the failure to follow the public interest when confronted with pressure from major campaign contributors. In addition, Governor Wilson's hiring of Craig Fuller, Senior Vice President for Corporate Affairs of Philip Morris Cos. to have overall responsibility for his presidential campaign might further jeopardize implementation of Proposition 99 to reduced tobacco use in California, despite repeated strong evidence that the voters support tobacco control.

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APPENDIX TABLES