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Holding Government Accountable: Tobacco Policy Making in California, 1995-1997

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Holding Government Accountable: Tobacco Policy Making in California, 1995-1997

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This report is the latest in a series of reports that analyze tobacco industry campaign contributions, lobbying, and other political activity in California and other states. 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 smokefree 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: Preauthorization 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.

S. Aguinaga, H. Macdonald, M. Traynor, M. Begay, S. Glantz. *Undermining Popular Government: Tobacco Industry Political Expenditures in California 1993-1994*. UCSF IHPS, 1995. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/tobexp>)

M. Begay, and S. Glantz. *Question 1: Tobacco Education Outlays From the 1994 Fiscal Year to the 1996 Fiscal Year* UCSF IHPS 1995. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/q1>)

F. Monardi, E. Balbach, S. Aguinaga, S. Glantz. *Shifting Allegiances: Tobacco Industry Political Expenditures in California, January 1995 - March 1996*. UCSF IHPS 1996 (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/sa>)

F. Monardi, A. O'Neill, and S. Glantz. *Tobacco Industry Political Activity in Colorado 1979 - 1995*. UCSF IHPS 1996. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/co>)

F. Monardi, and S. Glantz. *Tobacco Industry Political Activity in Washington 1983 - 1996*. UCSF IHPS 1996. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/wa>)

F. Monardi, and S. Glantz. *Tobacco Industry Political Activity in New Jersey 1982 - 1995*. UCSF IHPS 1996. (Available on the World Wide Web at <http://galen.library.ucsf.edu/tobacco/nj>)

EXECUTIVE SUMMARY

January 1, 1996 through May 31, 1997 was an active period for tobacco policy making in California. The fight in Spring, 1996, over the allocation of Proposition 99 revenues was more public and aggressive than it had been in the past, an increased level of public scrutiny was brought to bear on the implementation of the media campaign, the state of California's failure to sue the tobacco industry for recovery of medical costs became a political issue, and the tobacco industry continued to give generously to California legislators.

In 1996, the Legislature and the Governor in 1996 observed the voters' mandate on the funding levels for the Proposition 99 Health Education programs. The Health Education Account was allocated 20% of the tax revenues, and these funds were appropriated to anti-tobacco education programs instead of to medical services. The Research Account was restored to receiving the 5% of the tax revenues, as the voters had mandated, after several years of receiving less than 1%. This positive action on the part of the Legislature and the Governor followed an aggressive, public campaign on the part of several key constituency groups: the American Heart Association, Americans for Nonsmokers' Rights, and, to a lesser extent, the American Cancer Society and the American Lung Association.

After the legislative battle, however, the constituency groups were faced with the failure of the Wilson Administration to conduct the kind of aggressive media campaign that it had done in the early years of the program. In particular, the Administration did not want to attack the tobacco industry, a strategy of proven effectiveness in reducing tobacco use. It had only expended \$6,554,000 of the \$12,197,000 allocated to the media campaign in 1995-1996, and, in 1996-97, did not release any new media until March 20, 1997. The conduct of the media campaign remains a concern for the constituency groups.

The state of California has not yet sued the tobacco industry, although 32 other states had done so as of May 31, 1997. Although Attorney General Dan Lungren has claimed he is prevented from filing a lawsuit under California's products liability law, many people believe that this is not the case, because lawsuits filed by other states allege fraud, violations of the Business and Professions Code, violations of the racketeering laws, and violations of antitrust laws and breach of warranty. They are not product liability actions. The legislature is considering several laws that would clarify California's ability to sue, and has passed one such bill and sent it to the Governor for signature.

Campaign contributions by the tobacco industry have tended to favor the party in power in California. During the 1991-1992 election cycle, 41 percent of tobacco industry contributions to legislators, legislative candidates, political parties, and party controlled committees went to the Republican party. In 1993-94, this increased to 45 percent. In 1995-1996, when the Republicans gained control of the Assembly, 57 percent of the contributions went to them. When the Democrats regained control of the Assembly in November, 1996, however, most of the contributions given between the election and December, 1996, went to Democrats. In California, Republican state legislators are perceived as more pro-tobacco industry than the Democratic state legislators.

The tobacco industry has been generous in California. Between January, 1, 1995 and December 31, 1996, the tobacco industry contributed a total of \$1,252,804 to legislative officeholders and legislative candidates. On a per member basis, California legislators in 1995-96 received more money than the members of Congress, \$10,440 per member versus \$5,044 per member. Both Assembly Speaker Cruz Bustamante (D-Fresno) (\$63,750) and Senate President pro Tempore Bill Lockyer (D-Hayward) (\$127,875) received more money than U.S. House of Representatives Speaker Newt Gingrich (\$30,500).

The top three recipients of campaign contributions in California in 1995-1996 (Table 5) received more than the top three recipients in Congress in 1995. Lockyer, Assembly Member Curt Pringle (R-Garden Grove) and Assembly Member Curtis Tucker (D-Inglewood) received \$127,875, \$105,750 and \$93,926 respectively. In Congress, the top three recipients in 1995-1996 were Congressmen from tobacco growing states. Senator Jesse Helms (R-North Carolina), Senator John Warner (R-Virginia) and Representative Bart Gordon (D-Tennessee) received \$48,500, \$35,150 and \$33,000; respectively.

Attorney General Dan Lungren was the top recipient of tobacco industry campaign contributions among the state constitutional officers in 1995-96, receiving \$28,500.

In six California legislative races, tobacco industry campaign contributions were an issue and in four of those, the candidate who was attacked for taking contributions lost.

TABLE OF CONTENTS

INTRODUCTION 7

PROPOSITION 99 7

 Introduction 7

 Proposition 99 Litigation 10

 The Governor’s 1996-97 Budget Proposal 12

 Public Action 13

 The ANRF/AHA Paid Advertising Campaign 14

 Legislative Action 15

 The Governor’s May Revision of the Budget 16

 Reaction to the Governor’s Proposal 17

 The Final Budget Numbers 18

 Assembly Speaker Pringle’s Attempts to Limit Proposition 99 Programs 18

 Governor’s Proposal for Proposition 99, 1997-98 21

 The TEROC Purge 23

 Conclusion 25

ENFORCING EXISTING TOBACCO CONTROL LEGISLATION: AB 13 AND THE STAKE ACT . 27

LAWSUITS AGAINST THE TOBACCO INDUSTRY 28

 Tobacco Industry Liability 28

 The Napkin Deal 28

 The Changing Legal Climate for Tobacco Litigation 29

 California Legislation 30

OTHER LEGISLATION 31

 Penalizing Kids: SB 1849 31

 Smokefree Bars: AB 869 and AB 297 31

 Tax Increase: SB 552 33

TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS FOR THE 1995-1996 ELECTION CYCLE
..... 33

 Tobacco Industry Expenditures 35

 Tobacco Policy Scores 36

 Legislative Officeholders and Candidates 37

 Political Parties 39

 The California Legislature Versus the United States Congress 40

 Legislative Leaders 40

 Legislative Committees 42

 State Constitutional Officers 43

 The Relationship Between Campaign Contributions and Legislative Policymaking 44

 Tobacco Money as an Issue in the 1996 General Election 45

 Lobbying Expenditures 47

 Local Activity 47

SUMMARY 48

REFERENCES 49

INTRODUCTION

January 1, 1996 through May 31, 1997, was an active period for tobacco policy making in California. The fight over the allocation of Proposition 99 revenues was more public and aggressive than it had been in the past due to the involvement of the three voluntary health groups -- the American Heart Association (AHA), the American Cancer Society (ACS), the American Lung Association (ALA) -- and Americans for Nonsmokers' Rights (ANR). Once the programs were reauthorized, AHA, ACS, and ANR were responsible for bringing an increased level of public scrutiny to bear on the implementation of the media campaign.

The authorization and implementation of Proposition 99 programs, however, was not the only tobacco policy activity in California. As of May 31, 1997, 32 states other than California had filed suits against the tobacco industry to recover a portion of the medical costs they had incurred in treating those with tobacco related disease. The state of California's failure to sue the tobacco industry for recovery of medical costs became a political issue. Among other tobacco-related bills, legislation was considered to delay the implementation of the smokefree bars provision of Assembly Bill 13, California's smoke free worksites law.

Another reflection of the high profile and high stakes of tobacco policy making in California is the fact that the tobacco industry continues to be one of the largest sources of political money in California. Between January, 1, 1995 and December 31, 1996, the tobacco industry contributed a total of \$1,250,804 to legislative officeholders and legislative candidates. On a per member basis, California legislators in 1995-96 received more money than the members of Congress, \$10,440 per member versus \$5,044 per member. Both Assembly Speaker Cruz Bustamante (D-Fresno) (\$63,750) and Senate President pro Tempore Bill Lockyer (D-Hayward) (\$127,875) received more money than U.S. House of Representatives Speaker Newt Gingrich (\$30,500).

Despite this money, there is evidence that the public health groups are making progress against the tobacco industry. The public health groups succeeded in forcing Governor Pete Wilson and the Legislature to fund fully the Proposition 99 anti-smoking education and research programs in 1996-1997. These groups also forced the Administration to air more aggressive anti-smoking advertisements than it preferred. Tobacco also became a major issue in several election campaigns and appeared to help the anti-tobacco candidates.

PROPOSITION 99

Introduction

In November, 1988, California voters passed Proposition 99, the Tobacco Tax and Health Promotion Act, which increased 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, specified the percentage of the new revenues to be allocated to each account, and earmarked each account to serve a specific purpose. These were:

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

Hospital Account: 35% for treatment of medically indigent hospital patients

Physicians' Services Account: 10% for treatment of medically indigent patients by physicians

Research Account: 5% for research on tobacco-related diseases

Public Resources Account: 5% for public resources (conservation and other environmental issues)

Unallocated Account: 25% to be distributed by the legislature to any of the other accounts (The Unallocated Account has always been spent on medical services and environmental programs.)

The initiative specified that it could only be amended by a 4/5 vote of both houses of the legislature and then only if the amendments were “consistent with its purposes.”

The initiative only approved the tax increase and created the broad outline for its expenditure. The implementation of the Proposition 99 programs required legislation establishing the actual programs and appropriating money to them. Until 1996-97, the Health Education program had been given all of its allocated money to spend only once (1990-91). The Research program had been close to being given its allocated money each year until December, 1993, when the Research program was virtually shut down. (A summary of the underfunding of the Health Education and Research programs is contained in Appendix Table A-1.) From 1989-1990 through 1995-1996, the Health Education Account has been underfunded by \$273,814,000 and Research by \$71,345,000 (shown in the last section of Table A-1). Recent efforts to appropriate unspent monies to these program does not compensate for the failure to spend the voter mandated minima in the past.

Proposition 99 was used to create the largest tobacco control program in the world, which, in its initial years, tripled the rate of decline of tobacco consumption in California (Figure 1). In recent years the combination of funding shortages and the watering down the anti-smoking media campaign stopped this decline.

The basic structure of the Health Education and Research programs has been reasonably stable, in spite of the variability of funding. The Health Education Account is administered by the Tobacco Control Section (TCS) of the Department of Health Services (DHS) and by the Healthy Kids Office of the California Department of Education (CDE). The media campaign is run by TCS, which also gives competitive grants for innovative programs. CDE also gives competitive grants for both innovative programs and for high school programs. At the local level, each county health department has its own tobacco control program and school districts and county offices of education receive money based on average daily attendance for grades 4 through 8. The Research Account is administered by the University of California. The Tobacco Education and Research

Tobacco Consumption in California Effect of Proposition 99

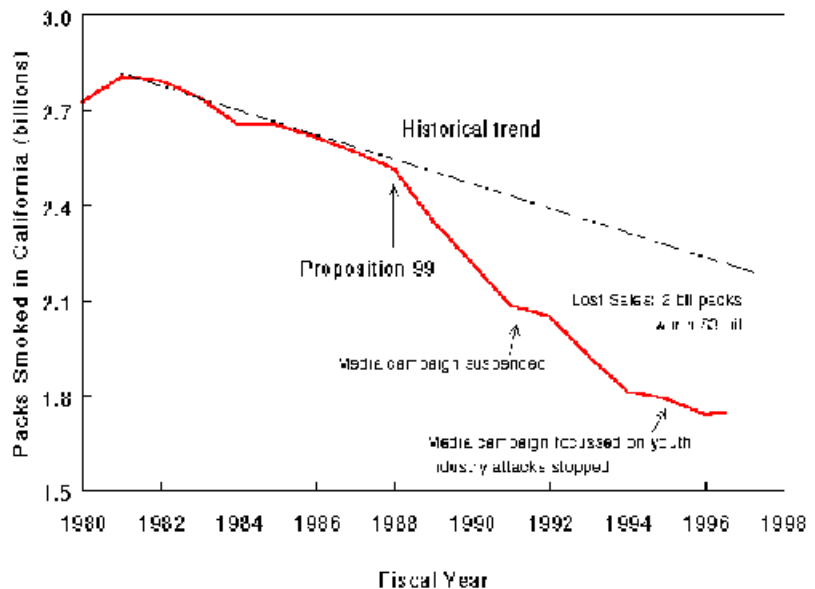


Figure 1 Proposition 99 dramatically accelerated the decline in tobacco consumption in California. However, with the softening of the media campaign and the diversions from the Health Education Account, tobacco consumption has declined at a slower pace and may be increasing.

Oversight Committee (TEROC) was created by the Proposition 99 authorizing legislation to provide oversight of the Proposition 99 programs. The Master Plans produced by TEROC describe the Proposition 99 programs in detail [1-3]

Despite its initial success, however, the program has had little support from either the administration or the legislative leadership [4, 5]. The success of the program has also made it the target of attacks by the tobacco industry. These efforts led to a suspension of the media campaign in 1992 by Gov. Wilson [6]. During the time the media campaign was suspended the decline in tobacco consumption slowed (Figure 1). After the American Lung Association sued successfully to restore the media campaign, the advertisements were returned to the air, and the decline in consumption resumed. Since 1994, there has been little new anti-tobacco advertising produced, with none at all between September, 1995, and March 1997. In 1995-96, the Wilson Administration only spent \$6,554,000 of the \$12,197,000 that had been appropriated to it by the legislature the media campaign. (The unspent \$5,643,000 was used to pay for smoking cessation programs in 1996-97, rather than anti-smoking advertising.) The community-based programs have also been underfunded since the inception of Proposition 99. Since 1994, they have sustained severe reductions in funding [6-9]. Table A-1 shows the funding allocated to Health Education in comparison to what the initiative required. During this period, tobacco consumption in California stopped dropping (Figure 1).

Likewise, the rapid decline in smoking prevalence that occurred early in the Proposition 99 program was reversed. In 1988, adult smoking prevalence was 26.7%, and it had dropped to 15.5% by the first six months of 1995, but in the second six months the adult rate was 17.9% and by 1996 it was 18.6% (Figure 2). Youth smoking prevalence was essentially flat from 1990 through 1993 at 9.1% (compared to national figures which showed youth smoking going up), but had risen to 11.6% by 1996 [10].

After accepting the misappropriation of money from the Health Education and Research Accounts for five years, the public health community challenged the diversion of Proposition 99 Health Education and Research funds into medical services in the courts in 1994. A series of appropriations were ruled illegal by the courts in a series of decisions made in 1994, 1995, and 1996 [7].¹ In 1996, the Court of Appeals upheld the Superior Court ruling that held Assembly Bill (AB) 816, which governed the 1994-95 appropriations, to be illegal and overturned the Superior Court ruling that held Senate Bill (SB) 493, which governed the 1995-96

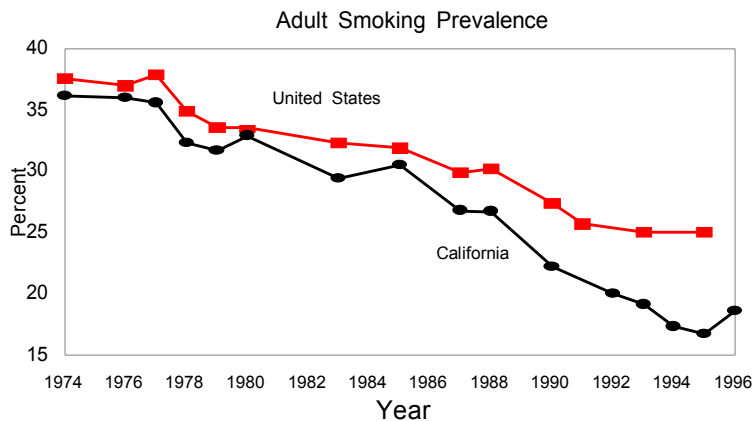


Figure 2 Adult smoking prevalence has decreased at a faster rate in California than in the United States.

¹American Lung Association v. Wilson (1992) Sac. Sup. Ct. No. 369533; Americans for Nonsmokers' Rights v. State of California, 3 Civil C020783, American Lung Association v. Wilson, 3 Civil C020782, Americans for Nonsmokers' Rights et al. v. State of California et al., 3 Civ. C022275, American Lung Assn. of California et al. v. Wilson, 3 Civ. C022389.

appropriations, to be illegal.² The latter decision has been appealed to the California Supreme Court by ANR, ACS, AHA, and ALA.³ The Governor did not appeal the AB 816 decision. The Supreme Court agreed to hear the appeal, although a court date has not been set.

In 1996, in addition to pursuing aggressively full funding of Proposition 99 in the courts, the constituency groups also mounted aggressive political and educational campaigns designed to restore full funding of the anti-tobacco education and research elements of Proposition 99. These campaigns were successful. The 1996-97 budget gave full funding to the Health Education and Research Accounts and the only programs funded from these accounts were ones the court had found legal.

Full funding of the Health Education and Research Accounts, however, was just the first step in implementing an effective tobacco use prevention program. After the legislative battles were done, the next battles centered on the administration and implementation of the program, in particular, the conduct of the media campaign.

Proposition 99 Litigation

There have been five different lawsuits filed over the diversion of monies from the Health Education and Research accounts to medical services.⁴ The first lawsuit was filed by ANR, along with Just Say No to Tobacco Dough (SAYNO), asking for the return of funds diverted from the Proposition 99 Health Education Account under AB 75 and AB 99 (the first two pieces of implementing legislation for Proposition 99 that covered October, 1989 through June, 1994). It was filed in the spring of 1994, prior to the passage of AB 816, the third piece of implementing legislation, which appropriated funds for July, 1994, through June, 1996. This suit has not yet been heard by the Court because the parties agreed to wait until the other suits were resolved.

The second and third lawsuits were filed immediately after AB 816 passed, one by ANR and the other by ALA and ACS. In second lawsuit, ANR sued to stop the implementation of parts of AB 816 that diverted money from the Health Education and Research accounts into medical accounts. (ANR at this point dropped out of the SAYNO lawsuit.) The third lawsuit was filed by ALA and ACS, also requesting that the diversions authorized by AB 816 be stopped. These latter two lawsuits were joined by the Court and heard together in December, 1994. On December 22, 1994, Superior Court Judge Roger Warren declared that AB 816 had illegally diverted \$128 million from the Health Education and Research Accounts.

With strong encouragement from Governor Pete Wilson, the legislature did not choose to allocate the money lawfully in response to Judge Warren's decision. Wilson wrote to the Legislature, urging them to

²Americans for Nonsmokers' Rights et al. v. State of California et al., (1996) 51 Cal. 51App.4th 724, 59 Cal.Rptr.2d 416; American Lung Association et al. v. Wilson et al., (1996) 51 Cal.App.4th 743, 59 Cal.Rptr.2d 428.

³Supreme Court No. S058619

⁴There was also a lawsuit in 1992, when the American Lung Association filed a lawsuit over the failure of the Governor to spend money on the media campaign as the legislature had directed. The Court ruled that the Governor had to spend the money as directed and the ruling was not appealed (American Lung Association v. Wilson (1992) Sac. Sup. Ct. No. 369533).

enact new legislation that continued to divert Proposition 99 funds into medical services, but which would pass legal muster. He wrote,

I hope that you will agree with me that neither the executive nor legislature [sic] branches of state government can abide the court's decision to substitute its will for that of the elected representatives of the people of California with regard to the allocation of critical state resources. I therefore call upon you to establish an appropriate structure for immediate consideration of legislative alternatives to resolve this egregious action by the court so we may minimize the disruption and loss of medical care to uninsured and indigent persons in California [92].

In response, the Legislature made two technical changes in the bill designed to get around the Court's ruling and continued to misappropriate the money. First, it changed the "findings" section of the bill in an attempt to convince the Court that the situation regarding tobacco use in California had changed sufficiently that major cuts in the Health Education and Research Accounts were "consistent with purposes" of Proposition 99. Second, the legislature changed the initial allocations for each account. For example, the Health Education Account, rather than getting the 20% of tax revenues mandated by the voters, received only 10% of the tax revenues. Similarly, Research received 1% instead of the required 5%. The legislature did this because Judge Warren had ruled that Health Education and Research Account funds could not be used to pay for medical services. Therefore, the legislature first moved the money into the medical services accounts and then appropriated the money from these to pay for medical services. The Physicians' Services Account got 22.5% instead of the 10% specified in the initiative. These changes were put into SB 493, a bill that had been sponsored by Sen. Cathie Wright (R-Simi Valley) to deal with radiologic technologies. Wright's text was dropped and the Proposition 99 appropriations and authorizations were amended into the bill. The amended bill was sponsored by Sen. Ken Maddy (R-Fresno), the Senate Minority Leader. The Assembly passed the amended version of SB 493 on July 10, 1995 and the Senate passed in on July 15, 1995. It was signed by the Governor on July 27, 1995.

The fourth and fifth lawsuits were filed after SB 493 passed, one by ANR and the other by ALA, ACS, and AHA. These lawsuits were heard together but were not formally joined. On September 1, 1995, Superior Court Judge James Ford issued a preliminary injunction against SB 493, ruling that, like AB 816, it violated Proposition 99.

The state appealed both the Ford and Warren decisions and the four cases were sent to the Court of Appeal together, although the AB 816 cases were argued separately from the SB 493 cases. The fourth and fifth lawsuits were joined by the Court of Appeal for all appellate procedures on March 27, 1996.

On October 23, 1996, the Court of Appeal heard oral arguments. In both cases, the Court was concerned with the extent of the legislature's authority to amend Proposition 99. The initiative had given the legislature authority to amend Proposition 99 with a 4/5ths vote but required that, "All amendments to this article must be consistent with its purposes" [11].

The question of whether the legislature could change the percentage allocation of funds required in the initiative was dealt with primarily in the case over SB 493. For AB 816, the justices of the Court of Appeal were concerned primarily with *how* the Proposition had been amended in order to take money from the Health Education and Research Accounts. The state tried to make the argument that AB 816 contained an implied amendment of Proposition 99 because the legislature had approved taking money out of the Health Education and Research Accounts by a 4/5ths vote. The Court of Appeal ruled on December 13, 1996 that AB 816 did not legally amend Proposition 99 and upheld the Superior Court ruling. The Court ruled that by trying to "amend" the Proposition merely by allocating Health Education and Research money

to medical services, without actually changing the language of the initiative, the Legislature had violated the reenactment rule of the Constitution. The reenactment rule provides that a statute cannot be amended only by referring to its title, that the amended language must be shown in the language of the affected statute, and that the amending language must be expressly stated. The reenactment rule exists so that legislators and the public know what is being amended and how. The justices were critical of the “cryptic language and uncodified context of AB 816.”

SB 493, in response to the Warren decision, had expressly amended the initiative, so the violation of the reenactment rule was not at issue. Instead the justices were concerned with whether the legislature could with a 4/5th vote change the account percentages or whether a change in the percentages was inconsistent with the purpose of the initiative and thus illegal. The plaintiffs argued that the 4/5ths language allowed the Legislature to make minor technical adjustments in Proposition 99 but that the minimum funding percentages were such an integral part of the purposes of Proposition 99 that they could not be changed. The Court rejected the plaintiffs’ arguments and ruled that, based on the record before it, there was no evidence that the amounts taken from the two accounts were such that the “account’s reason for being in the Act [Proposition 99] could not be carried out.” The Court of Appeal left open the possibility that the plaintiffs could return to the trial court to litigate this point, commenting that, “This conclusion is made on the state of the record before us. This conclusion does not foreclose the challengers from submitting evidence at trial to show that the percentage changes in the Fund’s accounts made by SB 493 rendered SB 493 inconsistent with the purposes of the Act as a matter of fact.” The Court ruled that the Legislature had supported its amendment with findings and that nothing in the record before it indicated that those findings were unreasonable or arbitrary. The Court also ruled that SB 493 did not violate the single subject rule by both amending Proposition 99 and also appropriating money within the same piece of legislation.

On January 22, 1997, both ANR et al. and ALA et al. appealed the ruling of the Court of Appeal on SB 493 to the California Supreme Court. (The Governor did not appeal the decision on AB 816.) C. Everett Koop, former U.S. Surgeon General, wrote a letter in support of the petitions for review by the Supreme Court, commenting that, “The drafters of Proposition 99 created a sophisticated balance of programs and divided resources among the program accounts carefully so as to craft a long term solution to nicotine addiction and tobacco-related diseases ... The Legislature disrupted this balance in such a way to frustrate effectiveness of the public policy choices reflected in the statute” [12].

The petitions filed by both ALA et al. and ANR et al. specifically request that the Supreme Court overturn the Court of Appeal based on a violation of the single subject rule and on the grounds that SB 493 is inconsistent with the purposes of Proposition 99 as it was represented to and approved by the voters. The California Supreme Court has agreed to hear the case, although a trial date has not been set.

The Governor’s 1996-97 Budget Proposal

By January, 1996, when it was time for the Governor to propose his 1996-1997 budget, there were substantial amounts of Proposition 99 money that had not been spent for anything and were being held in reserve. Some of the reserves resulted from the lawsuits and some had built up because the tobacco tax money had not been appropriated for anything. The Health Education Account was projected to have a reserve of \$101,195,000 by the end of June, 1996. Of this money, \$73,169,000 was in reserve because the courts had blocked it from being spent on anything other than health education programs, and \$28,026,000 had not been allocated for anything. Of the \$58,731,000 in the Research Account reserve, \$55,886,000 was in reserve because the courts had blocked it from being spent on anything other than research. In addition, new tax dollars would be available beginning July 1, 1996. All of these monies were available for allocation,

as long as they were used legally. For the fiscal year, 1996-97, there was \$191,227,000 available for Health Education and \$81,989,000 for Research [7].

Rather than proposing expenditures that conformed with the two court orders, however, the Governor proposed in his January 10 budget expenditures for 1996-97 that were similar to those authorized in AB 816 and SB 493, despite the fact that two judges had ruled that it was illegal to divert Health Education and Research monies to direct medical services. He proposed spending \$53,018,000 on Health Education programs and \$4,000,000 on Research. The Governor's budget also showed only 10% of the Proposition 99 revenues going into the Health Education Account (as opposed to the 20% required by Proposition 99) and 1% in the Research Account (not the 5% required by the voters). Gov. Wilson cited SB 493 as his precedent, despite the fact that SB 493 specifically stated that effective July 1, 1996 the allocations to the various accounts would conform to those established in Proposition 99 (20% and 5%, respectively). The temporary diversions of AB 816 and SB 493 had been justified due to financial exigency, and in 1996, the state's economy had improved greatly. According to the Governor's Budget, "Solid gains in employment and income will continue for the next two years" [13]. The Governor appeared to be committed to cutting the anti-tobacco education and research programs, whether or not there was a financial justification for doing so.

Public Action

The three voluntary agencies — ACS, AHA, and ALA — issued a press release immediately after the Governor's budget was made public saying they were “outraged” at the budget proposal, saying, “it reveals his latest attempt to thwart the law and steal monies earmarked for anti-tobacco education and research programs by the voter-approved Proposition 99.” The press release concluded with the statement that, “The health agencies refuse to let that happen and are launching a statewide campaign to invoke public awareness and put pressure on legislators to reject the Governor's tobacco fund raid” [14]. They organized the Coalition to Save Proposition 99 to work to prevent further diversions from the Health Education and Research accounts.

Although the three voluntary health organizations and ANR eventually engaged in different campaigns to restore the voter-approved funding levels to Proposition 99, with AHA joining with ANR and ALA working with ACS, there were some common themes in their strategic approaches to getting new legislation in 1996. Representatives of all four organizations felt that it was critical to expand the scope of the conflict in 1996 to involve more than just the Legislature and the Sacramento insiders. In particular, all four organizations wanted to involve the media more and to involve local level activists and agencies. In addition, there was a conscious effort not to rely solely on the lobbyists in Sacramento to conduct the reauthorization fight but to also involve the executives and volunteers of the public health groups and the grass roots membership of ANR. This effort had the effect of bringing in many players from outside Sacramento.

The changed strategy meant that the fight over what to do with the Proposition 99 revenues in 1996 was a more public fight than it had been in the past. AHA and the American Nonsmoker's Rights Foundation⁵ (ANRF) teamed up to begin a paid advertising campaign to publicize the failure of the Governor and the Legislature to follow the will of the voters. AHA committed \$50,000 for a grassroots lobbying campaign and hired a Republican lobbyist. Eventually, ANRF and AHA were supported by a \$250,000 grant from the California Wellness Foundation that allowed them to hire the Public Media Center in San Francisco to assist in designing the advertising campaign and the Field Institute to run public opinion

⁵ANRF is the educational arm of Americans for Nonsmokers' Rights.

polls [15].

ALA and ACS followed a less confrontational approach that sought to engage the public by focusing on generating free media news stories and editorials. To begin their campaign, ACS contributed \$120,000 and a full-time staff member and ALA contributed \$10,000. Much of the money raised was used to hire a professional public relations firm, Stoorza, Ziegau, Metzger, and Hunt, which helped them with access to editorial boards and to other media outlets.

Both groups also conducted campaigns focused at the local level to create public pressure on the Legislature to observe the terms of the initiative.

These two campaigns, however, did not run in conjunction. The ANRF/AHA approach was viewed as controversial by ACS and ALA, and on two occasions — February 16 and April 29 — they wrote letters designed to distance themselves from the ANRF/AHA campaign [16, 17]. The February letter was addressed to the Legislature; the April letter was addressed to the Board chairs of ANRF and AHA and was also hand delivered to the Governor.

The ANRF/AHA Paid Advertising Campaign

The earliest advertisement was a radio spot put together by ANR to coincide with Gov. Pete Wilson's announcement of his presidential bid. Wilson actually announced his candidacy for President three times — once on national television, once in Iowa, and once in New York — and ANR's radio advertisement asking, "Yuh think Pete Wilson's running for president — or just wants to be the next Marlboro Man?," ran each time. The advertisement called attention to the fact that Wilson's campaign manager, Craig Fuller, was on leave from his job as a senior vice president at Philip Morris tobacco company, makers of Marlboro cigarettes. A print version of the advertisement also ran in *USA Today* [18].

AHA joined with ANR as it continued its focus on Gov. Wilson and tobacco by running a print advertisement in the *Sacramento Bee* on January 30, 1996, nominating him for the Tobacco Industry Hall of Fame for his refusal to fund fully the Health Education and Research Accounts [7]. In addition, ANR and AHA broadened their defense of Proposition 99 by also nominating Steve Thompson, Director of Government Relations for the California Medical Association (CMA), to the Hall of Fame. The CMA was included because of its historic opposition to the Health Education and Research Accounts and its key lobbying role in Sacramento in diverting health education and research funds into medical services [7, 19]. Without the CMA arguing that the Health Education and Research monies were necessary for health care, the Legislature and the Governor could not pretend that it was a virtuous act to take the Health Education and Research money for medical services. The CMA's new executive vice president, Jack Lewin, had a background in public health and was thought to be open to changing the CMA's posture vis-a-vis the Health Education and Research Accounts [7].

Partially as a result of these early advertisements, in March, the California Wellness Foundation gave a grant to ANRF to educate the public about Proposition 99. A total of six advertisements were produced during the spring and fall campaigns; three of which ran while the Legislature was considering new authorizing legislation. (All six advertisements are contained in Appendix B.) The first two advertisements were directed at the CMA, urging it to change its policy relative to Proposition 99. One of these was signed by former Surgeon General C. Everett Koop and other physicians. The third advertisement contained a reproduction of an internal Philip Morris memo that had been leaked to ANR in April. The memo, written six years earlier in 1990 by a Philip Morris lobbyist, reported that Wilson's campaign would be returning the \$16,000 that could be directly linked to the tobacco industry but keeping \$84,000 raised at a fund raising

event organized by Philip Morris. It turned out that industry contractors were giving money to the Wilson campaign. Over \$35,000 of this amount came from businesses and industries with direct ties to Philip Morris [20]. The lobbyist also reported on private communications between Wilson and Hamish Maxwell, then chairman and chief executive of Philip Morris, in which Wilson assured Maxwell that he was “pro-tobacco.”

Wilson first saw the memo when he was being interviewed by Peter Jennings on tape for an ABC News special (aired in June, 1996), which several observers thought limited the amount of “spin” control Wilson’s advisers could do. Wilson did not deny that he had received the tobacco money. (The incident was not in the final broadcast.) The memo was covered in the California press [18, 21, 22] and was widely viewed as helping to explain Wilson’s efforts against Proposition 99.

Legislative Action

Four bills were introduced in 1996 to allocate the Proposition 99 funds: SB 1971 (Watson), AB 2987 (Katz), SB 1986 (Thompson), and SB 1773 (Committee on Budget and Fiscal Review). The first two bills were virtually identical and were introduced primarily by Senator Diane Watson (D-Los Angeles), chair of the Senate Health Committee, who has historically carried legislation that preserves the Health Education and Research Accounts at full funding levels, and these bills did that. (Assembly Member Richard Katz (D-Panorama City) was Democratic Minority leader in the Assembly and a strong opponent of the tobacco industry.) Introduced by Senator Mike Thompson (D-Santa Rosa), chair of the Senate Budget Committee, SB 1986 was similar in structure to AB 816, although SB 1986 listed no specific funding levels. Although it contained some specific language, it was also referred to as a “spot” bill, which means that it was proposed to meet the deadline for filing bills without specifying the content to provide a vehicle to implement later policy decisions. SB 1773 carried the name of the Committee on Budget and Fiscal Review; it had virtually no language and existed to provide a vehicle for the Governor’s budget proposals for the Proposition 99 money.

The Senate Health Committee considered SB 1971 and SB 1986 on April 17, 1996. Both bills were passed out of committee. The Assembly Health Committee passed AB 2987 on April 23 by a 12-1 vote. After the hearing, several other members signed on to the bill, resulting in a 15-1 vote in favor of the bill. The vote was called “unexpected and significant” by the ALA [23], because no one had expected the Republican majority to let the bill out of committee.

According to Elizabeth McNeil, a lobbyist for the CMA, a key factor in the success of the bill was convincing Assembly Member Brett Granlund (R-Yucaipa), the chair of the Assembly Health Committee, to let the bill pass out of committee. He was amenable to doing so because of an article that had appeared in the *Los Angeles Times* the day before the vote [24], reporting that Granlund had accepted at least \$44,500 in campaign contributions from the tobacco industry. It contained several quotes by Granlund, such as, “I’m a free-enterprise, no-tax smoker” [25]. The *Los Angeles Times* also ran an editorial condemning Granlund, saying, “The will of most Californians is unambiguous regarding the health risks associated with tobacco use. But public opinion is apparently a trifle to the cigarette companies and their new legislative charges in Sacramento” [26].

The bill later, however, stalled in the Assembly Appropriations Committee and died. The Assembly committee instead passed the Governor’s proposal, with his May revision (described below). Katz, the author of the bill and the minority leader of the Assembly, thought that it was a good strategy on the part of the Republicans to allow the bill out of the Assembly Health Committee, so they could claim to be supporting the program, knowing that the bill would die in the Appropriations Committee.

He was surprised that the Republicans were astute enough to follow this strategy, although he had heard rumors in the morning that they were going to do so [27].

The Governor's May Revision of the Budget

When the Governor makes his original budget proposal in January, it is based on assumptions about the California economy and the state's expected revenues. In May, the Governor adjusts his proposals based on new information about revenues and releases the so-called "May Revise." The May Revise is considered to be the Governor's "real" budget.

In the 1996 May Revise, the Governor changed his proposal regarding Proposition 99 revenues. He proposed releasing \$147,000,000 in reserve Proposition 99 funds, including \$32,700,000 to Health Education and \$40,900,000 to Research. (The rest was money for medical services.) The funds were available due to higher than expected revenues (because tobacco use was no longer falling, partially as a result of cuts in the anti-tobacco program; see Figure 1) and underspending in several Proposition 99 "caseload-driven" medical programs, including ones illegally funded out of the Health Education Account. Caseload-driven programs are those that only spend their allocations if they have clients who qualify for the program. For example, the budget for the Access for Infants and Mothers (AIM) is established with the assumption that a certain number of pregnant women will use the service in a given year. If there are fewer clients than expected, then there is money left in the budget.

The specific expenditure plan for Health Education allocated \$12.2 million to the media program, \$6.83 million to the local level public health departments (known as local lead agencies or LLAs), \$6.83 million to competitive grants, and \$6.83 million to the California Department of Education (CDE). All of the new monies were to target youth. The money going to the Research Account included \$38.9 million for research and \$2 million for evaluating the CDE program. The research money was to fund applied research related to tobacco use, prevention, and control, with an emphasis on youth and young adults. The youth focus was justified by the release of data showing that between 1994 and 1995, adult smoking prevalence had dropped to 16.7% from 17.3%, while youth smoking prevalence had risen from 10.9% to 11.9% [10].

The additional funds in May Revise funds were one-time expenditures based on the reserves that had accumulated. The plan did not change the Governor's budget proposal for the 1996-97 year; he continued to propose to use only 10% of tax reserves for Health Education and 1% for Research. The money being held pending the resolution of the litigation, which the Governor estimated at \$100 million, was not released. Although the May Revise demonstrated some movement on the Governor's part in response to the mobilization of the health groups and the change in the CMA position to no longer seek actively the diversion of Proposition 99 Health Education and Research funds into medical services, he did not change his budget to comply with the terms of Proposition 99. The expenditures for Health Education and Research were close to what the Proposition required for that year, which appeared to be a way to tempt the health groups to compromise on the fundamental question of how the Proposition 99 dollars should be allocated in the long run.

While the Governor had added money to the Health Education and Research Accounts, he also proposed restrictions on the use of program funds. For the first time, the Tobacco Education and Research Oversight Committee (TEROC) was to review the research expenditure plan, to hold public hearings on it, and to approve it. The effort to restrict the program to youth was also new. The proposed restrictions on the program were indicators of the summer fights to come.

Reaction to the Governor's Proposal

The reaction to the Governor's proposal was mixed. In a statement released on May 17 by the Coalition to Restore Prop 99, Carolyn Martin, one of two co-chairs of the Coalition and a volunteer with ALA, said,

We are encouraged the Governor has recognized the importance of funding tobacco education, prevention, and research and believe he has taken a critical first step. However, we have very serious concerns about his proposed programmatic changes which may not be consistent with Proposition 99 [28].

In the same statement, Don Beerline, the other co-chair of the Coalition and a volunteer with ACS, commented that the Coalition was concerned about the move away from science-oriented research to applied research [28]. In a separate memo to ALA directors and staff, Caitlin Kerk and Tony Najera, Director of Communications and Vice President, Government Relations, respectively, of ALA, commented that,

Although the proposal is a positive step, we have serious concerns and many questions about the details. We are quite concerned about the overall effectiveness of a tobacco control program that would require all funds to be spent on youth-focused education and research projects [29].

The AHA and ANRF reacted more strongly; they ran an advertisement to protest the Governor's plan, arguing that strategies that focused only on youth played into the tobacco industry's effort to hook young smokers. Their advertisement noted that the tobacco industry, according to internal memos, tries to attract young smokers by presenting the cigarette as "one of the initiations into the adult world" and as "part of the illicit pleasure category of products and services." Smoking is inserted into the illicit pleasure category by linking it with alcohol consumption and sex. Tobacco use prevention campaigns that only emphasize that youth should not smoke, without mentioning adults, inadvertently reinforce this message. They accused the Governor of using the youth only strategy as a way to subvert Proposition 99's educational campaign.

The *San Francisco Chronicle* on June 3, 1996 carried as its lead editorial, "Smelling the Smoke of Governor's Plan" [30]. It criticized the Governor's proposal:

Governor Wilson recently proposed a compromise that would shift \$147 million of previously diverted Prop. 99 funds to tobacco education programs, but that would still fall short of the 20-percent level approved by voters. The governor's plan also limits the education spending to programs aimed at teenagers, instead of broader approach. Also, his proposal is a one-year deal, leaving tobacco education funding vulnerable to vagaries of future budget conditions ... The Katz and Watson bills reassert the state's long-term commitment to fight smoking. California voters delivered the mandate — and the money — eight years ago. This effort must not be undermined by Wilson and other friends of tobacco in Sacramento [30].

At the June 3 meeting of TEROCC, Kim Belshe, the Director of DHS described the Governor's proposal. According to Belshe, the decision to focus on youth instead of both adults and youth was based on prevalence data. For the previous two years there had been an increase in the prevalence rates for youth smoking. What also came out at the meeting, however, was that for the second half of 1995 adult rates were also increasing. For the first six months of 1995, the adult prevalence rate was 15.5% but in the second six months the adult rate was 17.9%. By reporting an overall figure of 16.7% for the

year, the upturn in adult smoking was disguised [31]. Several major papers reported on apparent effort to disguise the upturn in the adult smoking rate [32, 33].

ANRF and AHA had commissioned a public opinion poll from The Field Institute to determine the extent of public support for Proposition 99. The poll was conducted between June 10 and 16, and the results of the poll were released on June 20, 1996. The results indicated overwhelming support among both Democrats and Republicans for Proposition 99 as it was passed by the voters and also indicated opposition to the Governor's policies. The poll also showed a high level of mistrust of the tobacco industry and its allies. It also found that voters were less likely to vote for candidates who took campaign [34]. Some of the specific questions and the responses are contained in Table 1.

The Final Budget Numbers

In the end, none of the bills that were introduced in the early spring authorized the Proposition 99 program. The program was authorized by AB 3487, which was passed as part of the budget package as a "trailer" bill. "Trailer bills" do not go through public hearings or other consideration by policy committees, such as the Assembly Health Committee. They are instead created as part of the budget. This process means that there are fewer opportunities for public input and consideration of the program than there are when a bill comes through the program committees. Budget deliberations are often private.

On June 12, the Budget Conference Committee agreed unanimously that the Proposition 99 reauthorization would be drafted as a two-thirds bill, as opposed to a 4/5ths bill, meaning that it would pass if 2/3rds of the members supported it. This decision was significant because it meant that the initiative's funding percentages would not be violated. If the Legislature had been planning to attempt to amend the percentages going into the accounts again, as the Governor proposed, they would have needed a four-fifths vote. (Even with a four-fifths vote, the courts had twice ruled that the percentages could not be amended, but the cases were on appeal and the Legislature could have tried one more time to amend Proposition 99. In 1996, it elected not to do so.) Both Katz and Sen. Mike Thompson (D-Santa Rosa), chair of the Senate Budget Committee, had made it clear to the Governor that they would not support a four-fifths vote.

The Budget Conference Committee adopted its Proposition 99 spending plan on the night of June 19. The plan gave the Health Education and Research Accounts their full allocation: \$129.520 million for Health Education Account and \$64.118 million for Research. (Tables A-2 and A-3.)

Assembly Speaker Pringle's Attempts to Limit Proposition 99 Programs

With the shift to full funding, the remaining legislative debate would be over how the money could be used. In addition to the Governor's effort to focus the program on youth, in June, Curt Pringle (R-Garden Grove), the Speaker of the Assembly, announced his efforts to control the Proposition 99 expenditures. He tried to prohibit the media account from being used to attack the tobacco industry, and he tried to insert language in the authorization for the research account that would block it from funding research of a "partisan political nature" [35]. He also wanted \$5 million set aside for cessation; as noted earlier, money to fund this eventually came from the unexpended media funds from 1995-1996.

Pringle's language specified that advertisements "be based solely on the health implications of tobacco use and on the health implications of refraining from tobacco use," although Pringle spokesman, Gary Foster said that language would be added to allow discussion of the social and behavioral

TABLE 1. FIELD POLL RESULTS -- JUNE, 1996

1. Proposition 99 mandates that 25% of the money raised from these additional state tobacco taxes be spent on programs and research to discourage Californians from smoking. It also permits that most of the money — 70% — be spent to pay for direct medical services. Do you approve or disapprove of this allocation of the Proposition 99 tobacco tax money?

	Overall	Democrats	Republicans	Smokers	Nonsmokers
Approve	80.1%	80.1%	82.0%	68.5%	83.5%

2. In each year since 1991 Governor Pete Wilson has reduced the amount of Proposition 99 moneys for anti-smoking programs below the 25% allocation specified in the initiative. A number of health organizations have sued the Governor over these reductions. The Courts have ruled against the Governor but he is appealing. Do you think the Governor should accept the Court's decision and spend 25% of the Proposition 99 tax moneys on anti-smoking programs or should he fight the ruling by appealing its decision?

	Overall	Democrats	Republicans	Nonsmoker	Smoker
Accept the Decision	73.0%	81.2%	70.6%	73.5%	68.1%

3. How much influence do you think the tobacco industry has over state elected officials who accept their campaign contributions — a great deal of influence, some influence, only a little influence or no influence at all?

	Overall	Democrats	Republicans	Nonsmoker	Smoker
Great Deal	56.4%	62.0%	53.8%	55.6%	55.1%
Some	29.5%	28.1%	32.6%	32.0%	28.2%

4. If an elected official or candidate running for public office accepted money from the tobacco industry, would this make you more likely to vote for that person, less likely to vote for that person, or wouldn't this make any difference to you?

	Overall	Democrats	Republicans	Nonsmoker	Smoker
Less likely	55.3%	61.6%	52.2%	58.7%	33.3%
More likely	2.8%	2.7%	1.8%	2.3%	3.3%

implications of smoking. Pringle's justification was that taxpayer dollars should not be used to attack industry. The Governor's office reportedly did not support the proposed limitations on the media account [36].

Pringle was widely criticized for his stance. The editorial in the *Sacramento Bee* on June 28, 1996 was representative. It said,

Tobacco industry executives plainly don't enjoy turning on the television and seeing ads telling Californians that the industry profits at the expense of their health. They don't like it when researchers unmask their marketing and political strategies. It's not hard to understand why they want the Legislature to undermine those elements of Proposition 99. What's harder to explain, and impossible to justify, is the speaker's willingness to do their work [37].

Pringle also wanted the advertisements to focus on children between the ages of 6 and 14, a strategy Mary Adams, a lobbyist with the American Heart Association, said, "dooms the entire campaign to fail" [38]. By focusing solely on children, the state would be reinforcing the tobacco industry strategy that makes tobacco use more attractive to children by presenting it as an "adults only" behavior.

Pringle's language putting limits on the media account was eventually dropped. Thompson, Katz, and Sen. Bill Lockyer (D-Hayward), President Pro-Tempore of the Senate, were strongly opposed to the media account restrictions, although were willing to include the cessation language [36].

Pringle's limits on the Research Account appeared to dovetail with the restrictions on the Research Account proposed by the Governor in his May Revise. Previously, the criteria for funding proposals from the Research Account had been scientific merit as determined by a peer review process. On top of that now the Governor now wanted a review by the Department of Finance (who reported to the Governor) and TEROC, which was largely appointed by the Governor.

Katz believed that the language governing the Research Account was focused specifically on UCSF Professor Stanton Glantz's research on campaign contributions and other tobacco industry political activity and how it affected legislative behavior [36, 39]. This same work had been one of the reasons that former Assembly Speaker Willie Brown, now the mayor of San Francisco, had stripped the Research Account of funding in prior years [7, 40, 41].

The University viewed the Pringle language as a direct threat to academic freedom, replacing scientific review with political review and disciplining the University for funding legitimate research that was politically unpopular. The University attempted to clarify what it believed the language meant. In a letter dated July 1, 1996, the University said that it,

[U]nderstands the phrase, "a research program expenditure plan," to be a general expenditure plan identifying the range of targeted research areas. As we have made clear to all parties, we do not intend to submit for review each grant proposal we wish to fund. [42].

The University then said that it,

[I]nterprets the phrase, "research or other activities of a partisan political nature," to mean activities pertinent to political parties. As a matter of policy, the University of California does not engage in such activities and the [research program] would not fund research that does so [42].

The letter specifically said that research related to public policies for tobacco control would be funded and that the University had no control over the uses to which its research was put by others [42].

The language putting limits on the Research Account, however, remained in the budget. The eventual language was,

Of the funds appropriated by this item, \$60,422,000 is to be allocated for research regarding tobacco use, with an emphasis on youth and young adults, including, but not limited to, the effects of active and passive smoking, primary prevention of tobacco use, nicotine addiction and its treatment, effects of second hand smoke and public health issues surrounding tobacco use. These funds may be used to support research or other activities of a partisan political nature, and shall be allocated primarily for applied research. In addition, prior to its use of this \$60,422,000, the university shall submit a research program expenditure plan to the Department of Finance for approval. The Tobacco Education Research Oversight Committee [sic] shall conduct public hearings on the proposed expenditure pan and make recommendations to the Director of Finance regarding approval of the plan.

The Assembly and Senate approved the budget, which included the Proposition 99 appropriations, and the trailer bill, AB 3487, that authorized the programs, on July 8. The Governor signed the budget on July 15. It represented the first time since Proposition 99 passed in 1988 that funds were expended consistent with the initiative.

Governor's Proposal for Proposition 99, 1997-98

For the fiscal year 1997-98, the Governor has proposed full funding of the Health Education and Research Accounts. The amounts of money in the accounts were also amended upward slightly because of higher than anticipated revenues, due to the fact that tobacco use was no longer falling in California (Tables A-1, A-2, and A-3) [43]. The battles over the 1996-97 budget, combined with the litigation, appear to have changed the political environment surrounding Proposition 99. The percentages established by the initiative were respected.

The Controversy over the Media Campaign

The focus of conflict between the public health community and the Wilson Administration shifted to the quality and content of the anti-tobacco program. In 1996-97, the most high profile aspect of this battle was over the scope, content, and focus of the anti-tobacco media campaign. The Wilson Administration reportedly had opposed inserting into the budget Pringle's language preventing the media campaign from attacking the tobacco industry and requiring that it focus its messages on children [36]. Once program implementation began, however, the Administration appeared to be trying to implement a program similar to what Pringle had proposed.

The advertising agency Asher/Gould had been awarded the last media campaign contract in May, 1994. When the new budget passed in 1996, the Department of Health Services extended Asher/Gould's contract for producing media through December 31, 1996 and issued a new Request for Proposals (RFP) for the media campaign for the period from January 1, 1997 through December 31, 1999 [44]. The new RFP was technically not necessary, because under the old contract with Asher/Gould, the contract could have been extended through June, 1998. By going through the bid process again, the Wilson administration delayed the production and placement of new media. By delaying the media contract, the Administration underspent the media campaign in 1995-96, spending

only \$6,554,000 of the \$12,197,000 appropriated by the Legislature for media. This lack of anti-tobacco media probably contributed to the flattening (and possible increase) in tobacco consumption (Figure 1).

New media could, of course, have been produced under the contract extension, but it was not. Even after Asher/Gould was the successful bidder on the new contract, new media was not released until March 20, 1997. During the period when no new media was being produced, DHS continued to run old advertisements, despite warnings from departmental staff that the advertisements were so over-exposed that they had likely lost their effectiveness [45].

In September, 1996, it turned out that Sandra Smoley, Secretary of Health and Welfare, had personally ordered that 190 billboards saying, "Are You Choking on Tobacco Industry Lies?" be papered over at a cost of \$10,000. Smoley did not approve of accusing the tobacco industry of lying [46]. The billboards had been approved by Kim Belshe, the Director of DHS [47]. For the public health groups, this was clear evidence that public health professionals were no longer in charge of the media campaign but that it was now subject to a review for political acceptability, as Assembly Member Pringle had demanded.

Jennie Cook, the chair of TEROC and an ACS volunteer, and Lester Breslow, former dean of the UCLA School of Public Health and former Director of DHS, had both been on TEROC since its formation under AB 75. Both were concerned with the delays in producing new media and the failure of DHS to share the story boards of the work in progress with TEROC. At the December 10, 1996 meeting of TEROC the delays in the media campaign were on the agenda, including a review of the process used for approving new media. TEROC also made a formal request to James Stratton, the State Health Officer and DHS Deputy Director for Prevention Services, to be allowed to see the story boards [48].

The veil of secrecy extended not only to TEROC but to the advertising firm as well. The new Asher/Gould contract contained a new clause barring it from revealing anything about the campaign until the new advertisements were made public [49, 50]. The change in the Asher/Gould contract reflected the larger veil of secrecy that had been placed around the whole media campaign. Experts from the field who had previously been consulted about the media campaign while it was under development were no longer involved in reviewing materials.

In December, 1996, a public records request by ANR revealed that in 1992, Betsy Hite, then press aide to Molly Joel Coye, the Director of DHS, pressured staff members in the Tobacco Control Section (TCS) to falsify data about the effectiveness of the Health Education program. In 1992, the Wilson Administration wanted to take all funding from the media campaign. To justify this action, it was important to show that the program was not having an effect. Hite told Jacquolyn Duerr, then head of the anti-smoking media campaign, to back up Hite's assertion that the decline in smoking had nothing to do with Proposition 99 [51, 52]. The Governor did suspend the media campaign in 1992, but, following a lawsuit by ALA, funding was restored [6]. The memos, and the actions they reveal, were four years old, but for the public health community they served as strong evidence of the administration's long-term interest in undercutting the Proposition 99 programs, particularly the media campaign. Coming as it did when there were concerns about delays in the new media campaign, the revelations about the Administration's behavior in 1992 increased the levels of frustration and concern on the part of ACS, AHA, and ANR.

On February 4, 1997, the Presidents of the ACS, AHA, and ANR wrote to Smoley to express their frustration with the "administration's ostensible defense of an industry responsible for the deaths of

more than 42,000 Californians each year — the tobacco industry” [53]. The three organizations protested the long delay in the production of new media and urged Smoley to release a campaign that featured the original campaign themes — “the tobacco industry lies,” “nicotine is addictive,” and “secondhand smoke kills.”

On March 7, ACS, ALA, and ANR received a response to their letter of February 4 letter. Smoley responded by saying that, “it was found to be offensive for government to use taxpayer funds to call a private industry a liar,” although she did state that it was appropriate to counter industry tactics [46]. Smoley appeared to be implementing Pringle’s program of refusing to attack the tobacco industry, even though the Legislature had refused to pass it.

The TEROC Purge

Cook called an emergency meeting of TEROC for Monday, February 10, 1997, to follow up on Stratton’s refusal to share information about the media campaign with TEROC and to decide what action TEROC should take in response [54].

On the Friday before the TEROC meeting, February 7, 1997, Stratton announced that two physicians on TEROC — Breslow and Reed Tuckson, president of Drew University of Medicine and Science in Los Angeles — had been replaced by Assembly Speaker Pringle the previous November, shortly before Pringle was replaced as Assembly Speaker by Cruz Bustamante (D-Fresno), when the Democrats took over the Assembly. In the physicians’ places, Pringle appointed Hal Massey, a retired Rockwell Executive who had been active in ACS, and Doug Cavanaugh, the President of Ruby’s Restaurants, who is, according to Pringle, “familiar with the tobacco debate, balancing regulations with people’s right to smoke” [55]. Public health groups were concerned that Cavanaugh was sympathetic to the tobacco industry, had no apparent qualifications to oversee a major public health program, and lacked the credentials of either Breslow or Tuckson.

DHS also announced that Gov. Wilson had replaced Dr. Paul Torrens, also of UCLA, with Dr. George Rutherford, who had been the State Health Officer in the Wilson Administration and responsible the Proposition 99 program. Rutherford is now on the faculty at University of California at San Francisco (UCSF). Wilson also appointed Dr. James Stratton, the State Health Officer and the person responsible for currently implementing the Proposition 99 program at DHS, to the TEROC. Stratton had previously been a protagonist of TEROC, refusing to allow TEROC access to the materials for the media campaign.

There had been no announcement of the appointments at the time they were made, and Jennie Cook, chair of the Committee, had been unaware of them. Spokesmen for Pringle and the Governor said that either DHS was not informed or the appointment letter had been lost [55]. Public health groups were suspicious that Breslow, Tuckson and Torrens had been removed because of their willingness to question how the program was being administered.

On Monday morning, before the TEROC meeting, ACS, ALA, ALA, and ANR called a press conference to protest the changes in the TEROC membership and to express their concerns about the administration of the program. Alan Henderson, President-Elect of ACS, Carolyn Martin, a volunteer with ALA and former chair of TEROC, John Schaffer, of AHA, and Stanton Glantz, of UCSF, spoke at the press conference. They pointed out that it was inappropriate for James Stratton to sit on TEROC. Stratton had asserted direct responsibility for the day to day management of the DHS tobacco program, particularly the media campaign. It appeared that there was a conflict of interest in Stratton both

running the program and also sitting on the Committee that was to oversee program operations.

At the press conference, several other points were emphasized: Every day in California, 130 people die of tobacco-related disease and 300 kids start using tobacco; between 1993 and 1995, while Proposition 99 revenues were diverted, there was a 31% increase in adolescent smoking; the tobacco industry spends \$1.7 million everyday in California to promote tobacco use; the media campaign had not produced new advertisements in 18 months and there were no advertisements at all currently running; TEROC had traditionally been allowed to review the story boards before advertisements were produced and they were no longer consulted; and two advertisements — Nicotine Soundbites and Insurance — had been produced but Nicotine Soundbites had hardly been shown and Insurance had not been used at all.

Nicotine Soundbites, produced in 1995, featured news footage from the Congressional hearing held by U.S. Representative Henry Waxman (D-Los Angeles) at which tobacco industry executives claimed, one by one, that nicotine was not addictive. The advertisement ended with the phrase, “Do they think we’re stupid?” When tobacco giant, R.J. Reynolds, threatened to sue, Belshe vigorously defended the advertisement, and it continued to air. A few weeks later, however, it was quietly pulled off the air. Belshe later commented that the Department perceived that it had the choice of spending resources on the media campaign or on litigation and chose the former [50]. It is interesting that in 1995-96 the media campaign was underexpended by \$5.643 million, belying Belshe’s expressed commitment to spending money on media. Both “Nicotine Soundbites” and “Insurance” were considered by the public health groups to be very effective in attacking the tobacco industry, a strategy known to be effective at preventing tobacco use.

Between the controversy caused by the lack of a media campaign and the controversy over the purge of the three widely respected committee members, the media gave substantial coverage to the meeting, particularly to the absence of the media campaign and the lack of information about it [55-61].

Well over a hundred people came to the TEROC meeting on the afternoon of February 10. TEROC normally meets in a conference room and has 10 to 15 nonmembers in attendance; this meeting was held in an auditorium. Among those at the meeting were the heads of a number of county tobacco use prevention programs who emphasized the key role the media campaign played in their efforts. Without the “air cover” created by the media, the impact of their local programs was more limited. Steve Hansen, of the CMA, suggested Stratton was guilty of “public health malpractice.” He urged the department to run “Boardroom” again, since it had not been seen in years and would again be effective. “Boardroom” was one of the first advertisements to run in the Proposition 99 campaign. In it, actors portraying a group of tobacco industry executives are talking about recruiting young people to smoke, commenting, “We’re not in this for our health.”

TEROC eventually agreed that Cook should write to Belshe, informing her of the committee’s unanimous vote to request a meeting to review the story boards for the current media and to request other, similar meetings to include the committee in the media development process. TEROC also voted that it favored “the most aggressive media ads possible” and “sustaining of continuous media coverage, using, if necessary, the strongest existing ads currently available”[54].

Belshe responded to the TEROC letter on March 19, indicating that TEROC would not be involved in the process of developing the media. Cook expressed her disappointment in a letter on April 2, commenting that, “The TEROC is not an outside party; it is to be part of the process; and it is being deprived of the tools necessary to function.” One of the other TEROC members stated that it appeared

that the Department considered twelve-year-olds in a focus group less of a security risk than the members of TEROC [54]. TEROC was finally shown the new advertisements at its March 25 meeting, after they were released to the public, and Cook indicated that their reactions were mixed.

At the TEROC meeting on March 25, the committee also had a report on the latest California smoking prevalence data from Drs. John Pierce and Elizabeth Gilpin, of the University of California at San Diego. At the December 10, 1996 meeting of TEROC, Dr. Dileep Bal, Chief, Cancer Control Branch, DHS (which includes the Tobacco Control Section), had reported that preliminary prevalence data would be available in early March, and Cook had requested that the information be shared with the committee. In the past, Pierce's evaluation data was not always readily made available by DHS, and the public health community was particularly watchful since they had had the December revelations about Betsy Hite's behavior in 1992.

The data showed that smoking rates for both youth and adults appeared to be going up. From 1993 to 1996, there was a 22% increase in susceptibility to smoking among children 12 to 14, a 22% increase in the number who were addicted to cigarettes among 15 to 17 year olds, and a 30% increase in the number of 15 to 17 year olds who smoked in the last 30 days. Increases were across the board, including racial/ethnic minorities and females. Overall, youth smoking, which had been as low as 8.7% in 1992, rose to 11.9% in 1995 and remained flat in 1996 at 11.6%. The annual Behavioral Risk Factors Survey conducted in-house at DHS showed that adult smoking prevalence had increased from 16.7% to 18.6% from 1995 to 1996, the first increase in adult smoking prevalence in California in 11 years (Figure 2). This increase translates in adult prevalence to additional sales of 200 million packs of cigarettes a year, worth about \$300 million in sales to the tobacco industry.

The increase in smoking rates received wide media coverage [62-64]. The budget shortfalls of the previous years, combined with the current reluctance of DHS to attack the tobacco industry, had had an effect on use. Sean Walsh, the Governor's press secretary, commented that he was frustrated with Wilson being blamed for everything "including [the comet] Hale-Bopp" [63]. He referred to criticisms by the public health groups as "Chicken Little-like comments made by zealots in the anti-smoking community" [64].

On March 13, 1997, ACS, AHA, and ANR ran a full page advertisement in the New York Times, headlined, "It's time to ask the Governor who he really works for: The people of California ... Or the tobacco companies? Is this memo the reason Governor Pete Wilson refuses to take on the tobacco industry?" The advertisement contained the full text of the Philip Morris memo, originally released the previous April (Figure 3). The fact the ACS joined AHA and ANR in this advertisement signaled a shift of ACS away from its earlier cautious behavior regarding Proposition 99.

On May 23, 1997, State Senate President pro Tempore Bill Lockyer (D-Hayward) announced that the Senate Rules Committee appointed UCSF Professor Stanton Glantz to TEROC. Glantz had been nominated to the position by the San Francisco Labor Council AFL/CIO.

Conclusion

In 1996, Legislature and the Governor observed the voters' mandate on the funding levels for the Proposition 99 Health Education programs. The Health Education Account was allocated 20% of the tax revenues, and these funds were appropriated to anti-tobacco education programs instead of to medical services. The Research Account was restored to receiving 5% of the tax revenues, as the voters had mandated, after several years of receiving less than 1%. This positive action on the part of the

Legislature and the Governor followed an aggressive, public campaign on the part of several key constituency groups: the AHA and ANR, and, to a lesser extent, ACS and ALA.

After the legislative battle, however, the constituency groups were faced with the failure of the Wilson Administration to conduct the kind of aggressive media campaign that it had done in the early years of the program. In particular, the Administration did not want to attack the tobacco industry, a strategy of proven effectiveness in reducing tobacco use. It had only expended \$6,554,000 of the \$12,197,000 allocated to the media campaign in 1995-1996, and, in 1996-97, did not release any new media until March 20, 1997. ACS, AHA, and ANR put pressure on the Wilson Administration to run an effective media campaign. The conduct of the media campaign remains a concern for the constituency groups.

ENFORCING EXISTING TOBACCO CONTROL LEGISLATION: AB 13 AND THE STAKE ACT

Although Proposition 99 often dominates the tobacco policy agenda in Sacramento, other policy issues also received attention in 1996-97, including the smokefree worksite and youth access laws. In response to the criticism of Gov. Wilson's tobacco efforts, Sandra Smoley, Secretary of Health and Welfare, and Kimberly Belshe, Director of DHS, have defended Gov. Wilson's anti-tobacco record. They specifically point to his signing of AB 13 (smokefree workplaces) and the STAKE (Stop Tobacco Access to Kids Enforcement) Act (youth access) as evidence of Wilson's commitment. While Wilson signed both bills, he did not support them in the Legislature. AB 13, passed in 1994, mandated that most workplaces be smokefree [65]. The STAKE Act prohibits the sale or provision of tobacco products to persons under 18 years of age and requires DHS to enforce laws prohibiting the sale, distribution, or provision of tobacco products to those under 18. Retailers are required to check the identification of those appearing to be under 18 and to post warnings that the sale of tobacco products to minors is illegal.

In 1996-1997, the record on the implementation of both of these laws was mixed. There had been no state level enforcement or effort to publicize AB 13. Although the voluntary health agencies had urged that the Proposition 99 media campaign be used to publicize AB 13, DHS had refused to do so. This problem was pointed out several times by county level health people at the February 10, 1997 meeting of TEROC. Enforcing AB 13 is one way to keep the issue of secondhand smoke alive and to deal with the issue of adult cigarette consumption.

Implementation of the STAKE act was uneven. Compliance checks to see whether or not retailers were selling tobacco to minors began on December 27, 1995. Retailers are selected based on complaints received over the 800 number (1-800-ASK-4-ID), complaints from local law enforcement, and a random sample pulled from the incomplete list of tobacco retailers that DHS has. As of June 2, 1997, 3,311 compliance checks had been completed. The 800 number, which began operating in September, 1995, had received over 22,000 calls. Following the discovery of illegal sales, merchants are assessed fines. As of June 2, 1997, \$223,150 had been collected.

In May, 1997, however, it came to light that Wilson had not signed the interagency agreement that allowed DHS to get tobacco sales information from the Board of Equalization [66]. Without this sales information, the department cannot build a list of comprehensive list of tobacco retailers to use as a basis for conducting randomized checks to see if the retailers are complying with the STAKE Act. While there is state level enforcement of the STAKE Act, federal law requires that states conduct scientific studies to determine the illegal sales rate. Without a comprehensive list of retailers, a true

random sample cannot be created and data on the illegal sales rate will likely be biased.

In addition to these enforcement problems, another problem created by the lack of access to the tax data is the inability to enforce the law requiring wholesalers, distributors, and cigarette vending machine operators to provide DHS with a complete list of tobacco retailers. If it had the tax data, DHS would be able to cross check the lists submitted by the wholesalers and others to see if these lists are complete.

Senator Tom Hayden (D-Santa Monica), author of the STAKE act, complained about Wilson's failure to sign the interagency agreement, because the sharing of the tax data had been the compromise posture to Hayden's preferred alternative, licensing tobacco retailers. It was one of the few times in history in which a governor had refused an interagency agreement to obtain routine tax data [66]. Within the tobacco use prevention community, this was viewed as a pro-tobacco gesture.

LAWSUITS AGAINST THE TOBACCO INDUSTRY

Tobacco Industry Liability

Across the country, as of May 31, 1997, 32 states and many cities and counties have filed lawsuits against the tobacco companies seeking reimbursement for excess medical expenditures caused by the consumption of tobacco products. In addition, there has been an explosion of individual and class action lawsuits against the tobacco industry for claims arising out the damages caused by smoking, the addictiveness of nicotine, and the dangers of second-hand smoke.

Within California there are a number of actions against the tobacco industry. Perhaps the best known is a medical care reimbursement suit filed by the City and County of San Francisco in the Federal District Court for Northern California and joined by 12 other counties. In this suit the counties seek both monetary damages related to the medical treatment of smokers and court orders requiring the tobacco industry to produce documents and to stop marketing to minors. San Francisco has also filed a lawsuit in the state courts under the California Business and Professions Code seeking the disgorgement of tobacco industry profits for violations of the statute. The American Cancer Society California Division, the American Heart Association California Affiliate, the California District of the American Academy of Pediatrics and the California Medical Association, as well as 15 cities and counties, have joined this suit. Los Angeles County also has filed suit seeking the reimbursement of excess medical expenditures related to tobacco. Many public entities, including the cities of Los Angeles and San Francisco, have intervened in a private attorney general's action against R.J. Reynolds which seeks to prohibit the use of the "Joe Camel" advertising image. There are also three private suits which aim to hold the tobacco companies liable under the Business and Professions Code and under some common law theories. One of these cases, which was filed in San Diego, has been joined by Lieutenant Governor Gray Davis. Many of these lawsuits have withstood early legal challenges by the tobacco industry. Only the "Joe Camel" action is scheduled to come to trial in 1997.

The Napkin Deal

Although many other public entities in California have sued the tobacco industry, the state of California has not. Attorney General Dan Lungren (R) cites Civil Code section 1714.45, which states in part that a manufacturer of a product shall not be liable "if the product is inherently unsafe and the product is known to be unsafe...[and] the product is a common consumer product intended for personal consumption, such as...tobacco" as the reason he has not filed suit to recover excess medical

expenditures paid by the state as a result of tobacco related disease, which have been estimated at more than \$700 million a year [67].

Section 1714.45 is known as the “Napkin Deal,” because the underlying agreement which made this legislation possible was written on a disposable tablecloth in 1987 at Frank Fat’s, a Chinese restaurant in Sacramento. The Napkin Deal came into being when lobbyists representing some of the major constituencies in California - manufacturers, the CMA, insurers, and trial lawyers - made an agreement which exchanged product liability and malpractice protections for increased attorneys fees. The bill was carried by Sen. Bill Lockyer (D-Hayward) and Assembly Speaker Willie Brown (D-San Francisco). Consumer advocates were not involved in the discussions, and it is widely believed that the agreement and the resulting law has been bad for consumers.

Despite Attorney General Lungren’s protestations, the Napkin Deal does not prevent lawsuits to recover medical costs or claims under the Business and Professions Code because the Napkin Deal only addresses product liability actions. In particular, many of the suits against the tobacco industry allege fraud, violations of the Business and Professions Code, violations of the racketeering laws, violations of the antitrust laws and breach of warranty, which are all distinguishable from product liability actions. The three courts which have looked at this question have all held that the section 1745.14 does not preclude the existing suits against the tobacco industry. In February, 1997, Judge D. Lowell Jensen of the United States District Court of Northern California in Oakland held that section 1745.14 did not bar San Francisco’s lawsuit because the San Francisco suit was based upon claims of fraud and breach of a special duty, while the Napkin Deal only provides the tobacco industry immunity from product liability actions. Previously, Superior Court Judge Paul Alvarado, in San Francisco’s state case, and Judge Robert May, from San Diego in one of the private lawsuits, held that the section 1745.14 does not bar claims against the tobacco industry under the Business and Professions Code.⁶

Lungren’s stated position that current law precludes a California suit to recover medical costs has led three members of the California Legislature to propose legislation which would amend the civil code specifically to allow the state to sue the tobacco companies. These bills are: SB 340 introduced by Senator Byron Sher (D-Stanford), SB 67 introduced by Senator Quentin Kopp (I-San Francisco), and AB 1603 introduced by Assembly Member Cruz Bustamante (D-Fresno). (Table 2 summarizes the provisions of these bills.)

The Changing Legal Climate for Tobacco Litigation

Since the passage of the Napkin Deal in 1987, there have been substantial societal changes that have improved the attractiveness of tobacco litigation nationwide. Lawsuits are increasingly being seen as a tool to implement public health changes, internal tobacco industry documents are being released which disclose that the industry knew more than it admitted regarding the dangers of smoking [68], and novel legal theories have been developed which rob the tobacco industry of many of its favorite defenses. As a result, the number of lawsuits against the tobacco industry has increased and the expectations of victories against the tobacco industry are higher than they have been in the past.

Two recent events have led to even more optimism in the lawsuits. First, the tobacco industry has shown a willingness to compromise. On March 20, 1997, 22 of the Attorneys General who had filed suit against the tobacco companies settled their cases with Liggett Tobacco Company. This settlement

⁶ City and County of San Francisco v. Philip Morris, Inc., et al.; Cordova vs. Liggett et al.

was of historic importance not for the money involved, which was secondary, but for the fact that Liggett made public statements in which it admitted that nicotine is addictive, smoking causes various diseases, and the tobacco companies market their products to children. Liggett also agreed to assist the states in prosecuting their cases against the other tobacco companies and to provide the states with internal tobacco industry documents. Also on March 20, Liggett entered into a class action settlement which was intended to settle all remaining and future litigation against Liggett. This class action settlement has been controversial and is not likely to survive. So that they can take advantage of the documents and assistance Liggett is providing without having to rely on the class action settlement, the State of California and the County of San Francisco have entered into private settlements with Liggett.

In addition, there are ongoing talks among the plaintiffs and defendants in many of the tobacco-related cases around the country to settle all of the remaining litigation against the tobacco companies. This willingness to settle has shown that the lawsuits are exerting pressure upon the tobacco companies.

The second event which has raised plaintiffs hopes is a smoker's victory in a product liability lawsuit against Brown and Williamson Tobacco in the 1996. A Florida jury returned a verdict of \$750,000, which, although it is being appealed by the defendant, may prove to be the first product liability case in which a tobacco company will pay damages for injuries caused to a smoker. More important, it has shown that the tobacco companies are vulnerable and that juries may be willing to hold the tobacco industry accountable for damages related to tobacco.

Because of these changes, there are renewed pressures from trial attorneys and public health officials for the State of California to file a lawsuit against the tobacco companies and to allow product liability actions against the tobacco companies.

Some states, such as Florida, have adopted legislation which has authorized the prosecution of medical cost recovery lawsuits against the tobacco industry, and that legislation has been upheld by the courts. The Tobacco Products Liability Project in Boston has developed model legislation to assist states in developing this type of legislation [69]. The model legislation provides for:

- 1) a specific cause of action on behalf of the state and its municipalities,
- 2) strict liability on behalf of manufacturers of tobacco products,
- 3) the removal of defenses such as assumption of risk and comparative negligence,
- 4) allowing for the use of epidemiological evidence to prove causation,
- 5) apportioning damages according to the market share of the tobacco companies.

Others have argued that ideal legislation would also extend the same benefits to private product liability lawsuits and specify that plaintiffs can use internal tobacco company documents in the prosecution of their lawsuits. It is not necessary for a state to pass such legislation prior to filing a successful suit against the tobacco industry, but such legislation presents many policy advantages and simplifies the litigation. For example, one of the tobacco industry's standard responses to lawsuits is that the plaintiff has failed to prove direct causation. While it is nearly impossible to show that the cigarette smoking directly caused a particular incident of disease, epidemiologists are secure in their ability to quantify the excess mortality and morbidity caused by tobacco. The ideal legislation would clarify that epidemiological data is sufficient to prove legal causation.

California Legislation

None of the legislation to modify the Napkin Deal which is being considered in California

approaches the ideal established by public health advocates, but each would clarify section 1745.14 to allow public medical reimbursement lawsuits. AB 1603 would add language clarifying that the Napkin Law is not intended to apply to public entities trying to recover the cost of public benefits. SB 340 similarly would add language clarifying that the Napkin Law was not intended to apply to suits in fraud, suits by people who did not voluntarily consume tobacco products, and suits by public entities to recover medical treatment costs. SB 67 would delete tobacco from the list of products included in the Napkin Law and would amend the law to clarify that tobacco products are not exempted from product liability actions. (Refer to Table 2 for how the specific pieces of legislation compare against each other and against ideal public health legislation.) Under both SB 340 and AB 1603, private product liability lawsuits would still be precluded in California. Because none of the proposals adopts terms equivalent to the model legislation, or other favorable tobacco control provisions, the public lawsuits in California could be more difficult to prosecute than those in states which have adopted such legislation. Attorney General Lungren has said he would file a lawsuit if the perceived problems with the Napkin Deal were addressed. The Assembly gave final approval for AB 1603 on June 4, 1997. Governor Wilson is expected to sign the bill [70].

OTHER LEGISLATION

Penalizing Kids: SB 1849

On September 30, 1996, the Governor signed SB 1849 (Kelley) which amended Section 308 of the Penal Code to increase the penalties on minors who purchase or receive tobacco products or paraphernalia designed for use with tobacco products or other controlled substances. The bill also imposed penalties for possession. The bill was opposed by the California Probation, Parole and Correctional Association; and supported by the California Grocers Association, the Tobacco Institute, the California Retailers Association, the California Academy of Family Physicians, the California Medical Association, and the City of Monrovia.

By May, 1997, several representative of local health departments were reporting that local law enforcement agencies were pressuring them to use Proposition 99 Health Education dollars to enforce the measure. Since public health professionals do not believe that measures that criminalize youth are effective anti-tobacco tools, this effort to divert health education dollars into law enforcement was viewed as a measure that would further undermine the State's tobacco control efforts.

Smokefree Bars: AB 869 and AB 297

The state smoke free workplace law, AB 13, required all restaurants to become smokefree, but exempted bars, gaming clubs, and parts of hotel lobbies until January 1, 1997. In 1996, the legislature extended the exemption to January 1, 1998. On February 27, 1997, Assembly Member Dick Floyd (D-Carson) introduced AB 869, which would have extended the exemption for bars, gaming clubs and parts of hotel lobbies from becoming smokefree for three more years, until January 1, 2001. AB 869 was defeated in the Assembly Labor and Employment Committee on April 23, 1997 by a vote of five to six. Two Democrats (Floyd and Baca) and three Republicans (Baugh, Morrissey, and Oller) voted in favor of the bill. Five Democrats (Escutia, Havice, Knox, Martinez and Washington) and one Republican (Kuykendall) voted against the bill.

After AB 869 failed, Assembly Member Ed Vincent (D-Inglewood) amended AB 297 to make it a bill to extend the exemption for bars, gaming clubs and parts of hotel lobbies from becoming smokefree for three more years, until January 1, 2001. AB 297, as introduced by Vincent on February 14, 1997, had nothing to do with smokefree workplaces or tobacco. The original bill dealt with registration of gaming clubs. However, after AB 869 failed in the Assembly Labor and Employment Committee, Assembly

**TABLE 2. PROPOSED LEGISLATION REFORMING
TOBACCO LITIGATION IN CALIFORNIA**

Ideal Law	Current Law Civil Code 1714.5	SB 340 (Sher)	SB 67 (Kopp)	AB 1603 (Bustamante)
Allows for private product liability actions against	No	No	Yes	No
Specifically allows for claims based upon fraud	No	Yes	Yes*	No
Specifically allows for product liability claims by non-smokers	No	Yes	Yes*	No
Specifically allows for medical reimbursement claims by public entities	No	Yes	No	Yes
Specifically allows for medical reimbursement by private entities	No	Yes	No	Yes
Specifically disallows tobacco industry defenses of assumption of risk and comparative negligence	No	No	No	No
Specifically allows the use of epidemiological evidence to prove causation	No	No	No	No
Specifically allows use of market share data to prove extent of liability of tobacco companies	No	No	No	No
Specifically allows for the use of internal tobacco industry documents in trials against the tobacco industry	No	No	No	No

*Although these claims are not referred to in the statute, by allowing product liability actions in general it is presumed that these claims would be specifically allowed as well.

Member Vincent amended AB 297 on May 7, 1997, by deleting references about gaming and adding references about extending the smokefree exemption for bars, taverns and gaming clubs. On June 3, 1997, the bill was withdrawn from the Assembly Governmental Organization Committee and re-referred to the Assembly Labor and Employment Committee. As of June 5, 1997, there have been no committee hearings on this bill. Despite the failure of AB 869 earlier, it appears that the tobacco industry will continue to seek passage of legislation that will delay the implementation of smokefree environments in bars, taverns, and gaming clubs.

Tax Increase: SB 552

On February 24, 1997, Senator Diane Watson introduced SB 552, which would increase the tax on a pack of cigarettes by 50 cents, effective January 1, 1998, moving it from 37 cents to 87 cents. The money raised by the increased cigarette tax would be used to fund health insurance for low income individuals, especially uninsured children. The bill is supported by the Board of Equalization, ACS, ALA, and the American College of Cardiology, California Chapter. It is opposed by the California Distributors Association, the Tobacco Institute, the California Taxpayers Association, the California Chamber of Commerce and the California Manufacturers Association. Assuming no other state passes a cigarette tax increase in 1997 and SB 552 is approved by the Legislature and signed by the Governor, California would have the highest cigarette tax rate in the nation. Currently, Washington state has the highest cigarette tax rate in the nation, 82.5 cents.

On May 8, 1997, the Senate Revenue and Taxation Committee approved SB 552. Four Democrats (Alpert, Green, Karnette and Lee), one Republican (McPherson), and one Independent (Kopp) voted in favor of the bill. Two Republican (Hurt and Knight) opposed the bill.⁷ The bill was referred to the Senate Appropriations committee where it was approved on May 30, 1997. Seven Democrats (Alpert, Burton, Calderon, Johnston, Karnette, Lee, and Vasconcellos) and one Republican (McPherson) voted in favor of the bill. Four Republicans (Johnson, Kelley, Leslie, and Mountjoy) voted against the bill.⁸

TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS FOR THE 1995-1996 ELECTION CYCLE

Clearly, in California, there continues to be considerable legislative and judicial activity surrounding tobacco policy issues, and not surprisingly, the tobacco industry remains a major political force in California. The tobacco industry spent \$4,594,685 on state level political activity in California during the 1995-1996 election cycle (Table 3). Tobacco industry campaign contributions to legislators and legislative candidates, state constitutional officers, political parties, and party controlled committees totaled \$1,503,531 and have surpassed the levels observed in the 1993-1994 election cycle, \$871,241 (Figure 4). There has also been a noticeable shift of tobacco industry contributions toward the Republicans. In the 1991-1992 election cycle, 41 percent of tobacco industry contributions to legislators, constitutional officers, candidates, political parties, and party controlled committees went to the Republican party. The percentage of tobacco industry funds to Republicans increased to 57 percent in during the 1995-1996 election cycle. This partisan shift in California mirrors a similar partisan shift behind the Republican party at the national level [71-73].

In comparison with other political action committees (PACs) and corporate contributors in 1995, the tobacco industry remains one of the largest sources of money in California politics. In 1995, the tobacco

⁷Democrat John Burton did not vote.

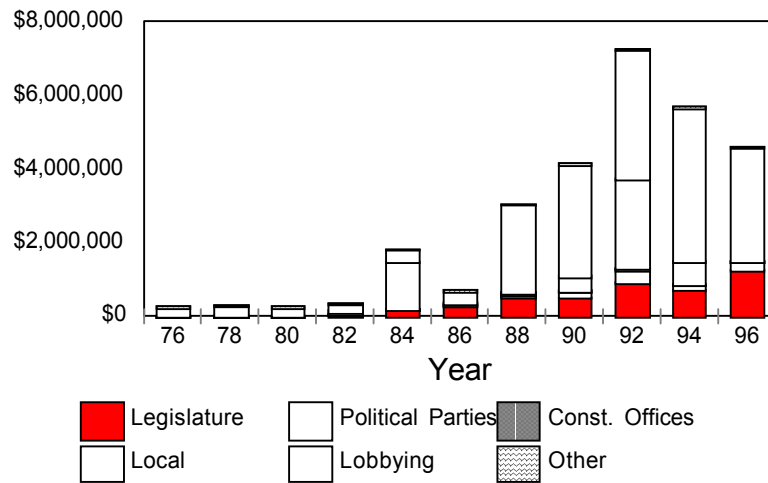
⁸Democrat Ralph Dills did not vote.

TABLE 3. SUMMARY OF TOBACCO INDUSTRY POLITICAL EXPENDITURES IN 1995-1996

	Legislature	Political Party	Constitutional Office	Local Activity	Initiatives	Lobbying
Brown and Williamson	\$7,000	\$5,000				\$282,758
Liggett						\$4,167
Lorillard						\$71,098
Philip Morris	\$807,479	\$146,977	\$42,500	\$500		\$1,382,995
RJ Reynolds	\$183,800	\$21,500	\$5,000			\$602,889
Smokeless Tobacco	\$25,500	\$4,000				\$204,770
Cal. Distributors Assoc.	\$14,400	\$750				\$67,047
Tobacco Institute	\$207,250	\$25,000				\$364,585
US Tobacco	\$7,375					
TILMC						\$110,346
1995-1996 TOTAL	\$1,252,804	\$203,227	\$47,500	\$500		\$3,090,654
1976-1992	\$2,510,729	\$636,188	\$173,950	\$4,197,030	\$32,157,603	\$10,644,106
1993-94	\$723,542	\$117,800	\$29,899	\$618,681	\$18,974,675	\$4,198,077
GRAND TOTAL	\$4,487,075	\$957,215	\$251,349	\$4,816,211	\$51,132,278	\$17,932,837

industry ranked second in political contributions in California (Table 4). The tobacco industry contributed \$395,294 to legislative officeholders and candidates, state constitutional officers, and political party committees in 1995. This level of political spending relative to other interest groups is significant considering that no tobacco is grown in the state, and tobacco manufacturing in California accounts less than 0.01% percent of the gross state product [74].

Tobacco Ind. Political Expenditures
(excluding initiatives) 1975-1996



The level of political activity by the tobacco industry in California probably reflects the importance of California’s tobacco control program, created by the voters in 1988 when they passed Proposition 99 [75]. The tobacco industry appears to have been successful in influencing the policy making process in Sacramento. From implementation on January 1, 1989 through June 30, 1997, the Governor and Legislature underspent the Health Education programs by \$273,814,000 and Research by \$71,345,000 (Table A-1).

Tobacco Industry Expenditures

We obtained data on tobacco industry statewide political expenditures from disclosure statements filed with the Secretary of State’s Political Reform Division. We included the following organizations as “tobacco industry” sources of funds: American Tobacco Company, California Distributors Association, Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris, Inc., RJR Nabisco, Inc., Smokeless Tobacco Council, Tobacco Industry Labor and Management Committee, the Tobacco Institute, and U.S. Tobacco. Data included in this report include contributions to legislators, legislative candidates, political parties, political party controlled committees, state constitutional officers, local candidates, and expenditures made for lobbying legislative or administrative officials. We collected campaign contribution data for candidates, political parties, and lobbying expenditures from January 1, 1995 to December 31, 1996.

There are some limitations to the data. As we have done in earlier reports, we did not include contributions from non-tobacco subsidiaries of these companies, such as Philip Morris’ Kraft Foods and Miller Beer, or personal contributions from employees and officers of the tobacco companies or their lobbyists. We also did not include contributions from non-tobacco sources collected at activities hosted by a tobacco company or donations solicited by a tobacco company from its contractors. Most of these monies are difficult, if not impossible, to trace.

TABLE 4. TOBACCO INDUSTRY COMPARED TO OTHER TOP CONTRIBUTING PACs OR CORPORATIONS IN CALIFORNIA POLITICS IN 1995 (1)	
Contributor	1995 Amount
CA Teachers Association ABC/PAC	\$403,928
Tobacco Industry (2)	\$395,294
Atlantic Richfield Company	\$284,102
Fieldstead and Company	\$266,519
Educational Assistance	\$246,649
CA Optometric PAC	\$242,221
CA Restaurant Association PAC	\$233,250
CA Cable Television Association PAC	\$233,250
CA Dental PAC	\$224,745
Pacific Telesis Group	\$210,683
State and Local Citizenship Responsibility Group PAC	\$206,965
CA Medical PAC	\$206,107
Browning-Ferris Industries of California	\$204,630
Mercury General Corporation	\$194,300
CA Trial Lawyers PAC	\$191,297
CA Correctional Peace Officers Association PAC	\$186,371
Chevron Corporation	\$184,883
1. Figures represent contributions to officeholders, candidates, political parties and party controlled committees. Other PAC and corporate contribution figures were from Capitol Weekly, February 19, 1996	
2. Tobacco industry sources of funds include Philip Morris, Inc., RJ Reynolds Nabisco, Inc., Tobacco Institute, California Distributors PAC, Smokeless Tobacco Council and US Tobacco, Inc.	

Tobacco Policy Scores

We sought to relate campaign contributions to legislative behavior. To do so, we estimated a “tobacco policy score” for each member of the 1995-1996 Legislature. The score is obtained from polling five individuals knowledgeable about the Legislature and tobacco policy on a scale of 0 to 10 [7, 9, 76]. A score of 0 represented an extremely pro-tobacco industry legislator and a score of 10 represents an extremely pro-tobacco control legislator. The average for each legislator is reported. Assembly Member Richard Katz (D-Panorama City) and Senators Tom Hayden (D-Santa Monica) and Diane Watson (D-Los Angeles) had the highest policy scores in their chambers, 9.8, 10.0, and 10.0, respectively. Since Katz is no longer a member of the Legislature, the next highest tobacco policy score in the Assembly belongs to Valerie Brown (D-Santa Rosa), who received a score of 8.3. Assembly Member Brett Granlund (R-Yucaipa) and Senator Cathie Wright (R-Simi Valley) had the lowest policy scores in their chambers, 0.6 and 1.6, respectively.

The tobacco policy scores did not significantly differ between Assembly Members and Senators (Assembly: mean 4.7, standard deviation 2.4, n=83; Senate: mean 4.9, standard deviation 2.2, n=41; p=.65). Republicans had significantly lower tobacco policy scores (more pro-tobacco industry) than Democrats (Republicans: mean 3.2, standard deviation 1.1, n=60; Democrats: mean=6.4, standard deviation 2.0, n=61; p<.001).⁹

⁹ Analysis of partisan differences excludes Lucy Killea (I-San Diego) and Quentin Kopp (I-San Francisco). Both Senators are independents.

Legislative Officeholders and Candidates

During the 1995-1996 electoral cycle, tobacco industry contributions to 106 legislative officeholders and candidates (Table C-1) totaled \$1,252,804. The tobacco industry contributions given directly to individuals during the 1995-96 election cycle exceeded the 1993-1994 election cycle (\$723,542). Table 5 presents the top 20 recipients of tobacco industry campaign contributions during the 1995-1996 election cycle. Senator Bill Lockyer (D-Hayward) and Assembly Member Curt Pringle (R-Garden Grove) were the top recipients in their respective chambers, receiving \$127,875 and \$105,750 respectively. The average tobacco policy score among these top 20 recipients was 2.7, (standard deviation, 1.5) indicating a pro-tobacco industry leaning. This average was significantly lower than the average tobacco policy score of the remaining legislators (mean, 5.1; standard deviation, 2.2; $p < .001$).

Table 6 presents the 28 members of the 1997-1998 legislature who have never accepted tobacco industry contributions. Almost all non-recipients were Democrats. The three Republican non-recipients were Tom Bordonaro (R-San Luis Obispo), Peter Frusetta (R-Hollister), and Bruce McPherson (R-Santa Cruz). Nineteen of the non-recipients were first elected in 1996. All freshman non-recipients were Democrats.

Name	Party	House	1976-92	1993-94	1995-96	Grand Total	Tobacco Policy Score
Lockyer, Bill	D	S	\$32,500	\$17,475	\$127,875	\$177,850	4.6
Pringle, Curt	R	A		\$500	\$105,750	\$106,250	0.8
Tucker, Curtis Jr.	D	A	\$9,000	\$18,000	\$93,926	\$120,926	1.2
Hurt, Rob	R	S		\$3,000	\$87,668	\$90,668	2.0
Bustamante, Cruz	D	A		\$9,000	\$63,750	\$72,750	6.0
Maddy, Ken	R	S	\$97,750	\$30,225	\$47,500	\$175,475	2.2
Johnson, Ross	R	S	\$29,250	\$9,000	\$46,000	\$84,250	2.0
Calderon, Charles	D	S	\$15,600	\$15,500	\$45,750	\$76,850	3.2
Wright, Rod	D	A			\$37,000	\$37,000	
Brown, Willie	D	A	\$461,517	\$138,975	\$35,250	\$635,742	1.0
Boland, Paula	R	A	\$7,750	\$2,000	\$34,921	\$44,671	2.5
Granlund, Brett	R	A		\$1,000	\$31,750	\$32,750	0.6
Brewer, Marilyn	R	A			\$28,926	\$28,926	3.0
Olberg, Keith	R	A		\$500	\$26,000	\$26,500	4.5
Polanco, Richard	D	S	\$20,400	\$7,650	\$25,400	\$53,450	4.4
Papan, Lou	D	A	\$8,500		\$25,000	\$33,500	
Brulte, Jim	R	A	\$10,500	\$34,975	\$23,500	\$68,975	2.6
Floyd, Dick	D	A	\$69,716		\$23,000	\$92,716	
Cortese, David	D	A			\$23,000	\$23,000	
Hoge, Bill	R	A	\$3,441	\$11,500	\$21,000	\$35,941	3.0

TABLE 6. CURRENT LEGISLATORS WHO HAVE NEVER ACCEPTED TOBACCO INDUSTRY CONTRIBUTIONS				
Name	Party	House	Year Elected	Tobacco Policy Score
Alquist, Elaine White	D	A	1996	
Aroner, Dion	D	A	1996	
Bordonaro, Tom	R	A	1994	3.3
Davis, Susan	D	A	1994	7.8
Frusetta, Peter	R	A	1994	4.0
Havice, Sally	D	A	1996	
Hayden, Tom	D	S	1982	10.0
Hertzberg, Bob	D	A	1996	
Honda, Mike	D	A	1996	
Karnette, Betty	D	S	1996	
Keeley, Fred	D	A	1996	
Knox, Wally	D	A	1994	7.5
Kuehl, Sheila	D	A	1994	7.8
Lempert, Ted	D	A	1996	
Mazzoni, Kerry	D	A	1994	7.5
McPherson, Bruce	R	S	1993	6.3
Migden, Carole	D	A	1996	7.8
Ortiz, Deborah	D	A	1996	
Perata, Don	D	A	1996	
Schiff, Adam	D	A	1996	
Scott, Jack	D	A	1996	
Shelley, Kevin	D	A	1996	
Sher, Byron	D	S	1980	9.6
Strom-Martin, Virginia	D	A	1996	
Thomson, Helen	D	A	1996	
Torkalson, Tom	D	A	1996	
Wayne, Howard	D	A	1996	
Wildman, Scott	D	A	1996	

Of the tobacco industry contributions during the 1995-1996 election cycle, 64 Republican legislators and candidates (54 legislators and 10 candidates) received \$651,249 and 42 Democrats (29 legislators and 13 candidates) received \$601,555. In recent years, tobacco industry contributions to legislators and candidates have shifted from Democrats to Republicans. During the 1991-1992 election cycle, 36 percent of contributions to legislative officeholders and candidates went to Republicans (\$328,362 for Republicans and \$592,737 for Democrats). In the 1993-1994 election cycle, the Republican percentage of contributions increased to 48 percent (\$346,950 for Republicans and \$372,592 for Democrats). In the 1995-1996 election cycle, Republican legislators and candidates received a majority of campaign contributions -- 52 percent (\$651,249 for Republicans and \$601,555 for Democrats). This recent trend of giving more to Republicans in California is similar to the recent trend at the national level. Contributions from the tobacco industry almost doubled to Republican Congressional candidates in between 1993 and

1996 [77].

With the Democrats taking over the Assembly again after the 1996 election, a majority of tobacco industry contributions may shift again to the Democratic legislators. Between November 6, 1996 (the day after the 1996 election) and December 31, 1996, twenty Democratic legislators received \$120,500 and sixteen Republican legislators received \$52,500. Normally, there are very few contributions in the weeks after a general election. However, because of the changes in the campaign finance laws mandated by Proposition 208, many contributors, including the tobacco industry, made donations to legislators before the end of the year to avoid the contribution limits that started January 1, 1997 [78]. Effective January 1 1997, Propositions 208 limited contributions to candidates to \$500 for legislative races if the candidate agrees to spending limits and \$250 if the legislative candidate does not agree to spending limits. The voluntary spending restrictions limit spending for Senate candidates to \$300,000 in a primary and \$400,000 in a general election. For Assembly candidates, the voluntary spending limits are \$150,000 for a primary and \$200,000 for a general election.

Political Parties

During the 1995-1996 election cycle, the tobacco industry contributed \$203,227 to political parties and party controlled committees (Table C-2). Contributions to political parties and party controlled committees exceeded contributions made to parties in 1993-1994, when the industry contributed \$117,800.

Most political party contributions went to the Republican party (\$165,727 or 82 percent). The largest beneficiary of contributions to party controlled committees was Pringle's Assembly Republican Victory Fund, which received \$84,250. Leadership Fund 2000, controlled by Assembly Member Brett Granlund, received \$20,500. The tobacco industry also contributed \$17,000 to the Jim Brulte Assembly Republican Leadership Fund and \$6,500 to the Senate Republican Majority Fund (controlled by Rob Hurtt). The California Republican Party received \$37,477, while the California Democratic Party has not received any money from the tobacco industry during this election cycle. The Assembly Democratic Majority Fund received \$5,000 in 1996. The Assembly Democratic Victory fund, formerly controlled by former Speaker Willie Brown, received \$32,500 in 1995 (Table C-2).

Tobacco industry contributions to the Republican party and Republican party controlled committees increased sharply compared to the Democratic party and Democratic controlled committees during the 1995-1996 election cycle. In the 1991-1992 election cycle, the Republican party received 48 percent of contributions intended for political parties or party controlled committees (\$167,188 to Republicans and \$182,000 to Democrats). In the 1993-1994 election cycle, this percentage decreased substantially to 26 percent (\$30,500 to Republicans and \$87,300 to Democrats). However, in the 1995-1996 election cycle, the tobacco industry contributed 82 percent of contributions to party related activities to the Republican party and Republican controlled committees (\$165,727 to Republicans and \$37,500 to Democrats).

The significant shift in tobacco industry contributions away from the Democratic party and towards the Republican party in California did not just occur in contributions to parties. During the 1991-1992 election cycle, 41 percent of tobacco industry contributions to legislators, legislative candidates, constitutional officers, political parties and party controlled committees went to the Republican party (\$531,050 for Republicans and \$776,737 for Democrats). In the 1993-1994 election cycle, contributions to Republicans increased to 46 percent (\$396,850 for Republicans and \$470, 391 for Democrats). In the current 1995-1996 election cycle, combined tobacco industry contributions to legislators, legislative candidates, constitutional officers, political parties and party controlled committees totaled \$1,503,531. Of this total, 57 percent (\$864,476) was contributed to the Republican party. Democrats received \$639,055.

The substantial increase in tobacco industry contributions to the California Republican party is similar to a recent trend in tobacco industry “soft money” contributions to the Republican party at the national level [73]. In 1995-1996, tobacco industry soft money contributions to the Republican party totaled \$5,012,291 compared to the \$962,181 given to the Democrats. Republicans thus received 84% of the soft money the tobacco industry gave compared to 16% for the Democrats [Mierzwinski, 1997 #8, 77, 79-81].

The California Legislature Versus the United States Congress

As in the past [7, 9], the tobacco industry is contributing money to members of the California Legislature more intensively than it is to the United States Congress. This fact may reflect the high priority the tobacco industry gives to influencing tobacco control policy making in California because of Proposition 99. On a per member basis, California legislators in 1995-1996 received more money than the members of Congress in 1995-1996. The tobacco industry had contributed \$10,440 per member in the state of California. In comparison, the tobacco industry contributed \$5,044 per member of Congress.¹⁰

The top three recipients of campaign contributions in California in 1995-1996 (Table 5) received more than the top three recipients in Congress in 1995. Lockyer, Pringle and Assembly Member Curtis Tucker (D-Inglewood) received \$127,875, \$105,750 and \$93,926, respectively. In Congress, the top three recipients in 1995-1996 were from tobacco growing states. Senator Jesse Helms (R-North Carolina), Senator John Warner (R-Virginia) and Representative Bart Gordon (D-Tennessee) received \$48,500, \$35,150 and \$33,000, respectively [77].

During the last decade, the top recipients in California received more than the top recipients in the United States Congress. From 1987 to 1996, former Assembly Speaker Willie Brown (D-San Francisco), Lockyer and Senator Ken Maddy (R-Fresno) received \$635,742, \$177,850 and \$175,475, respectively. In the United States Congress between 1987 and 1996, the top three recipients of tobacco industry money were Representative Thomas Bliley (R-Virginia; \$132,415), Helms (\$95,000), and Senator Mitch McConnell (D-Kentucky, \$87,700) [77]. The continuing pattern of heavier contributions to California legislators than to Congress probably reflects the importance the tobacco industry places on impeding California’s Proposition 99 anti-smoking education and research program and other California policy initiatives.

Legislative Leaders

On January 5, 1996, the Republicans took control of the Assembly and elected Curt Pringle (R-Garden Grove) as the new Assembly Speaker. Pringle was only speaker until the November 1996 election, when the Democrats regained control of Assembly and elected Cruz Bustamante (D-Fresno) as the new Speaker of the Assembly.

Several legislative leaders were among the largest recipients of tobacco industry contributions during the 1995-1996 election cycle. In the Assembly, Bustamante received \$63,750 during the 1995-1996 election cycle. Bustamante received \$17,000 after the November, 1996, election. Bustamante’s tobacco policy score of 6.0 represents a mildly pro tobacco control score. Pringle received \$105,750 in the 1995-1996 election cycle. Pringle also controls the Assembly Republican Victory Fund which has received \$84,250 from the tobacco industry since 1995. With Brown no longer in the Assembly, Pringle’s tobacco policy score, 0.8, is the second lowest in the legislature, behind only Granlund, indicating that Pringle is

¹⁰There are 120 seats in the California Legislature and 535 seats in the United States Congress. California legislators and candidates in 1995-1996 received \$1,250,804 and Congressional candidates and members in 1995-1996 received \$2,698,619 [Mierzwinski, 1997 #8].

perceived as one of the most pro-tobacco industry members of the Legislature. In 1996, Pringle made several attempts to place pro-industry restrictions on the Proposition 99 programs, after it became clear that the programs were going to be fully funded. Both Bustamante and Pringle received more tobacco industry contributions in 1995 and 1996 than United States House of Representative's Speaker Newt Gingrich (\$30,500) [77]. The tobacco industry also contributed \$5,750 to Assistant Speaker Joe Baca (D-San Bernardino) and \$3,500 to Majority Floor Leader Antonio Villaraigosa (D-Los Angeles) in 1995-96. Speaker pro Tempore Sheila Kuehl (D-Encino) has never accepted tobacco industry contributions.

In the Senate, Senate President pro Tempore, Bill Lockyer (D-Hayward), has received \$127,875 in tobacco industry contributions during the current 1995-1996 election cycle (and a grand total of \$177,850). Lockyer, along with former Assembly Speaker Willie Brown, helped broker the "Napkin Deal" (discussed above). In the current legislative session, however, Lockyer has supported "clarification" of the Napkin Deal that would make it clear that California could sue the tobacco industry to recover medical costs. Democratic Floor Leader Charles Calderon (D-Montebello) and Majority Whip Leroy Greene (D-Sacramento) received \$45,750 and \$1,500, respectively. The tobacco industry contributed \$87,668 to Republican Floor Leader Rob Hurtt (R-Garden Grove). Lockyer received a neutral tobacco policy score of 4.6 and Hurtt received strong pro-tobacco industry score of 2.0. Table 7 summarizes the tobacco industry contributions given to Assembly and Senate leaders.

TABLE 7. 1995-96 CONTRIBUTIONS TO LEGISLATIVE LEADERSHIP							
Senate Leaders	Name	Party	1976-92	1993-94	1995-96	Grand Total	Tobacco Policy Score
Pres. pro Tempore	Lockyer, B.	D	\$32,500	\$17,475	\$127,875	\$177,850	4.6
Dem. Floor Leader	Calderon, C.	D	\$15,600	\$15,500	\$45,750	\$76,850	3.2
Majority Whip	Greene, L.	D	\$6,000	\$1,500	\$1,500	\$9,000	5.2
Minority Leader	Hurtt, R.	R	\$0	\$3,000	\$87,668	\$90,668	2.0
Sub-total			\$54,100	\$37,475	\$262,793	\$354,368	
Assembly Leaders							
Speaker	Bustamante, C.	D	\$0	\$9,000	\$63,750	\$72,750	6.0
Speaker pro Tempore	Kuehl, S.	D	\$0	\$0	\$0	\$0	7.8
Assistant Speaker	Baca, J.	D	\$2,500	\$1,500	\$5,750	\$9,750	4.2
Majority Floor Leader	Villaraigosa, A.	D	\$0	\$0	\$3,500	\$3,500	6.8
Minority Floor Leader	Pringle, C.	R	\$0	\$500	\$105,750	\$106,250	0.8
Sub-total			\$2,500	\$11,000	\$178,750	\$192,250	
Total			\$56,600	\$48,475	\$441,543	\$546,618	

Legislative Committees

As discussed earlier, several committees in the California Legislature typically consider legislation related to tobacco policy, particularly the Assembly and Senate Health Committees and the Assembly and Senate Budget Committees. As noted above, these committees have considered legislation or are considering legislation on the reauthorization of Proposition 99 funds and other tobacco control legislation, such as revisions to AB 13.

Assembly Health Committee. Fourteen of the twenty-one members of the Assembly Health committee received tobacco industry contributions in 1995 and 1996 (Table C-3). The largest recipient was Granlund who received \$31,750 in 1995 and 1996. Granlund (whose tobacco policy score of 0.6 was the lowest in the entire legislature) was the Chair of the Assembly Health Committee, from January, 1996, through November, 1996, when the Republicans controlled the Assembly. He also controls the Leadership Fund 2000, which had received \$10,000 from Philip Morris and \$10,500 from RJ Reynolds in 1995. The veteran Democratic committee members tend to have pro-tobacco control scores while the veteran Republicans on the committee tend to have pro-tobacco industry scores.

Senate Health and Human Services Committee. Five of the nine Senate Health and Human Services committee members received contributions in 1995 and 1996 (Table C-4). Maddy was the largest recipient of tobacco industry funds among committee members during the election cycle, with \$47,500. The chair of the committee, Watson, has not received any tobacco industry contributions during this election cycle and has the highest tobacco policy score (pro-tobacco control) in the legislature.

Assembly Budget Committee. Twenty-one of the twenty-eight members of the Assembly Budget committee received tobacco industry contributions in 1995 and 1996 (Table C-5). The largest recipient in 1995-1996 was freshman legislator Rod Wright (D-Los Angeles) who received \$37,000. The chair of the committee, Denise Ducheny (D-National City), received \$5,500 in 1995-1996 and has a high tobacco policy score, 7.8 (pro-tobacco control).

Senate Budget and Fiscal Review Committee. Eight of the fourteen Senate Budget and Fiscal Review Committee members received contributions in 1995 and 1996 (Table C-6). The largest recipient was Rob Hurtt (R-Garden Grove), who received \$87,668 in 1995-1996. The chair of the committee, Mike Thompson (D-Santa Rosa), received \$2,500 in tobacco industry contributions during the 1995-1996 election cycle. Thompson has a neutral tobacco policy score of 5.6.

Assembly Labor and Employment Committee. The tobacco industry made campaign contributions to seven out of eleven members of the Assembly Labor and Employment Committee in 1995-1996 (Table C-7). Chair Dick Floyd (D-Carson) received the most contributions during the 1995-1996 electoral cycle among committee members, \$23,000, even though he was not a member of the legislature in 1995-1996. Floyd, a former member of the Assembly, lost his seat in a Democratic primary race in 1992. Floyd ran for election again in 1996, after Assembly Member Juanita McDonald decided to run for Congress. Vice Chair Steve Kuykendall, who had received a last minute \$125,00 contribution from Philip Morris in 1994, received \$500 from Philip Morris in 1995-1996.

The Committee did not pass Floyd's bill, AB 869, which would have allowed bars, gaming clubs, and parts of hotel lobbies to avoid becoming smokefree worksites until January 1, 2001, as opposed to January 1, 1998, as required by current law. The five members that voted for AB 869 received a total of \$37,250 in tobacco industry contributions in 1995-1996. The six members that voted against AB 869 received a total of \$3,500 in tobacco industry contributions in 1995-1996.

Senate Revenue and Taxation Committee. Four of the nine Senate Revenue and Taxation committee members received contributions in 1995 and 1996 (Table C-8). Hurtt was the largest recipient of tobacco industry funds among committee members during the election cycle, \$87,668. The chair of the committee, Deirdre Alpert (D-San Diego) received \$2,500 in tobacco industry contributions during the 1995-1996 election cycle. On May 8, the Senate Revenue and Taxation Committee approved SB 552 to raise the tobacco tax by 50 cents. Four Democrats (Alpert, Green, Karnette and Lee), one Republican (McPherson), and one Independent (Kopp) voted in favor of the bill. Two Republican (Hurtt and Knight) opposed the bill.¹¹ The six members who supported the proposed cigarette tax increase received a total of \$4,000 from the tobacco industry in 1995-1996. The two members who opposed the bill received a total of \$97,168. The bill was referred to the Senate Appropriations committee.

Senate Appropriations Committee. Eight of the thirteen members of the Senate Appropriations Committee have accepted tobacco industry contributions in 1995-1996 (Table C-9). Charles Calderon (D-Montebello) and Ross Johnson (R-Irvine) were the largest recipients of tobacco industry contributions in 1995-1996, \$45,750 and \$46,000, respectively. Only two members, Betty Karnette (D-Long Beach) and Bruce McPherson (R-Santa Cruz) have never accepted tobacco industry campaign contributions. The Senate Appropriations Committee also approved SB 552 (8 to 4), the bill to increase the cigarette tax by fifty cents. Seven Democrats (Johnston, Alpert, Burton, Calderon, Karnette, Lee, and Vasconcellos) and one Republican (McPherson) voted in favor of the bill and four Republicans opposed the bill (Johnson, Kelley, Leslie, and Mountjoy).¹² The eight members who supported the proposed cigarette tax increase received a total of \$49,000 from the tobacco industry in 1995-1996. The four members who opposed the bill received a total of \$59,750.

State Constitutional Officers

Philip Morris contributed \$47,500 to four state constitutional officers during the 1995-1996 election cycle (Table C-10). All contributions to state constitutional officers were made to Republicans. Attorney General Dan Lungren received the most contributions in 1995-1996, \$28,500. As noted above, Lungren has become a particularly crucial player in tobacco policy making with the advent of state lawsuits to recover Medicaid costs due to smoking. He may be sensitive to criticism about his failure to sue the tobacco industry and a possible connection between this decision and his receipt of tobacco industry contributions. Although he accepted \$28,500 from Philip Morris in 1995 and 1996, he did return some contributions from RJ Reynolds and the Tobacco Institute. On September 30, 1996, RJ Reynolds contributed \$5,000, which Lungren returned on November 16, 1996. The Tobacco Institute contributed \$2,500 in October, 1996, which Lungren returned on December 31, 1996.

In addition to tobacco industry campaign contributions, another reason Lungren may be reluctant to sue the tobacco industry may be his ties to the Dolphin Group. The Dolphin Group is a political consulting firm that has Philip Morris as one of its primary clients and is running Dan Lungren's gubernatorial bid in 1998 [82, 83]. The Dolphin Group has been active in mobilizing local opposition to proposed smokefree ordinances [84]. In 1994, the Dolphin group also organized the unsuccessful campaign to pass Proposition 188, a Philip Morris backed initiative that would have repealed all local smokefree ordinances in favor of a weak statewide law regulating smoking [82, 83].

¹¹Democrat John Burton did not vote.

¹² Democrat Ralph Dills did not vote.

Secretary of State Bill Jones and Insurance Commissioner Chuck Quackenbush received \$5,500 and \$6,000, respectively. This is the first constitutional office for both Jones and Quackenbush. However, they also received tobacco industry contributions while in the state legislature -- a combined total of \$48,250 for Jones and \$37,947 for Quackenbush. State Treasurer Matt Fong, also in his first term, received \$7,500 from Philip Morris. The next election for state constitutional offices is not until 1998.

The Relationship Between Campaign Contributions and Legislative Policymaking

There is a statistical relationship between tobacco industry campaign contributions and the tobacco policy scores, with the campaign contributions and the tobacco policy scores affecting each other. We sought to test the hypothesis that campaign contributions sway legislators to be sympathetic toward the tobacco industry's point of view. While at the same time, the tobacco industry rewards those legislators that have helped it in the past. Simultaneous equations regression using two stage least squares was used to test the hypothesis that campaign contributions were affecting legislative behavior simultaneously with behavior affecting contributions [7, 76, 85-88]

The simultaneous equations regression model contains two equations. One equation predicts the 1995-1996 tobacco policy score (dependent variable) from the amount of campaign contributions in that election cycle (independent variable) and whether the candidate was a Republican or non-Republican. The second equation predicts campaign contributions (dependent variable) from the tobacco policy scores,

TABLE 8. SIMULTANEOUS EQUATIONS RESULTS FOR TOBACCO POLICY SCORES AND 1995-1996 CAMPAIGN CONTRIBUTIONS				
Dependent Variable = Tobacco Policy Score				
Variable	Coefficient	St. Error	t	p
Contributions (in thousands of dollars)	-.02	.20	-3.49	<.001
Republican Legislators	-3.14	.27	-11.61	<.001
Intercept	6.63			
Dependent Variable = Campaign Contributions (in thousands of dollars)				
Tobacco Policy Score	-1.82	.77	-2.37	.02
Majority Party	-2.41	2.55	-.95	.34
Lockyer	122.1	12.71	9.60	<.001
Pringle	93.0	12.98	7.17	<.001
Tucker	79.5	13.17	6.04	<.001
Intercept	16.6			
n=122				
R ² = .56 for tobacco policy score; R ² = .64 for campaign contributions.				

whether the legislator was a member of the party in power in his or her chamber and dummy variables for Lockyer, Pringle and Tucker, who received significantly more tobacco industry money than other candidates. (This analysis is only based on direct contributions to legislators. It does not include money contributed to political parties or party controlled committees.)

Table 8 presents the results of this analysis. For every \$1000 a legislator received, his or her tobacco policy score dropped (i.e., became more pro-tobacco industry) by an average of -.02 points. Republican legislators had tobacco policy scores that were -3.15 points lower than Democratic legislators for the same amount of tobacco industry funds. In other words, assuming a Republican and a Democrat received the same amount of money from the tobacco industry, the Republican would likely have a lower policy score than the Democrat. At the same time, for every one point reduction in the tobacco policy score, campaign contributions from the tobacco industry increased by an average of \$1,820.

These results are comparable to previous findings of the effects of tobacco industry campaign contributions on the California, Colorado, Massachusetts, New Jersey, Ohio, Pennsylvania and Washington legislatures [7, 76, 85-88]. These studies also found a simultaneous relationship between tobacco policy scores and tobacco industry campaign contributions.

Tobacco Money as an Issue in the 1996 General Election

Accepting tobacco money was a campaign issue in several legislative campaigns across the state. Generally, if a candidate was unpopular with constituents on several grounds and had a viable challenger who made tobacco money an issue in the campaign, the recipient was in a vulnerable position of losing the election. The following districts were races (Table 9 provides a summary) where accepting tobacco industry contributions was a major issue in the campaign. In four of the six races in which tobacco money was an issue, the candidate who did not receive tobacco industry money won. In addition, in the districts that should have been “safe” for Republicans, Democrat non-recipients came much closer to winning than expected.

Assembly District 78 (San Diego) -- This was an open seat race that *California Journal* rated as a “leaning Republican” [89]. Registered Republicans slightly outnumber registered Democrats in this district (40% Republican to 38% Democrat); however, previous elections have not shown consistent voting patterns in this district [89]. The district was formerly represented by Democrat Deirdre Alpert who ran for state Senate in 1996.

Democrat Howard Wayne used the tobacco money issue against Republican Tricia Hunter. Tricia Hunter, a nurse, did not receive tobacco money in 1995-1996, but she was a former state Assembly member who was reapportioned out of her district in 1992 [89]. She had received \$8,000 during the 1991-1992 election cycle and a lifetime total of \$9,500 from tobacco industry sources. Howard Wayne defeated Hunter with 49.0 percent of the vote. Hunter received 45.8 percent. The electorate reportedly found it disturbing that a nurse would take money from the tobacco industry .

Senate District 15 (Santa Cruz) -- This was an open seat race that *California Journal* rated as a “tossup” [89]. Registered Democrats outnumber registered Republicans in this district (52% Democrat to 32% Republican). The district was formerly represented by Democrat Henry Mello who retired in 1996.

Bruce McPherson was an Assembly Member running for the vacated Senate seat in 1996. He used the tobacco money issue against Democrat Rusty Areias, a former member of the Assembly. Areias had received \$5,500 during the 1993-1994 election cycle and has a lifetime total of \$17,000 from tobacco

TABLE 9. STATE LEGISLATIVE RACES WHERE TOBACCO MONEY WAS AN ISSUE						
Dist.	Tobacco Industry Recipient	Recipient's Opponent	California Journal Rating	Winner	Margin of Victory	Outcome
A-78	Hunter (R)	Wayne (D)	Leaning Rep.	Wayne	3.2%	Tobacco Recipient Loses
S-15	Areias (D)	McPherson (R)	Tossup	McPherson	0.5%	Tobacco Recipient Loses
A-54	Kuykendall (R)	Schipske (D)	Tossup	Kuykendall	1.2%	Tobacco Recipient Wins
S-21	Boland (R)	Schiff (D)	Tossup	Schiff	7.9%	Tobacco Recipient Loses
S-7	Rainey (R)	Smith (D)	Leaning Rep.	Rainey	0.3%	Tobacco Recipient Wins
S-27	Hawkins (R)	Karnette (D)	Tossup	Karnette	2.8%	Tobacco Recipient Loses

industry sources. McPherson defeated Areias by a slim margin, 46.8 percent to 46.3 percent.

Assembly District 54 (Long Beach) -- Incumbent Steve Kuykendall (R- Long Beach) held this seat in 1995-1996. Registered Democrats outnumber registered Republicans in this district (45% Democrat to 40% Republican). *California Journal* rated this district as a “tossup” [89].

Democratic challenger Gerrie Schipske used the tobacco money issue against Kuykendall. In the closing days of the 1994 election, Kuykendall received a \$125,000 contributions from Philip Morris to help him defeat Democratic incumbent Betty Karnette. Kuykendall received \$500 from Philip Morris in 1995-1996. Kuykendall defeated Schipske by a close margin, 50.6 percent to 49.4 percent.

Senate District 21 (Northern Los Angeles County) -- This was an open seat race that *California Journal* rated as a “tossup” [89]. Registered Democrats outnumber registered Republicans in this district (45% Democrat to 39% Republican). The Senate seat was previously held by Republican Newton Russell (R-Glendale) who retired in 1996.

Democrat Adam Schiff used the tobacco money issue against Assembly Member Paula Boland, who was losing her Assembly seat because of term limits. Boland, a Republican, had received \$34,921 in 1995-1996 and a lifetime total of \$44,671 from tobacco industry sources. Schiff defeated Boland in the general election, 51.9 percent to 44.0 percent. Paula Boland won a seat in the April, 1997 Los Angeles City Council elections.

Senate District 7 (Contra Costa County) -- This was an open seat race that *California Journal* rated as a “leans Republican” [89]. Registered Democrats outnumber registered Republicans, 44 percent to 40 percent. The Senate seat was formerly held by Senator Daniel Boatwright (D-Concord), who had lost his seat due to term limits.

Democrat Jeff Smith, a doctor, used the tobacco money issue against Republican Assembly Member Richard Rainey. Rainey received \$3,250 in 1995-1996 and has received a grand total of \$6,250 from

tobacco industry sources during his legislative career. In one of the closest races of the year, Rainey defeated Smith with 48.1 percent of the vote (Smith received 47.8 percent).

Senate District 27 (Southern Los Angeles County) -- This was an open seat race that *California Journal* rated as a “tossup” [89]. Registered Democrats outnumber registered Republicans in this district (47% Democrat to 38% Republican). The Senate seat was previously held by Democrat Robert Beverly (D-Redondo Beach) who retired in 1996.

Democrat Betty Karnette used the tobacco issue against Republican Phil Hawkins. Karnette was a former Assembly Member who lost to Republican Steve Kuykendall in 1994, after Kuykendall received the last minute \$125,000 Philip Morris contribution. Hawkins, who had received \$4,900 in 1995-1996 was a one-term Assembly Member seeking a Senate seat in 1996. Karnette defeated Hawkins with 51.4 percent of the vote (Hawkins received 48.6 percent).

The poll conducted by the Field Institute in 1996 for ANR and AHA had revealed that the majority of voters were less likely to vote for a candidate who took campaign contributions from the tobacco industry (Table 1). This result was one indication of the increasing hostility of the political landscape to the tobacco industry. As noted in the *Washington Post*, “[I]n the last three years, as tobacco companies have faced a steady drip-drip-drip of revelations about deceptive marketing practices, public opinion has shifted forcefully against the tobacco industry and politicians have responded”[90]. In California, in these six races, the taking of tobacco industry money was, in fact, a campaign liability.

Lobbying Expenditures

The tobacco industry spent \$3,090,654 on lobbying in 1995 and 1996 (Table C-11). Whereas in 1993-1994, lobbying expenses totaled \$4,198,077. Of the total, \$2,600,095 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, \$1,382,995, followed by RJ Reynolds and the Tobacco Institute, which spent \$602,889 and \$364,585, respectively.

Among the lobbying firms hired by the tobacco industry, Carpenter, Snodgrass and Associates received the largest tobacco payments in 1995-1996, \$485,600. This firm represented Philip Morris, Brown and Williamson, Lorillard, and RJ Reynolds. Other top recipients included Lang and Mansfield (\$451,730), representing Philip Morris, and Flanigan and Flanigan (385,097), representing RJ Reynolds. The firm Nielsen, Merksamer, et al., which has represented tobacco companies for over twenty years, received \$166,961 in 1995-1996, raising its grand total to \$2,064,108.

Several health related groups are represented by some of the same lobbyists as the tobacco industry. In addition to Philip Morris, Governmental Associates also represents the California Coalition of Nurse Practitioners, the California Optometric Association, and Foundation Health Corporation. Besides Brown and Williamson, Lorillard, Philip Morris and RJ Reynolds, Nielson, Merksamer, et al., also represent Addus Healthcare, Inc., the AIDS Healthcare Foundation, and the California Association of Ophthalmology. This pattern of representation raises the possibility of conflict of interests among lobbyists who represent the tobacco industry and health groups [91].

Local Activity

In 1995-1996, tobacco industry contributions to local candidates were made to Assembly members who ran for local office in 1995 or 1996 and to the incumbent Mayor of Los Angeles. Assembly Speaker

Willie Brown (D-San Francisco), who would have had to leave the Assembly in 1996 because of term limits, chose to run for Mayor of San Francisco in 1995. Of the \$35,250 dollars that he had received individually in 1995, only \$250 went directly to the Willie Brown for Mayor committee. This amount is counted toward his legislative total since he was still in the Assembly before he was officially Mayor of San Francisco. The other \$35,000 went to his Willie Brown for Assembly committee and \$32,500 went to the Assembly Democratic Victory Fund, which he had controlled.

Assembly Member Mickey Conroy (R-Orange) also faced term limits in 1996. He successfully ran for the Orange County Board of Supervisors in 1996. Conroy had received \$2,500 dollars in 1995-1996 and \$11,750 since he started his legislative career in 1991.

Incumbent Los Angeles Mayor Richard Riordan received \$500 from Philip Morris in 1996. He easily won re-election for mayor against state Senator Tom Hayden on April 8, 1997. Riordan received 61.3 percent of the votes, while Hayden received 34.7 percent.

SUMMARY

In 1996-97, tobacco control advocates could point to a number of important victories. The full funding of the Proposition 99 Health Education and Research Accounts in the 1996-97 budget was a very important victory. The litigation over Proposition 99 and the legislature's ability to amend the Proposition will continue. While AB 816 was found to be not legal by the Court of Appeal, SB 493 was found to have legally amended the Proposition. ACS, AHA, ALA, and ANR have appealed the Court of Appeal ruling, and the Supreme Court will hear the case, although a date has not been set. Full funding in 1996-97 was followed up with the Governor's proposal to fund fully the Health Education and Research programs in 1997-98. This was the first budget in which the Governor did not propose diverting Health Education monies into medical services. The battle over Proposition 99 has shifted from one over money to one about the nature and quality of the anti-tobacco programs.

The California legislature "clarified" the Napkin Deal so that Attorney General Dan Lungren could no longer use it as a reason not to sue the tobacco industry for medical costs incurred by California taxpayers. Other bills are being considered that would remove the tobacco industry's protections from products liability lawsuits. Since there had been no serious discussion about amending the Napkin Deal in any previous legislative session, the speed at which bills were being introduced and passed was quite remarkable.

The taking of tobacco industry campaign contributions is emerging as a serious liability for candidates, especially those in close races.

The progress this year reflects a newfound aggressiveness on the part of the public health constituency groups, particularly the American Heart Association and Americans for Nonsmokers Rights and, more recently, the American Cancer Society. In tobacco policy making, the public health groups and ANR have a key role to play in holding government accountable.

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