

UCSF

Tobacco Control Policy Making: United States

Title

Shifting Allegiances: Tobacco Industry Political Expenditures in California January 1995 - March 1996

Permalink

<https://escholarship.org/uc/item/3wf6284g>

Authors

Monardi, Fred M., Ph.D.
Balbach, Edith D., Ph.D.
Aguinaga, Stella, MScN, MPH
et al.

Publication Date

1996-04-01

**Shifting Allegiances:
Tobacco Industry Political Expenditures in California
January 1995 - March 1996**

Fred M. Monardi, PhD
Edith D. Balbach, PhD
Stella Aguinaga, MScN, MPH
Stanton A. Glantz, PhD

Institute for Health Policy Studies
School of Medicine
University of California San Francisco
1388 Sutter Street, 11th Floor
San Francisco, CA 94109

April 1996

Supported in part by National Cancer Institute Grant CA-61021. Opinions expressed reflect the views of the authors and do not necessarily represent the sponsoring agency or the Institute for Health Policy Studies.

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

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

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

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

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

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

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

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

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

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

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

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

S. Aguinaga, H. Macdonald, M. Traynor, M. Begay, S. Glantz. Undermining Popular Government: Tobacco Industry Political Expenditures in California 1993-1994. UCSF IHPS, 1995.

EXECUTIVE SUMMARY

* In the past few election cycles, there has been a significant shift in tobacco industry contributions away from the Democratic party and towards the Republican party 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 the 1993-1994 election cycle, contributions to Republicans increased to 45 percent. During the current 1995-1996 election cycle, tobacco industry contributions to the Republican party has increased to 56 percent.

* The tobacco industry contributed a total of \$553,673 to legislative officeholders and candidates between January 1, 1995 and March 26, 1996. \$273,979 of this amount was contributed from January 1, 1996 through March 26, 1996, the date of the primary election.

* In California, Republican state legislators are significantly more pro-tobacco industry than Democratic state legislators.

* Comparing contributions made to legislators in California to contributions made to current members of Congress, the top three recipients in California in 1995 received more than the top three recipients in Congress in 1995. Former Assembly Speaker Willie Brown (D-San Francisco), Senator Ken Maddy (R-Fresno), and Assemblyman Jim Brulte (R-Rancho Cucamonga) received \$35,250, \$28,500 and \$25,000; respectively in 1995. In Congress, the top three recipients in 1995 were Congressmen from tobacco growing states. Senator Jesse Helms (R-North Carolina), Representative Lewis Payne (D-Virginia) and Senator Fred Thompson (R-Tennessee) received \$32,500, \$24,500 and \$22,500; respectively. In addition, during the last decade, the top recipients in California received more than the top recipients in the United States Congress.

* On a per member basis, California legislators in 1995 have received more money than the members of Congress in 1995. The tobacco industry had contributed \$2,331 per member in the state of California. In comparison, the tobacco industry contributed \$1,859 per member of Congress.

* Both former Assembly Speaker Willie Brown and current Assembly Speaker Curt Pringle received more tobacco industry contributions in 1995 than United States House of Representative's Speaker Newt Gingrich (\$13,500). Willie Brown received \$35,250 in 1995. The new Assembly Speaker, Republican Curt Pringle, received \$16,250 in 1995.

* The tobacco industry has recently been making large last minute contributions in the weeks prior to an election. The tobacco industry made a contribution of \$125,000 to Steve Kuykendall a few days before the 1994 general election. The tobacco industry also made several large contributions, including five \$20,000 contributions, in the weeks prior to the March 26, 1996 California primary.

* In 1988, California voters passed Proposition 99, the Tobacco Tax and Health Promotion Act, increasing the state tobacco tax by 25 cents on a pack of cigarettes and 42 cents on other tobacco products. The initiative also created the largest and most aggressive tobacco control program in the world. The initiative specified how the revenue raised from the tobacco tax would be spent. Twenty percent of the revenues raised were earmarked for health education and five percent was earmarked for research on tobacco related diseases. The Governor and the Legislature have diverted a total of \$280 million from anti-tobacco education and research to medical services.

* The level of political activity by the tobacco industry in California probably reflects the importance of California's tobacco control program. From enactment on January 1, 1989 through June 30, 1995, the combined effect of the tax increase mandated by Proposition 99 and the effect of the tobacco control

programs dramatically accelerated the rate of decline of tobacco consumption in California. These effects reduced total cigarette consumption by 2.1 billion packs of cigarettes, worth \$2.9 billion in pre-tax revenues to the tobacco companies. Thus, the tobacco industry has a strong incentive to reduce the magnitude or effectiveness of the Proposition 99 tobacco control programs.

* Diversions of Proposition 99 anti-tobacco education and research funds have decreased program effectiveness. Assuming a constant program effect, the result of these diversions was probably the fact that Californians smoked an additional 584 million packs of cigarettes, worth about \$880 million in pre-tax sales above that which would have occurred had Proposition 99 been implemented as the voters mandated. Viewed in this context, the \$21,139,152 the tobacco industry has spent on campaign contributions, lobbying, and other political activities (excluding \$18,974,675 in the tobacco industry's unsuccessful attempt to enact Proposition 188 in 1994) in California since 1989 (when Proposition 99 went into force) was an excellent, and understandable, investment.

* Twice in 1995, Superior Court judges have ruled illegal the diversion of monies from the Proposition 99 Health Education and Research Accounts to medical services approved by the Legislature and Governor. In 1996, the Governor has again proposed diverting funds. The Legislature will act this summer.

TABLE OF CONTENTS

INTRODUCTION 7

TOBACCO INDUSTRY POLITICAL EXPENDITURES 9

 Tobacco Policy Scores 11

 Legislative Officeholders and Candidates 12

 Political Parties 14

 The California Legislature Versus the United States Congress 15

 The 1996 California Primary 15

 Legislative Leaders 17

 Legislative Committees 18

 State Constitutional Officers 20

 Lobbying Expenditures 21

 Local Activity 21

TOBACCO POLICY MAKING IN CALIFORNIA 21

 Proposition 99 Background 22

 Structure of the Health Education and Research Programs 23

 From Initiative to Legislation: Conflict and Compromise 23

 The First Litigation: ALA Sues to Restore the Media Campaign 26

 Proposition 99 Litigation: The End of Acquiescence 27

 The Governor's Efforts to Avoid Compliance with the Judgment 30

 The Governor and Legislature Try an End Run Around the Courts: SB 493 31

 The Current Battle: 1996 Reauthorization of Proposition 99 Programs 32

 The Governor's 1996-97 Proposal 32

 Response of the public health community to the Governor's budget 35

 Legislative Proposals 36

 SB 1971/AB 2987. 36

 SB 1986. 38

 SB 1773. 39

CONCLUSION 39

REFERENCES 40

INTRODUCTION

The tobacco industry remains a major political force in California. The tobacco industry has spent \$2,116,112 on state level political activity in California during the current election cycle (Table 1). (The current election cycle refers to the period from January 1, 1995 through March 26, 1996 -- the date of the California primary. For a summary of tobacco industry contributions for 1995 alone, see Table A-1.) Since most campaign contributions are made near the time of the general election, it appears that the tobacco industry will spend more on campaign contributions during the current cycle than in the 1993-1994 election cycle. Indeed, tobacco industry campaign contributions to party controlled committees and legislators have already almost reached the levels observed in the 1993-1994 election cycle. 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 has increased to 56 percent in during this election cycle. This partisan shift in California mirrors a similar partisan shift behind the Republican party at the national level [1,2].

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 industry ranked second in political contributions in California (Table 2). 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 [3].

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. Proposition 99 increased the tax on a pack of cigarettes by 25 cents (with corresponding increases in taxes on other forms of tobacco products) -- approximately \$620 million a year initially and approximately \$436 million in 1996-97-- and directed that 20% of the new revenues were to go to anti-tobacco education, 5% to research, 5% to the environment, with the remaining 70% available to pay for medical services. From enactment on January 1, 1989 through June 30, 1995, the combined effect of the tax increase mandated by Proposition 99 and the effect of the tobacco control programs dramatically accelerated the rate of decline of tobacco consumption in California (Figure 1).

These effects reduced total cigarette consumption by 2.1 billion packs of cigarettes, worth \$2.9 billion in pre-tax revenues to the tobacco companies. In addition, teen smoking in California

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

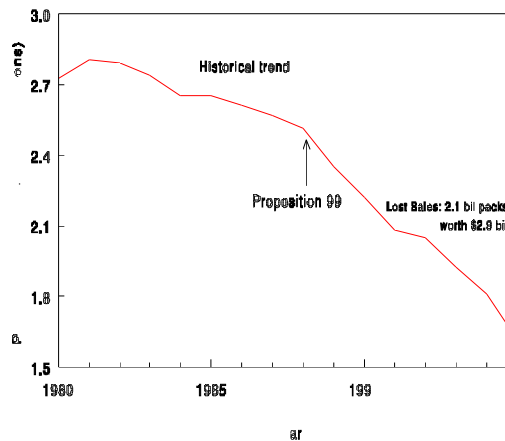


Figure 1. Proposition 99 dramatically accelerated the decline in tobacco consumption in California.

* Philip Morris, Inc. was the largest contributor to legislative officeholders, candidates, constitutional officers and political parties within the tobacco industry. Philip Morris Inc. contributed \$227,544 and, by itself, would rank eighth among the top contributors.

TABLE 1. SUMMARY OF TOBACCO INDUSTRY POLITICAL EXPENDITURES IN 1995-1996*													
	1976-1992	1994	B/W	LOR	PM	RJR	STC	CDAPAC	TI	UST	OTHERS	1995-96*	Grand Total
Legislature	\$2,510,729	\$723,542			\$365,523	\$112,250	\$4,750	\$7,900	\$60,250	\$3,000		\$553,673	\$3,787,944
Political Party	\$636,188	\$117,800			\$77,600	\$20,500	\$2,500		\$15,000			\$115,600	\$869,588
Constitutional	\$173,450	\$29,899			\$22,000							\$22,000	\$225,349
Local Activity	\$4,197,030	\$618,681										\$0	\$4,815,711
Statewide Initiatives	\$32,157,603	\$18,974,675										\$0	\$51,132,278
Lobbying	\$10,644,106	\$4,198,077	\$142,977	\$52,165	\$629,447	\$304,296	\$94,882	\$34,662	\$181,319		\$55,346	\$1,495,093	\$16,337,276
Other	\$30,000	\$0										\$0	\$30,000
Total	\$50,349,106	\$24,662,674	\$142,977	\$52,165	\$1,094,570	\$437,046	\$102,132	\$42,562	\$256,569	\$3,000	\$55,346	\$2,186,366	\$77,198,146

* Only includes 1996 contributions made between January 1, 1996 and March 26, 1996 . Lobbying figures are for 1995 only.

Table 2. 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.	

remained constant over the first three years of the program, at a time that teen smoking was increasing the rest of the country. Teen smoking in California began to increase since the anti-tobacco education program has been cut (Figure 2). Thus, the tobacco industry has a strong incentive to reduce the magnitude or effectiveness of the Proposition 99 tobacco control programs.

While the voters enacted Proposition 99, it still remained for the Governor to propose and the Legislature to enact programs to implement it. 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, 1996, the Governor and Legislature have diverted into medical services a total of \$221 million out of \$781 million the voters had mandated for anti-tobacco education and \$59 million of \$195 million the voters had mandated for research (Table B-1 presents Proposition 99 expenditures as budgetted by the Governor and Legislature; Table B-2 presents actual expenditures in light of several court rulings that the budgets as enacted by the Legislature and signed by the Governor violated the terms of Proposition 99). Assuming a constant program effect, the result of these diversions was probably the fact that Californians smoked an additional 584 million packs of cigarettes, worth about \$880 million in pre-tax sales above that which would have occurred had Proposition 99 been implemented as the voters mandated.

TOBACCO INDUSTRY POLITICAL EXPENDITURES

We obtained data on tobacco industry statewide political expenditures from disclosure statements

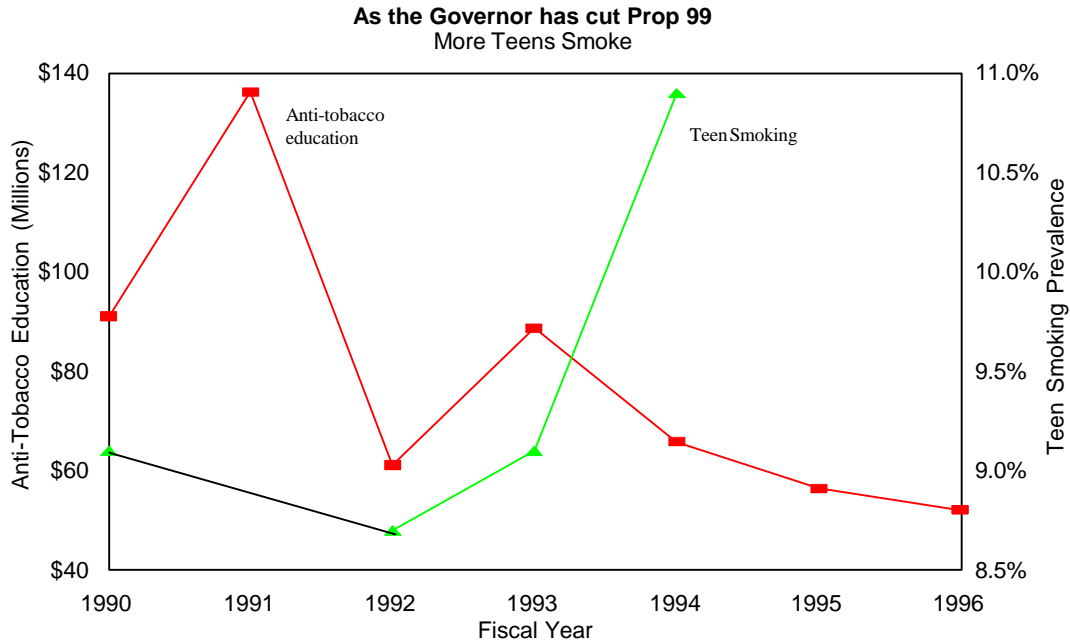


Figure 2. After remaining stable for several years, teen smoking in California is increasing, as Proposition 99 anti-tobacco education programs have been cut.

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 for 1996 was gathered from candidate files and late contribution reports at the Secretary of State’s Political Reform Division.* Data included in this report include contributions to legislators, legislative candidates, political parties, political party controlled committees, state constitutional officers and expenditures made for lobbying legislative or administrative officials.

We collected campaign contribution data for candidates and political parties from January 1, 1995 to March 26, 1996 (the date of the California primary). Lobbying data cover only 1995. 1996 lobbying data for the first quarter were not available at the time of publication of this report. When appropriate, this report will present separate tables for 1995, and the combined totals for 1995 and the first three months (up until March 26) of 1996.

There are some limitations to the data. As we have done in the past, we did not include contributions from non-tobacco subsidiaries of these companies, such as Philip Morris’ Kraft Foods and Miller Beer, or 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. One example of a fund-raiser that was hosted by a tobacco company occurred in 1990. According to a Philip Morris memo obtained and leaked by American for Nonsmokers’ Rights (Figure 3), Philip Morris hosted a fund-raising event for then gubernatorial candidate Pete Wilson that appears to have grossed \$100,000.

* We also obtained Federal Election Commission (FEC) reports for state legislators who are running for Congress. No tobacco industry contributions were found for those candidates running for Congress from January 1, 1995 through April 7, 1996. Rep. Tom Campbell returned a \$2,000 contribution from Philip Morris.

PHILIP MORRIS COMPANIES INC. INTER-OFFICE CORRESPONDENCE
 1201 G STREET, N.W., SUITE 900, WASHINGTON, D.C. 20002

TO: Doffy **DATE:** 4/14/90

FROM: Jim

SUBJECT: Pete Wilson

Wilson is only sending about 16K of the 100K he collected. This 16K includes checks he received from either a tobacco company or anyone working directly for a tobacco company, i.e., Hamish Maxwell, Mr. Ehud, Bill Murray.

Apparently, he has also done this with other "controversial" industries such as lumber, chemical, and others. The decision to do this was Wilson's alone, and in the response to a wave of negative campaigning in California that not only attacks the candidates, but those who give to them as well.

You will be pleased to know that Pete called Hamish to explain that he was doing this to protect Hamish as well as himself. You will also be pleased to know that Pete is an "pro-tobacco".

Wilson had returned \$16,000 in checks that had obvious links to the tobacco industry [4,5], in particular contributions from Hamish Maxwell (Chairman of the Board of Philip Morris), Ehud Houminer (President of Philip Morris USA), and William Murray (Philip Morris Vice-Chairman) [4]. In April, 1990, Wilson's gubernatorial campaign returned \$2,000 to Philip Morris. We were unable to find the expenses Philip Morris incurred in hosting an event in 1990 as an in-kind contribution to Pete Wilson's gubernatorial campaign. This incident demonstrates the fact that it is difficult to trace all tobacco industry involvement in financing political campaigns.

Figure 3 *Despite not accepting campaign contributions from the tobacco industry, this internal Philip Morris Inc, document reveals Governor Wilson's close relationship with the tobacco industry.*

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 first session of the 1995-1996 Legislature. The score is obtained from polling individuals knowledgeable about the Legislature and tobacco policy on a scale of 0 to 10 [6,7]. A score of 0 represented an extremely pro-tobacco industry legislator and a score of 10 represented an extremely pro-tobacco control legislator.* Each legislator received a rating from four to six individuals. The average for each legislator is reported. Assemblymen 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, 9.3, 10.0 and 10.0, respectively. Former Assembly Speaker Willie Brown (D-San Francisco) and Senator Charles Calderon (D-Montebello) had the lowest policy scores in their chambers, 0.8 and 1.3, respectively. Since Willie Brown is no longer a member of the Legislature,** the next lowest tobacco policy score in the Assembly belonged to Mickey Conroy (R-Orange), who received a score of 1.2.

The tobacco policy scores did not significantly differ between Assembly members (mean 4.8, standard deviation 1.9, n=79) and Senate members (mean 4.9, standard deviation 2.2, n=40; p=.72). However, Republicans had a significantly lower tobacco policy scores (more pro-tobacco industry) than Democrats (Republicans: mean 3.5, standard deviation 1.0, n=57; Democrats: mean=6.1, standard

*Tobacco policy scores for former Senators Bergeson, Horcher, and newly elected Assemblyman Ackerman were not collected since they only served a short time in 1995. Bergeson had resigned in January of 1995 to run for judge in Los Angeles county. Ross Johnson moved from the Assembly to the Senate in May, 1995, to replace Marian Bergeson. Dick Ackerman was elected in a special election in September, 1995 to replace Ross Johnson's 72nd assembly seat. Paul Horcher was recalled in May, 1995.

**Willie Brown was elected Mayor of San Francisco in December, 1995.

TABLE 3. CALIFORNIA'S TOP 20 RECIPIENTS OF TOBACCO INDUSTRY CAMPAIGN CONTRIBUTIONS IN 1995-1996*									
Name	Party	House	1976-92	1993-94	1995	1996*	1995-96*	Grand Total	Tobacco Policy Score
Tucker, Curtis Jr.	D	A	\$9,000	\$18,000	\$18,000	\$68,886	\$86,886	\$113,886	2.0
Brown, Willie	D	A	\$461,517	\$138,975	\$35,250	\$0	\$35,250	\$635,742	0.8
Maddy, Ken	R	S	\$97,750	\$30,225	\$28,500	\$0	\$28,500	\$156,475	1.8
Boland, Paula	R	A	\$7,750	\$2,000	\$1,000	\$25,921	\$26,921	\$36,671	2.6
Wright, Rod	D				\$2,000	\$22,000	\$24,000	\$24,000	
Granlund, Brett	R	A	\$0	\$1,000	\$1,000	\$23,000	\$24,000	\$25,000	2.8
Cortese, David	D					\$23,000	\$23,000	\$23,000	
Lockyer, Bill	D	S	\$32,500	\$17,475	\$20,000	\$0	\$20,000	\$69,975	3.5
Pringle, Curt	R	A	\$4,500	\$9,000	\$16,250	\$1,000	\$17,250	\$30,750	1.3
Brulte, Jim	R	A	\$10,500	\$34,975	\$13,000	\$0	\$13,000	\$58,475	3.0
Calderon, Charles	D	S	\$15,600	\$15,500	\$13,000	\$0	\$13,000	\$44,100	1.3
Hurt, Rob	R	S	\$0	\$3,000	\$11,668	\$0	\$11,668	\$14,668	2.7
Hoge, Bill	R	A	\$3,441	\$11,500	\$4,500	\$7,000	\$11,500	\$26,441	4.0
Papan, Lou	D				\$500	\$10,000	\$10,500	\$10,500	
Brewer, Marilyn	R	A	\$0	\$0	\$4,276	\$6,000	\$10,276	\$10,276	4.3
Morrow, Bill	R	A	\$1,250	\$3,000	\$3,000	\$7,000	\$10,000	\$14,250	2.3
Johnson, Ross	R	S	\$29,250	\$9,000	\$2,500	\$7,000	\$9,500	\$47,750	2.0
Polanco, Richard	D	S	\$20,400	\$7,650	\$3,000	\$5,650	\$8,650	\$36,700	4.2
Vicencia, Micheal	D				\$500	\$7,698	\$8,198	\$8,198	
Takasugi, Nao	R	A	\$2,500	\$1,500	\$1,500	\$6,000	\$7,500	\$11,500	3.4
Knight, William "Pete"	R	A	\$500	\$3,500	\$2,500	\$5,000	\$7,500	\$11,500	1.8
Total			\$696,458	\$306,300	\$181,944	\$225,155	\$407,099	\$1,409,857	

*January 1, 1996 to March 26, 1996

deviation 2.0, n=60; p<.001).*

Legislative Officeholders and Candidates

From January 1, 1995 through March 26, 1996, the tobacco industry contributions to 93 legislative officeholders and candidates (Table A-2) totaled \$553,673. (Table A-3 shows that \$279,694 was contributed in 1995 and Table A-4 shows that \$273,979 was contributed from January 1, 1996 through the California primary on March 26.) It appears that the tobacco industry contributions given directly to individuals during this current two year election cycle will likely exceed the 1993-1994 election cycle (\$723,542) because a greater proportion of contributions are usually provided in an election year. For instance, Philip Morris Inc. has already provided more individual contributions in the months before the March 26 California primary than they did in all of 1995 (\$150,444 in 1995 and \$215,079 between January 1, 1996 and March 26, 1996).

Table 3 presents the top 20 recipients of tobacco industry campaign contributions during the current

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

election cycle.* Assemblyman Curtis Tucker (D-Inglewood) and Senator Ken Maddy (R-Fresno) are the top recipients in their respective chambers, receiving \$86,886 and \$28,500 respectively. In 1993, Assemblyman Curtis Tucker had sponsored a preemption bill supported by the tobacco industry (AB 996). After the tobacco control community mobilized against AB 996, the bill did not pass in the Assembly [8]. Senator Ken Maddy was the former Senate Republican Floor Leader. Former Assembly Speaker Willie Brown (D-San Francisco) received \$35,250 before he resigned from the Assembly in 1995. The average tobacco policy score among these top 20 recipients was 2.6, (standard deviation, 1.0) indicating a pro-tobacco industry leaning. This average is significantly lower than the average tobacco policy score of the remaining legislators (mean, 5.2; standard deviation, 1.9; p<.001).

Table 4 lists the members of the Legislature who have never accepted tobacco industry money. Of the fourteen who have never received tobacco industry money, five are Republicans and nine are Democrats. The average tobacco policy score was 6.9 (standard deviation, 1.9) which is significantly higher than the average tobacco policy score of the remaining legislators (mean, 4.5; standard deviation, 1.9; p<.001).

Of the tobacco industry contributions during the current election cycle, 58 Republican legislators and candidates (50 legislators and 8 candidates) received \$281,689 and 35 Democrats (24 legislators and 11 candidates) received \$271,984. 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). So far in the 1995-1996

TABLE 4. 1995-1996 LEGISLATORS WHO HAVE NEVER ACCEPTED TOBACCO INDUSTRY CONTRIBUTIONS					
Legislator	Party	Dist.	House	Year Elected	Tobacco Policy Score
Baugh, Scott*	R	67	A	1995	
Bordonaro, Tom	R	33	A	1994	5.0
Campbell, Robert	D	11	A	1980	8.6
Campbell, Tom **	R	11	S	1993	5.6
Davis, Susan	D	76	A	1994	6.5
Frusetta, Peter	R	28	A	1994	4.3
Hayden, Tom	D	23	S	1982	10.0
Knox, Wally	D	42	A	1994	6.3
Kuehl, Sheila	D	41	A	1994	7.7
Mazzoni, Kerry	D	6	A	1994	6.0
McDonald, Juanita	D	55	A	1992	6.3
McPherson, Bruce	R	27	A	1993	4.5
Petris, Nicholas	D	9	S	1966	9.8
Sher, Byron	D	21	A	1980	9.0
* Replaced Doris Allen in a special election in Nov. 1995.					
** Tom Campbell, a member of the 1995 California Senate and elected to Congress in Nov. 1995, has never accepted tobacco industry money as a state legislator.					

* Table A-5 list the top recipients of tobacco industry contributions in 1995 only.

election cycle, Republican legislators and candidates received a majority of campaign contributions -- 51 percent (\$281,689 for Republicans and \$271,984 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 doubled to Republican Congressional candidates in between 1993 and 1995. Contributions to Democratic Congressional candidates declined between 1993 to 1995 [9].

Political Parties

From January 1, 1995 through March 26, 1996, the tobacco industry contributed \$115,600 to political parties and party controlled committees. At this rate, contributions to political parties and party controlled committees would exceed contributions made to parties in 1993-1994, when the industry contributed \$117,800.

The largest beneficiary of contributions to party controlled committees was Willie Brown's Assembly Democratic Victory Fund, which received \$32,500. However, the remaining \$83,100 was distributed to the Republican party and Republican controlled committees. Leadership Fund 2000, controlled by Assemblyman Brett Granlund (R-Yucaipa), received \$20,500. The tobacco industry also contributed \$17,000 to the Jim Brulte Assembly Republican Leadership Fund and \$35,000 to the Assembly Republican Victory Fund (controlled by Speaker Curt Pringle). The California Republican Party received \$10,600, while the California Democratic Party has not received any money from the tobacco industry during this election cycle (Table A-6).

Tobacco industry contributions to the Republican party and Republican party controlled committees increased sharply compared to the Democratic party and Democratically controlled committees increased sharply 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, between January 1, 1995 and March 26, 1996, the tobacco industry contributed 72 percent of contributions to party related activities to the Republican party and Republican controlled committees (\$83,100 to Republicans and 32,500 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 legislative candidates. 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 total \$691,274. Of this total, 56 percent (\$386,789) was contributed to the Republican party. (Democrats received \$304,484.)

The substantial increase 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. At the national level, 62 percent of the tobacco industry's soft money contributions went to the Republican party in 1991. In 1995, 85 percent of tobacco industry soft money contributions were donated to the national Republican party [10,11].

The California Legislature Versus the United States Congress

As in the past [7], the tobacco industry is contributing money to members of the California Legislature more intensively than it is to the US 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 received more money than the members of Congress in 1995. The tobacco industry had contributed \$2,331 per member in the state of California. In comparison, the tobacco industry contributed \$1,859 per member of Congress.*

Comparing contributions made to legislators in California to contributions made to current members of Congress, the top three recipients in California in 1995 (Table A-5) received more than the top three recipients in Congress in 1995. Former Assembly Speaker Willie Brown (D-San Francisco), Senator Ken Maddy (R-Fresno), and Assemblyman Jim Brulte (R-Rancho Cucamonga) received \$35,250, \$28,500 and \$25,000; respectively. In Congress, the top three recipients in 1995 were Congressmen from tobacco growing states. Senator Jesse Helms (R-North Carolina), Representative Lewis Payne (D-Virginia) and Senator Fred Thompson (R-Tennessee) received \$32,500, \$24,500 and \$22,500; respectively [12].

During the last decade, the top recipients in California received more than the top recipients in the United States Congress. From 1985 to 1995, Assemblyman Willie Brown, Senator Ken Maddy and Assemblyman Steve Kuykendall (R-Long Beach) received \$552,342, \$153,475, and \$125,500; respectively. In the United States Congress between 1986 and 1995, the top three recipients of tobacco industry money were Representative Thomas Bliley (R-Virginia; \$127,140), Representative Charley Rose (D-North Carolina; \$104, 550), and Representative Lewis Payne (D-Virginia; \$92,149) [12].**

The 1996 California Primary

The tobacco industry made significant contributions to legislative officeholders and candidates between January 1, 1996 and the California primary held on March 26, 1996. The tobacco industry contributed \$273,979 to legislative officeholders and candidates in the first three months of 1996, 98 percent of what the tobacco industry had contributed to legislators and candidates in all of 1995. Table A-4 presents who received contributions between January 1, 1996 and March 26, 1996. Table A-2 presents the totals for legislators and candidates between January 1, 1995 through March 26, 1996.

Among the forty-one legislators and candidates that received tobacco industry contributions in the first three months of 1996, seventeen were Democrats and twenty-four were Republicans. Democrats received a total of \$152,984 and Republicans received a total of \$120,995. Among the forty-one contributions made, twenty contributions were to candidates where there was no incumbent running in the primary and eighteen were made to incumbents. Three contributions were made to holdover senators not up for re-election. Of the twenty contributions made to candidates running for an open primary seat, four of those contributions were made to former assembly members running for State Senate. Contributions were also made to one Assembly member (Curtis Tucker; D-Inglewood) who challenged an incumbent Senator (Theresa Hughes; D-Inglewood). Assembly members Tucker and Paula Boland (R-Granada Hills), who were facing term limits in the assembly in 1996, chose to run for the State Senate in 1996. Assembly members

*There are 120 seats in the California Legislature and 535 seats in the United States Congress. California legislators and candidates in 1995 received \$279,694 and Congressional candidates and members (excluding presidential committees) in 1995 received \$994,350 [12].

** Figures available for Congress were for the ten year period between 1986 and 1995. Figures available for California were from 1985 to 1995.

Hawkins (R-Artesia), Rainey (R-Walnut Creek) and Knight (R-Palmdale) were not facing term limitations for their Assembly seats. Nevertheless, they chose to run for the Senate because of the availability of an open seat. Of the forty-one candidates that received tobacco industry contributions, six candidates lost, nine candidates faced no opposition in their partisan primary, three were holdover senators and twenty-three* won their partisan primary. Of the six candidates that lost, all were challengers who lost in open races with the exception of Tucker (D-Inglewood), who lost to an incumbent.

While most of the candidates that received tobacco industry support during the primary were incumbents or Assembly members moving to the Senate, 15 of the 41 recipients were candidates who were not in the Legislature in 1996. This level of support for non-incumbents is new for the tobacco industry. From 1976 to 1994, the tobacco industry rarely contributed to non-incumbents. In general elections between 1976 and 1990, the tobacco industry had never contributed to more than three challengers in any one general legislative election [13]. In 1992 and 1994, the tobacco industry contributed to only eight and seven challengers, respectively [7]. It is likely that the tobacco industry will still contribute more to incumbents than non-incumbents. While we cannot make any definitive conclusions based on one primary election, it may be that with the introduction of term limitations in California and more open legislative races will make the tobacco industry more willing to contribute to non-incumbents in the future.

What is particularly interesting about the 1996 California primary was that Philip Morris gave five large \$20,000 contributions between March 8 and March 15, two to three weeks before the primary. The recipients were Paula Boland, Rod Wright, Curtis Tucker, David Cortese and Bret Granlund. Assemblywoman Paula Boland (R-Granada Hills) won her Senate primary race (district 21). She received 34.9% of the vote in a four person Republican primary. Boland received a total of \$24,921 from Philip Morris. She also received \$1,000 from RJ Reynolds. Rod Wright (D) won a seven person Democratic primary for an Assembly seat in the 48th district (Los Angeles). He received 51.6% of the Democratic primary vote and faces no Republican challenger in November. Wright also received \$2,000 from RJ Reynolds. Granlund (R-Yucaipa) defeated his one primary opponent with 70.2% of the vote. Granlund also received \$2,500 from RJ Reynolds and \$500 from U.S. Tobacco.

Curtis Tucker (D-Inglewood) and David Cortese (D), on the other hand, lost their primary races. Tucker received \$64,886 in monetary and non-monetary (telephone-banking and polling) from Philip Morris, all in the month of March. The Tobacco Institute also made a late contribution of \$4,000. Tucker lost to incumbent Theresa Hughes (D-Inglewood) in a two person Democratic primary (Tucker received 42.3% of the vote). He will remain in the Assembly until the end of the current legislative session.

David Cortese, the son of Assemblyman Dominic Cortese (Reform Party-San Jose), ran in the Democratic primary for the Assembly seat in the 23rd district (currently held by Dominic Cortese who is facing term limits). David Cortese had received \$20,000 from Philip Morris, \$2,000 from RJ Reynolds and \$1,000 from the Tobacco Institute. Cortese lost in an open four person Democratic primary and received only 17.9% of the vote. Philip Morris's contribution to Cortese made headlines in the *San Jose Mercury News* a week before the primary [14].

Given the last minute contributions made during the 1996 primaries [15] and the last minute \$125,000 contribution given to Steve Kuykendall (R-Long Beach) in the 1994 general election, it is likely that the tobacco industry will again make last minute contributions in the 1996 general election to assist their preferred candidates. Contributions made during the last weeks and days of a campaign are often difficult

* One legislator, Mickey Conroy (R-Orange), qualified for a runoff election for the Orange County Board of Supervisors.

to track by opposing campaigns, the media and the public. The extent of last minute contributions is often not noticed until after an election. The tobacco industry may use last minute contributions as a strategy to avoid publicity of their involvement in the election process.

Legislative Leaders

The Assembly leadership situation was unsettled in 1995. The Republicans had regained control of the Assembly after the 1994 elections with a 41 to 39 advantage. Philip Morris assisted in the Republican takeover of the Assembly by making a last minute contribution of \$125,000 to Republican challenger Steve Kuykendall of Long Beach.

Although the Republicans had a 40-39* majority at the start of the 1995-1996 legislative session, Republican (turned Independent) Paul Horcher (I-West Covina) voted for Democrat Willie Brown (D-San Francisco) as speaker, which permitted Brown to retain the speakership. Horcher was later recalled, and Republican Assemblyman Ross Johnson (R-Irvine) moved to the Senate to fill a vacancy (leaving two vacancies in the Assembly in spring and summer of 1995). When Democrat Willie Brown decided to run for Mayor of San Francisco, rather than leave the Assembly under the control of Republicans, the Democrats and Republican Doris Allen (R-Cypress) made a deal that would make Doris Allen Speaker of the Assembly [16]. On June 5, 1996, Republican Doris Allen was voted Speaker of the Assembly with a vote of 40 to 38, winning with all the Democratic votes and her own vote and opposed by all the remaining Republicans. Willie Brown was given the honorary title Speaker Emeritus. Although the new Speaker, Doris Allen, was a Republican, Republicans accused Willie Brown of continuing to play an important behind the scenes role [16]. The Republicans then initiated a recall election to replace Doris Allen. Citing the need to campaign to retain her seat, she resigned as Speaker. The Democrats and Allen voted in another Republican, Brian Setencich (R-Fresno), as the new Speaker. After the successful recall of Allen, the election of Republican Scott Baugh to replace her, and the election of Republican Richard Ackerman (R-Fullerton) to replace Ross Johnson, the Republicans regained the majority in the Assembly. Finally, on January 5, 1996, the Republicans elected Curt Pringle (R-Garden Grove) as the new Assembly Speaker.

Former Democratic Assembly Speaker Willie Brown was still the largest recipient of tobacco industry contributions in California in 1995. He had received \$35,250 in 1995 and the committee that he controlled, the Assembly Democratic Victory Fund, received \$32,500. However, the Republican party now holds the majority in the Assembly and the new Speaker is Republican Curt Pringle (R-Garden Grove). Pringle has received \$29,750 since he was elected in 1992. More than half that amount, \$16,250, was donated to him in 1995. Curt Pringle also controls the Assembly Republican Victory Fund which has received \$35,000 from the tobacco industry since 1995. With Willie Brown no longer in the Assembly, Curt Pringle has the second lowest tobacco policy score in the entire Legislature, 1.3, (behind Mickey Conroy, R-Orange) indicating that he is perceived as one of the most pro-tobacco industry members of the Legislature. Both Willie Brown and Curt Pringle received more tobacco industry contributions in 1995 than United States House of Representative's Speaker Newt Gingrich (\$13,500) [12].

The tobacco industry contributed \$2,000 to Speaker Pro Tempore Fred Aguiar (R-Ontario) in 1995 and \$4,000 throughout his legislative career. His tobacco policy score of 4.0 represents a mildly pro-tobacco industry position. Democratic Floor Leader Richard Katz (D-Panorama City) had accepted donations from the tobacco industry in the past (\$5,500), but he did not receive any contributions in 1995 or in the first three months of 1996. As mentioned earlier, Katz was rated as the highest pro-tobacco control legislator in the

* An assembly seat was vacant after Richard Mountjoy (R-Arcadia) moved from the Assembly to the Senate in the spring of 1995.

Assembly with a score of 9.3. Katz is sponsoring Assembly Bill (AB) 2987 in the Assembly. AB 2987 (along with Senate Bill (SB) 1971) would restore full funding of the Health Education and Research Accounts as instructed in Proposition 99. Katz also introduced AB 994, that would have authorized the state of California to file a Medi-Cal (Medicaid in California) recovery suit against the tobacco industry to force the industry to reimburse California for its Medi-Cal expenditures. The bill, however, died in the Assembly Judiciary Committee on January 31, 1996.

Senate President Pro-Tempore, Bill Lockyer (D-Hayward), has received \$20,000 in tobacco industry contributions during the current 1995-1996 election cycle (and a grand total of \$69,975). Lockyer, along with former Assembly Speaker Willie Brown, helped broker a deal between the tobacco industry, the California Medical Association, the trial lawyers and the insurance companies over liability reform in 1987 [17]. The agreement included a clause exempting tobacco from product liability suits [18]. Senate Majority Leader Henry Mello (D-Gilroy) did not receive any tobacco industry contributions during the current election cycle (grand total of \$12,000). (Mello pledged to refuse all tobacco industry contributions in 1992.) The tobacco industry contributed \$11,668 to Republican Floor Leader Rob Hurtt (R-Garden Grove). Lockyer and Hurtt received strong pro-tobacco industry scores of 3.5 and 2.7 respectively. Mello received a neutral tobacco policy score of 5.0. Table 5 summarizes the tobacco industry contributions given to Assembly and Senate leaders.

Legislative Committees

Several committees in the California Legislature typically consider legislation related to tobacco policy, particularly the Assembly and Senate Health Committees, the Assembly and Senate Budget Committees and the Joint Legislative Budget Committee. As discussed later, these committees have considered legislation on the reauthorization of Proposition 99 funds and other tobacco control legislation.

Because of the recalls and special elections in 1995, the Republicans gained complete control of the Assembly in 1996. Therefore, the composition of the Assembly committees in 1995 and 1996 differ. The composition of the current Assembly committees are discussed below. (Assembly committee tables for 1995 and 1996 are presented in Tables A-7 to A-10.)

Assembly Health Committee -- Sixteen of the nineteen members of the Assembly Health committee received tobacco industry contributions in 1995. Four members received contributions in the first quarter of 1996. Robert Campbell (D-Martinez) is the only committee member never to have accepted tobacco industry contributions. The largest recipient was Curtis Tucker (D-Inglewood) who received \$18,000 in 1995 and \$68,886 in the first quarter of 1996. Brett Granlund (R-Yucaipa) replaced Doris Allen (R-Cypress) as chair of the Health committee in 1996. He had only received \$1,000 in 1995, but \$23,000 in the first three months of 1996 -- after he was selected chair of the Assembly Health Committee. Assemblyman Granlund also controls the Leadership Fund 2000, which had received 10,000 from Philip Morris and \$10,500 from RJ Reynolds in 1995.

Assembly Budget Committee. Fifteen of the nineteen members of the Assembly Budget committee received tobacco industry contributions in 1995 and five members receive contributions in the first three months of 1996. Byron Sher (D-Redwood City) and Juanita McDonald (D-Carson) are the only two committee members to have never received tobacco industry contributions. The largest recipient in 1995 is Bill Morrow (R-Oceanside) who received \$3,000. Morrow also received \$7,000 in the first quarter of 1996. The chair of the Assembly Budget committee in 1995, John Vasconcellos (D-San Jose), is no longer on the Assembly Budget committee. The new chair is Gary Miller (R-West Covina) who received \$2,500

TABLE 5. 1995-96 CONTRIBUTIONS TO LEGISLATIVE LEADERSHIP								
		Party	Dist.	1976-92	1993-94	1995-96*	Grand Total	Tobacco Policy Score
Senate Leadership								
President Pro Tempore	Lockyer, Bill	D	10	\$32,500	\$17,475	\$20,000	\$69,975	3.5
Democratic Floor Leader	Mello, Henry	D	15	\$11,500	\$500	\$0	\$12,000	5.0
Majority Whip	Greene, Leroy	D	6	\$6,000	\$1,500	\$500	\$8,000	4.6
Democratic Caucus Chair	Polanco, Richard	D	22	\$20,400	\$7,650	\$8,650	\$36,700	4.2
Republican Floor Leader	Hurt, Rob	R	34	\$0	\$3,000	\$11,668	\$14,668	2.7
Minority Whip	Russell, Newton	R	21	\$5,250	\$0	\$0	\$5,250	4.2
Republican Caucus Chair	Johannessen, Maurice	R	4	\$0	\$500	\$1,000	\$1,500	3.2
Assembly Leadership								
Speaker	Pringle, Curt	R	68	\$4,500	\$9,000	\$16,250	\$29,750	1.3
Speaker Pro Tempore	Aguiar, Fred	R	61	\$1,000	\$1,000	\$2,000	\$4,000	4.0
Majority Floor Leader	Rogan, James	R	43	\$0	\$3,000	\$3,500	\$6,500	3.4
Majority Whip	Kuykendall, Steven	R	54	\$0	\$125,000	\$500	\$125,500	2.7
Republican Caucus Chair	Thompson, Bruce	R	66	\$0	\$0	\$500	\$500	4.3
Minority Floor Leader	Katz, Richard	D	39	\$5,500	\$0	\$0	\$5,500	9.3
Minority Whip	M. Archie-Hudson,	D	48	\$3,250	\$750	\$750	\$4,750	6.0
Minority Whip	Villaraigosa, Antonio	D	45	\$0	\$0	\$500	\$500	6.8
Democratic Caucus Chair	Bustamante, Cruz	D	31	\$0	\$9,000	\$2,250	\$11,250	5.8
Total				\$89,884	\$180,274	\$70,063	\$336,343	
*January 1, 1995 to March 26, 1996 only								

in 1995 and \$2,500 in the first three months of 1996.

Senate Health and Human Services Committee. Whereas a majority of Assembly Health committee members have received tobacco industry contributions during this election cycle, a majority of Senate Health and Human Services committee members have not (Table A-11). Four of the nine Senate Health and Human Services committee members received contributions in 1995 and one member (Richard Polanco; D-Los Angeles) received \$5,650 in the first three months of 1996. Ken Maddy (R-Fresno) was the largest recipient of tobacco industry funds among committee members during this election cycle, \$28,500. The chair of the committee, Diane Watson (D-Los Angeles) has not received any tobacco industry contributions during this election cycle.

Senate Budget and Fiscal Review Committee-- As in the Senate Health committee, a majority of Senate Budget and Fiscal Review members did not receive tobacco industry contributions during this election cycle (Table A-12). Six of the thirteen members received contributions in 1995 and three members received contributions in the first quarter of 1996. As in the Senate Health Committee, the largest recipient on the Senate Budget and Fiscal Review committee was Ken Maddy (R-Fresno), who received \$28,500 in 1995. Nicholas Petris (D-Oakland) is the only member of the committee to have never accepted a tobacco industry contribution. The chair of the committee, Mike Thompson (D-Santa Rosa), has not receive any tobacco industry contributions during his election cycle.

Joint Legislative Budget Committee -- The Joint Legislative Budget Committee consists of eight Assembly members and eight Senate members (Table A-13). This committee is responsible for resolving differences between the two legislative chambers on budgetary issues. The tobacco industry contributed to ten of the sixteen Joint Budget Committee members during this election cycle. Senator Tim Leslie (R-Roseville) received the largest contribution among committee members, \$6,500. Senator Nicholas Petris, who has never received tobacco industry contributions, is also on the committee. The chair of the committee, Senator Alfred Alquist (D-San Jose), did not receive a tobacco industry contributions during this election cycle.

State Constitutional Officers

Philip Morris contributed \$28,000 to four state constitutional officers during the current election cycle (Table A-14). (There were no tobacco industry contributions to state constitutional officers between January 1, 1996 and March 26, 1996.) All contributions to state constitutional officers were made to Republicans. Attorney General Dan Lungren received the most contributions in 1995, \$8,500. The Attorney General has become a particularly crucial player in tobacco policy making with the advent to state law suits to recover Medicaid costs due to smoking. As of April 15, 1996, seven states have filed such lawsuits (Florida, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, and Texas). As previously mentioned, although Assemblyman Katz introduced legislation to authorize California to file a suit last year (which died in committee), and Assembly Democrats have introduced a resolution urging Lungren to take action, it is unlikely he will do so. Lungren, a political conservative, is thought to have higher political ambitions and to have little interest in alienating businesses and other “anti-lawsuit” interests [19].

Secretary of State Bill Jones and Insurance Commissioner Chuck Quackenbush received \$5,000 and \$6,000, respectively. This is the first term in a state constitutional office for both Jones and Quackenbush. However, Jones and Quackenbush 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 \$2,500 from Philip Morris. The next election for state constitutional offices is not until 1998.

Lobbying Expenditures

The tobacco industry spent \$1,495,093 on lobbying in 1995 (Table A-15). At this rate, tobacco industry lobbying expenditures for 1995-1996 will be around \$3 million; whereas in 1993-1994, lobbying expenses totaled \$4,198,077. Of the total, \$1,282,467 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, \$455,995, followed by RJ Reynolds and Brown and Williamson, who spent \$301,260 and \$149,585, respectively.

Among the lobbying firms hired by the tobacco industry, Carpenter, Snodgrass and Associates received the largest tobacco payments in 1995, \$245,600. This firm represented Philip Morris, Brown and Williamson, Lorillard, and RJ Reynolds. Other top recipients included Lang and Mansfield (\$208,645), representing Philip Morris, and Flanigan and Flanigan (195,189), representing RJ Reynolds. The firm Nielsen, Merkasamer, et al., which has represented tobacco companies for over twenty years, received \$59,797 in 1995, raising its grand total to \$1,956,944.

Local Activity

In 1995, tobacco contributions to local candidates were made only to Assembly members who ran or will run for local office in 1996. Willie Brown, 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.

Assemblymen Mickey Conroy (R-Orange) is also facing term limits in 1996. He will be running for the Orange County Board of Supervisors in 1996. Conroy had received \$1,000 dollars in 1995, \$1,000 in so far in 1996 and \$11,250 since he started his legislative career in 1991. The 1996 contribution is also counted toward his legislative total since he is still in the Assembly.

TOBACCO POLICY MAKING IN CALIFORNIA

Tobacco industry campaign contributions and lobbying expenditures are important to monitor because they influence the climate in which California tobacco policy is made. In 1995-1996 there were a number of efforts on tobacco policy in progress at the state level, particularly reauthorization of the Proposition 99 tobacco control and research programs.* As discussed earlier, these programs have had a dramatic effect on tobacco consumption in California and cost the tobacco industry \$2.9 billion in lost sales (Figure 1), so reducing the magnitude and effectiveness of Proposition 99 must be a high priority for the tobacco industry. As a result, Proposition 99 has been the subject of extensive political maneuvering in

*The most important issue related to tobacco policy making before the California Legislature continues to be implementation of Proposition 99. There are, however, some other tobacco-related issues before the Legislature. For example, Sal Canella (D-Turlock) introduced a bill, AB 3037, on February 23, 1996 to amend AB 13. AB 13 passed in 1994 and mandated that most workplaces be smokefree. It was controversial because it contained a clause preempting the power of local governments to regulate smoking in places of employment as defined by the bill [20]. Its implementation also relies on local discretion because it requires legislative action by local governments to designate an enforcing agency. AB 3037 would move AB 13's phase-in date for bars going smokefree from January 1, 1997 to January 1, 2000. It has been referred to the Committee on Labor and Employment.

Sacramento as well as a series of lawsuits. The Governor and Legislature have consistently refused to implement Proposition 99 as directed by the voters and, more recently, the courts. The failure of the political process to implement Proposition 99 as directed by the voters has probably led to sales of approximately 584 million more packs of cigarettes than would have been sold if the programs had been implemented as the voters wanted. The 584 millions packs sold were worth about \$880 million in pre-tax sales to the tobacco industry. Viewed in this context, the \$21,139,152 the tobacco industry has spent on campaign contributions, lobbying, and other political activities (excluding \$18,974,675 in the tobacco industry's unsuccessful attempt to enact Proposition 188 in 1994) in California since 1989 (when Proposition 99 went into force) was an excellent, and understandable, investment.

Proposition 99 Background

In November, 1988, California voters passed Proposition 99, the Tobacco Tax and Health Promotion Act, increasing the state tobacco tax by 25 cents on a pack of cigarettes and a comparable amount on other tobacco products. The initiative did not place the new revenues in the state general fund, but established the Cigarette and Tobacco Products Surtax Fund consisting of 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 (Figure 4):

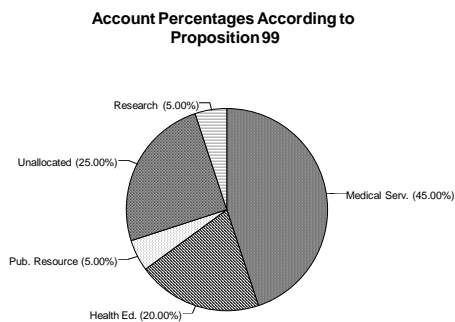


Figure 4. Proposition 99 mandated how the new tobacco tax revenues were to be spent.

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

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

Physician 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 the protection of wildlife habitat and programs to enhance park and recreation resources

Unallocated Account: 25% to be distributed by the legislature to any of the other accounts

While Proposition 99 allowed the vast majority of the funds (70%) to be used for medical services, polling done at the time the initiative was being written showed that the use of the funds for anti-tobacco education and research were the primary reasons the public supported the initiative. Funding for education was supported by 72% of voters and research was supported by 60%. Only 42% of voters supported more money for Medi-Cal [21]. If the initiative had only been targeted to support medical services, it probably would not have passed.

Structure of the Health Education and Research Programs

Proposition 99's Health Education Account created the largest tobacco control program in the world and featured several types of interventions: a media campaign; state level programming; and local, community-based programs in the schools and county and city health departments. Assembly Bill (AB) 75 established the basic structure of how the Health Education program would operate in California (Table B-3).

The media campaign is run by the Department of Health Services, Tobacco Control Section (TCS), working with a professional advertising firm. This campaign consists of paid advertising as well as a professional public relations effort to attract free media. Local agencies and community-based organizations are involved in delivering local programs. City and county health departments are designated as Local Lead Agencies (LLAs) and given Proposition 99 funds to run local programs, focusing on local educational needs and tobacco-related problems. The LLAs offer some services directly and also make grants to community-based organizations. Citizen groups working with local programs are active in helping to pass local ordinances through educating their communities about the risks of smoking and the ways the tobacco industry was targeting their communities. School districts, through the California Department of Education (CDE) receive funds based on their average daily attendance to operate school-based programs. Oversight of the program is provided by the Tobacco Education Oversight Committee (TEOC), whose membership is appointed by the governor, legislature, and the Superintendent of Public Instruction. As already discussed, this program dramatically accelerated the rate of decline of tobacco consumption in California (Figure 1).

The Proposition 99 Research Account was implemented with Senate Bill (SB) 1613 (Table B-4), passed in 1989 at the same time as AB 75. It established that the Tobacco Related Disease Research Program (TRDRP) administered by the University of California with a Scientific Advisory Committee appointed by the President of the University. Research funds were distributed through a competitive grants process, following the peer review model established by the National Institutes of Health. Grants are made to established researchers, new investigators, and postdoctoral fellows and support both work in progress and new ideas. Research funded by Proposition 99 has added important new information about the effects of secondhand smoke, the effectiveness of cigarette advertising, health effects of smoking, and the political activity of the tobacco industry, as well as traditional biomedical research.

From Initiative to Legislation: Conflict and Compromise

The initiative outlined the framework for expending the funds raised by the tax, but the legislature was still responsible for passing the implementing legislation to authorize specific programs and appropriate the funds. On November 10, two days after the election, the *Los Angeles Times* accurately predicted the future of Proposition 99:

Now comes the really hard part: negotiating the Legislature's special-interest steeplechase to make sure that the estimated \$600 million to be raised annually by the tobacco tax increase is allocated as the sponsors intended and spent as they promised voters it would be spent [22].

The Legislature has implemented Proposition 99 through a series of bills, none of which has complied with the terms of the initiative. The Health Education programs funded by Proposition 99 were authorized by AB 75 until June 30, 1991 and by AB 99 until June 30, 1994. The medical programs were authorized by these same two bills. The Research program was authorized under separate legislation -- SB 1613 -- until June 30, 1993. In 1994, the medical services accounts, the Health Education Account, and the Research Account were all reauthorized under AB 816. The Public Resources Account has always

TABLE 6. PROPOSITION 99 LEGISLATION AND ALLOCATIONS					
Account	Voter Mandate*	AB 75/ SB 1613; 10/89- 6/30/91	AB 99/ SB 1613; 7/1/91 - 6/30/94	AB816/ SB493; 7/1/94 - 6/30/96	Governor's Proposal for 1996-1997; Jul 1, 96 - Jun 30, 97
Health Education	20%	15.9%	13.5%	13.1%	12.0%
Research Account	5%	5%	4.5%	.9%	.9%
Medical Services	45%	73.0%	75.1%	77.8%	79.3%
Public Resources	5%	6.1%	7.9%	8.2%	7.8%
*25% in Unallocated Account could be spent in any of the four areas, so potentially medical services could receive up to 70% of the funds legally. Expenditures does not include reserves.					

been authorized separately. Table 6 shows the dates of the implementing legislation for each Account and the percentage of total expenditures allocated to each Account under each piece of legislation. "Medical Services" covers both the Physicians Services' Account and the Hospital Services Account, which combined are allocated a minimum of 45% of the funding according to the initiative. Every year the Legislature has diverted increasing fractions of the funds devoted by the voters to the Health Education and Research Accounts to medical services (Tables 6 and B-1 through B-4). As will be described subsequently, the diversions contained in AB 816/SB 493 have been enjoined by the courts. The situation actually diverges further from the intent of the voters in the initiative, since the Governor and legislature are allowing large reserves to accumulate in the Health Education and Research Accounts.

When the Legislature passed the initial implementing legislation for Proposition 99, AB 75 in 1989, it diverted \$39,004,000 of \$288,672,000 in the Health Education expenditures to medical services programs. Of the diverted funds, \$30,989,000 went to expand the Child Health Disability Prevention program (CHDP). This CHDP expansion was proposed by the Assembly Office of Research, under Steve Thompson's direction. The purpose of the program is to offer comprehensive health screenings to children. The remainder of the diverted monies supported a variety of state operations. The health groups that had supported the initiative (i.e., American Lung Association, American Cancer Society, and American Heart Association) supported this violation of the terms of the initiative as a political necessity to get the authorizing legislation passed, and AB 75 passed the Assembly by a 72 to 2 vote and the Senate by a 38 to 0 vote. Unfortunately, the decision to divert funds from Health Education established a precedent of deviating from the will of the voters. As noted in Table 6, the diversions from the Health Education Account accelerated over time and also eventually destroyed the Research Account.

As we have documented, the tobacco industry responded to Proposition 99 by massively increasing its political effort through lobbying and campaign contributions in California with much of this effort directed at derailing Proposition 99 [7,13,23]. Given the strong anti-tobacco sentiments in California that led to Proposition 99 in the first place, however, it is doubtful that the tobacco industry could have achieved this success had it been the only special interest group seeking to divert funds away from Proposition 99 tobacco control activities. The tobacco industry's efforts were substantially supported by the confluence of its interests with the California Medical Association (CMA), the California Association of Hospitals and Health Care Systems (CAHHS), and the Western Center for Law and Poverty (WCLP), who benefit from

the diversion of funds from Health Education and Research to pay for medical services. The CMA and CAHHS are major political players in Sacramento who make substantial campaign contributions. While the Western Center does not make campaign contributions, it provided crucial support for the CMA and tobacco industry with liberal members of the legislature. The combination of the pressure from the medical establishment with that of the tobacco industry — two of the wealthiest lobbies in California — have, each year, diminished the revenues available for anti-tobacco education and research.

The CMA's position has been portrayed as a painful choice between taking care of poor children on one hand and funding prevention programs that have a longer term benefit.* For example, Jack Lewin, the Executive Vice President of the CMA wrote in April, 1996:

Health education interventions, when well designed and critically evaluated, are vitally important in this struggle. But when young women lack prenatal care, and children are not being screened for preventable disabilities, there is no easy way to determine how scarce resources will be best spent in the historical competition between health education and health care. In the Proposition. 99 debate I argue that ALL programs funded are in the general sense "prevention-oriented" [26].

This statement reflects the CMA's long-established position that the program allocations among the different accounts in Proposition 99 are not binding. The framing of the issue as a choice between women and children on one hand and health education on the other has relieved the tobacco industry of the need to take overt measures against the Proposition 99 Health Education and Research programs. There is no need to vote against Health Education; one must merely vote for pregnant women and children.

In fact, Lewin's view belies the long history of cooperation between the CMA and the tobacco industry, beginning in 1987, when the CMA, the tobacco industry, trial lawyers, insurance companies, and the legislative leadership agreed to product liability reform. The agreement, referred to as the Frank Fat's napkin deal after the restaurant where the deal was brokered and the paper on which it was written [17], exempted the tobacco industry from product liability lawsuits.

While the CMA was a participant in the original discussions about Proposition 99, it insisted that in exchange for its support, the Health Education Account be cut from 47.5% of the revenue raised to 20% and that the Research Account be cut from 15% of the revenue raised to 5% and the funds devoted to direct medical services [21]. Once the initiative qualified for the ballot, the CMA Council took the position that, "The CMA believes it is not in the best interest of physicians to battle the tobacco industry" [27]. During

*Information provided by the Legislative Analyst indicates that this is a false choice. The Governor's AIM program is a very expensive way to provide services to poor pregnant women who do not qualify for Medi-Cal. (AIM provides prenatal services for women using private insurers rather than Medi-Cal.) In 1994, the Legislative Analyst noted that AIM costs \$5,857 per woman compared to \$3,500 for providing comparable services through Medi-Cal. The state's responsibility for costs under Medi-Cal actually is even less because Medi-Cal expenditures are offset by federal funds. The extra costs might be understandable if the quality of care was better but in fact AIM yield worse clinical outcomes than Medi-Cal. Five percent of AIM mothers had low birth weight babies compared to 4% for Medi-Cal. Thus, AIM costs more money to produce worse clinical outcomes. In fact, in 1994 [24] and again in 1995 [25], the Analyst recommended ending AIM and providing the services through Medi-Cal. In her analysis of the 1996-1997 budget, the Analyst points out that the governor could also reduce AIM costs by reversing the decision made in the current year to expand AIM to cover women at 251 to 300% of the poverty level.

the debate over AB 75, the CMA joined forces with groups supporting diversion of Health Education funds into medical care.

In 1989, the CMA, along with several other organizations formed "Project 90," a group that supported an initiative to divert Health Education funds into medical care. The Tobacco Industry had offered \$250,000 to support the effort, but the offer was withdrawn when it was publicized [21,28].

Until 1994, however, the lack of full funding of anti-tobacco education occurred with the consent of the American Lung Association and other voluntary health agencies who were responsible for lobbying for the Health Education and Research programs. In AB 75, the voluntaries acquiesced in diverting Health Education monies to pay for the Child Health and Disability Prevention (CHDP) screenings. Under AB 99, in addition to CHDP funding, two other major diversions were included: comprehensive perinatal outreach (CPO) and Section 43. One-third of the tobacco use prevention allocation to the LLAs had to be used to fund Comprehensive Perinatal Outreach (CPO) services. CPO is a county-based program in which the health department makes an effort to find pregnant women who should be receiving medical care, tries to bring them into the health care system, and coordinates the services they receive. CPO does not actually provide medical services. Section 43 is a clause in AB 99 that authorizes the Director of Finance to take money from Health Education, Research or other programs funded by Proposition 99 to guarantee funding for five "protected" programs: Medi-Cal Perinatal Program, Access for Infants and Mothers (AIM), Major Risk Medical Insurance Program (MRMIP), CHDP, and the County Medical Services Program (CMSP). It has the effect of reducing anti-tobacco education further as these medical service programs grow [23].

The First Litigation: ALA Sues to Restore the Media Campaign

The beginnings of formal resistance by the public health groups to the continuing diversion of Proposition 99 Health Education funds into medical services came in 1992. In 1991, the American Lung Association was promised that in exchange for their acquiescence to the diversions contained in AB 99 there would be no further diversions for the life of the legislation, which meant June, 1994. Early in 1992, however, Gov. Wilson ordered that the \$16 million that had been appropriated by the Legislature for the media campaign be redirected to help fund expanded Medi-Cal perinatal services. When Kassey Perry, a spokesperson for the Health and Welfare Agency, was asked why the agreement was not being observed, she responded, "That was last year. This is this year" [29]. The governor initially wanted the money to pay for perinatal services but then changed to also wanting to fund AIDS testing and county medical services. According to Kathy Dresslar, an aide to then Assemblyman Lloyd Connelly (D-Sacramento), a strong supporter of the media campaign, "The fact that the governor has changed the reason why he wants to divert funds from the media account suggests he is less interest in health priorities than he is in gutting the media campaign" [30].

The attack on the media account was not surprising. The DHS had mounted an aggressive, highly visible campaign that attacked the credibility and legitimacy of the tobacco industry. Moreover, during the debate over the initial implementing legislation for Proposition 99, AB 75, the tobacco industry had made it clear it did not want the media campaign funded. In 1989, the industry hired 25 lobbyists to try to kill the provisions in AB 75 that authorized the media campaign. Press reports described tobacco industry lobbyists lined up three and four deep along the public railing outside the Assembly chamber, sending messages into legislators and talking to them as they entered [31]. Anti-tobacco activists questioned whether a Philip Morris fundraiser for the Republican Party and a \$25,000 contribution by them to Wilson's inaugural fund had influenced the decision to take the money from the media account. A spokesman for the governor denied that there was a connection [29].

On February 21, 1992, the American Lung Association sued Gov. Wilson and Molly Joel Coye, the

director of the Department of Health Services, arguing that they had violated AB 99. On April 24, 1992, the Judge James Ford of Sacramento Superior court found that Wilson did not have the authority to take funds appropriated for one purpose and use them for another. The court ordered that the money be used for the authorized media campaign. The Governor did not appeal and the media campaign went forward. At the time the Senate was considering confirmation of Molly Joel Coye as director of DHS [32]. The American Heart Association (AHA) publicly expressed reservations about Coye's implementation about of the health education programs. Dian Kiser, of the AHA, testified that the legislature should defer Coye's confirmation until the media contract was awarded and the contractor was allowed to proceed without political interference [33].

Proposition 99 Litigation: The End of Acquiescence

AB 99 sunsetted on June 30, 1994, which meant that new authorizing legislation needed to be passed in 1994. The new legislation, AB 816, was sponsored by Assembly member Phil Isenberg (D-Sacramento). In negotiations regarding AB 816, the public health community eventually adopted a position that AB 816 should appropriate Proposition 99 funds as the voters mandated, i.e., the use of the Health Education Account to support direct medical services should end. The CMA, however, constituted a powerful voice in opposition to the public health groups, and Assembly member Phil Isenberg, who was in charge of the conference committee drafting the legislation, accepted the CMA's argument that the funds were better spent on medical services and that physicians were conducting effective anti-tobacco education. This argument was not supported by DHS's own program evaluation that showed that physician-mediated interventions had no significant effect on tobacco use [34]. In the end, AB 816 continued the pattern of diverting money from the Health Education into medical services, with only 13.1% of the total expenditures going to fund Health Education programs.

At the same time, funding for the Research Account had come under attack. As shown in Table 6, the Research Account, administered by the University of California through TRDRP, received its full 5% in the first two years of the program and 4.5% for the two years after that. The Research Account had been authorized under SB 1613, not under AB 75 and AB 99. Before SB 1613 expired on December 31, 1993, the legislature unanimously passed SB 1088 to continue the program until 1997. Among other things, however, TRDRP funded research on campaign contributions by the tobacco industry to members of the legislature as well as an analysis of the implementation of Proposition 99 which highlighted the pattern of diversions of funds.* This work angered Assembly Speaker Willie Brown, who demanded that the University of California see that this work be stopped [35,36]. Shortly after the University refused, the CMA began attacking the Research Account as a waste of money and began agitating to use the money for medical services. The governor vetoed SB 1088, stating that he wanted the Research Account to be considered at the same time as the medical services and health education programs [37]. As a result, authorization and appropriation of the Research Account was added to AB 816 and expenditures for research dropped from 5% to 0.9% of Proposition 99 expenditures.

Since AB 816 was the first implementing legislation for Proposition 99 in which the use of Health Education and Research Account funds for medical services was contested in the legislature by the voluntary agencies, the Governor and Legislature were faced with the likelihood of a law suit over their decisions. Indeed, as discussed below, Americans for Nonsmokers' Rights and another advocacy group, Just Say No to Tobacco Dough (SAYNO), had already filed a law suit to recover \$165 million diverted from the Health

*This work, TRDRP Grant 1RT520, was the predecessor of the research project, funded by the National Cancer Institute (CA-61021), that supported preparation of this report. Dr. Stanton Glantz was the Principal Investigator.

Education into medical services by AB 75 and AB 99.* The situation was made more difficult for the legislature by the fact that the Legislative Counsel, the legislature's lawyer, Bion Gregory, had told the legislature in several different opinions that the diversions from health education and prevention into medical services were illegal [23,38]. The Legislature and Governor justified their decision to use money from the Health Education and Research Accounts for medical services on the grounds that the initiative granted the Legislature the authority to amend Proposition 99 by a 4/5 vote of both houses of the legislature, provided that such amendments are consistent with the intent of the initiative. The legislature attempted to head off or at least weaken a potential legal challenge to AB 816 by writing the "findings" portion of the bill to eliminate all references to the medical problems caused by smoking and instead "find" that,

The Legislature finds that the efforts to reduce smoking in California have led to a drop in the consumption of tobacco. Although not on target to meet the goal of achieving a 75-percent reduction in tobacco consumption in California by the year 1999 [which was established in AB 99], the results are encouraging [39].

Despite efforts by public health groups, AB 816 passed both houses of the legislature by the necessary 4/5 majorities and the Governor signed the bill into law on July, 1994.

This time, rather than acquiescing as they had in the past, the public health groups went to court. When AB 816 passed with even greater diversions than had occurred in AB 75 or AB 99, ANR and the voluntary health agencies both decided to file suit. On August 31, 1994, ANR filed suit in Los Angeles to stop future diversions. (ANR dropped out of the original lawsuit with SAYNO to focus on obtaining injunctive relief to prevent current and future diversions. On September 6, 1994, the American Lung Association and the American Cancer Society filed their lawsuit in Sacramento. Both suits asked the court to instruct the Controller and Treasurer not to disburse funds from the Health Education and Research Accounts that were appropriated for purposes other than health education and research, which they estimated to be \$64 million. On November 4, 1994, the ANR and ALA/ACS lawsuits were consolidated in Sacramento. The case was heard on December 2, 1994 in Sacramento by Judge Warren.

In its arguments before Superior Court Judge Roger Warren, the state argued that the programs to which funds had been diverted had a health education component which meant they could legitimately be funded from the Health Education Account. For example, the state argued that the diversion of funds to CHDP, a medical screening program for the poor, was appropriate because three questions about smoking were included on the forms and physicians were told to provide cessation advice. Evidence presented by ANR and ALA/ACS, however, showed that 80% of CHDP health screens were done on children under 6 years old and that only 0.4% of those eligible for the screens smoked [40]. Evidence was also presented showing that all county Comprehensive Perinatal Outreach (CPO) services were funded by Proposition 99 Health Education monies and that 86% of these were used to generate matching funds for federal money. Under federal guidelines, state matching funds cannot be used for interventions to prevent smoking or interventions to stop exposure to smoke during pregnancy and after birth [40]. It is, therefore, impossible

*On February 2, 1994, ANR and SAYNO delivered letters to the State Controller Gray Davis and State Treasurer Kathleen Brown, demanding that the funds that had been diverted from Health Education under AB 75 and AB 99 be returned and that all further diversions be stopped immediately. Failing to get an acceptable response, they filed a lawsuit on March 23, 1994, against the governor, the legislature, and others seeking restoration of the approximately \$165 million that had been diverted from Health Education Account and to stop future misappropriations (ANR et al. v. State of California, Sac. Super. Ct. No. 539577). By mutual agreement between the plaintiffs and defendants, this lawsuit will not be heard until the four later lawsuits dealing with AB 816 and SB 493 are resolved.

for these funds to be used for anti-tobacco education.

On December 22, 1994, Judge Warren ruled that AB 816 had illegally diverted \$128 million from the Health Education and Research Accounts. He wrote that,

In my view, one can't make a cat into a dog by calling it Fido or by putting a dog collar on it... It seems to me that the legislature has called this component of the program an education program and has attached a tobacco-related education component to the health services program, but those two facts do not, in my view, convert this health services program into a tobacco-related education program [41].

The court concluded that the legislature had violated the specification in the initiative that the funding allocations could only be amended by a 4/5 vote of the legislature and then only for purposes consistent with the initiative. According to the court, the Proposition 99 ballot arguments assured voters that money allocated for tobacco education and research would be spent for these purposes and the legislature could not amend the allocation of revenues until the Proposition's "finding of fact" that tobacco is the number one preventable cause of death and disease and causes pain and suffering changed. All use of the contested funds was to stop.

On January 19, 1995, a hearing was held in which Judge Warren granted the request for an injunction against further illegal diversions in the 1994-1995 budget. The ruling was memorialized in a written order on January 23, 1995. The court ruled specifically that the expenditures listed in Table 7 authorized for 1994-95 by AB816 were illegal.

The degree to which the state was allowed to spend monies that were appropriated illegally had to be established. Judge Warren entered different judgments in the ANR and ALA/ACS lawsuits. In the ALA/ACS lawsuit, the state was allowed to spend up to \$4.2 million in CPO funds, while the ANR judgment only allowed them to spend about \$100,000. Under the ANR judgment the state was allowed

TABLE 7. AB816 EXPENDITURES RULED ILLEGAL BY THE COURTS (millions)				
Program	Account	94-95	95-96	Total
Clinic Grants	Research	\$3.0	\$3.0	\$6.0
CPO	Health Ed	5.7	5.1	\$10.8
Children's Medical Services	Research	5.0	5.0	\$10.0
Genetically Handicapped Persons	Research	4.0	4.0	\$8.0
CHDP	Health Ed	29.9	31.7	\$61.6
CHDP	Research	3.3	0.0	\$3.3
Oversight Committee	Research	1.1	1.1	\$2.2
Oversight Committee	Health Ed	2.0	2.0	\$4.0
Access for Infants and Mothers (AIM)	Research	11.0	11.0	\$22.0
TOTALS		65.0	62.9	\$127.9

Source: Legislative Analyst's Office, 1995 [24]

to come back and ask for more money if it was needed to wind down the program. The ALA/ACS ruling allowed \$18.5 million to be spent on CHDP, while the ANR ruling blocked all expenditures. Thus, under

the ALA/ACS judgment blocked spending of \$102 million, while the ANR judgment blocked \$128 million. Since the ANR judgment was more restrictive, it was the binding decision.

Similar diversions AB 816 authorized for 1995-1996 were also found illegal and enjoined.

The Governor appealed Warren's decision and the appeal is still in process. The CMA has filed an *amicus curie* brief in support of the state. Californians for Smokers' Rights is the only other organization to file an *amicus* brief. On May 24, 1995, the Third District Court of Appeals denied the State's request to issue a stay of the lower court's ruling. A stay would have unfrozen the funds that were illegally diverted from the Health Education and Research Accounts and allowed the state to spend the money as authorized by AB 816 while the appeal was in progress. The plaintiffs successfully argued that if Judge Warren's order was stayed, the contested funds would be lost forever. The fact that both Judge Warren and the Court of Appeals denied the Governor's request for a stay was deemed to be an important procedural victory for the public health groups.

Nothing in these rulings interfered with the \$293,951,000 of Proposition 99 funds that were being used legally in 1994-1995 to provide medical services from the Physicians Services, Hospital Services, and Unallocated Accounts.

The Governor's Efforts to Avoid Compliance with the Judgment

For the health groups the early victories in Judge Warren's court, however, were only the beginning of the battles to be fought in 1995 over the illegally diverted funds. They had to fight to get the judgment enforced, they had to fight for a new bill that restored full funding, and, in the end, they had to bring new lawsuits.

After Warren's ruling in Superior Court, the state argued that some of the contested funds had already been spent. Judge Warren specified that CPO funds that were already encumbered by counties could be spent insofar as that was necessary to comply with giving appropriate notice to existing providers but that no other expenditures on CPO were legal. Further, if the counties had other funds available to cover encumbrances, those were to be used instead of the allocation to the LLAs. The state was subject to the same rules and was, for example, ordered to reimburse the Health Education Account for money already spent on CHDP.

The state, however, tried to avoid complying with the ruling. In response to the injunction, DHS verbally instructed counties to proceed with business as usual in terms of spending money on health services. The state wanted to keep the programs alive while a new source of funds was found for CPO programs. In fact, the state waited three months before it mailed notices to the local health departments (April 21, 1995) formally notifying them that they could not rely on AB 816 appropriations to fund CPO services [42].

The state then returned to court late in 1995 to request that it be allowed to spend an extra \$3,133,311 million on CPO services in 1994-1995. This was in response to the portion of the ANR judgment that restricted the state to spending \$100,000 on CPO but allowed the state to ask for more. On January 30, 1996, ANR protested the state's application. Specifically, ANR pointed out that the state had not informed the counties in a timely manner to stop using funds for illegal purposes and had not used rollover funds from previous years to fund CPO services. The state, in fact, had used "new" AB 816 monies in 1994-1995 before they had used rollover funds from the previous years. Using the new money was prohibited by the court, while using the rollover funds was not restricted. Further, ANR pointed out that the state had sufficient funds to reimburse the counties for illegally spent monies. The court denied the state's request to use \$3,133,311 in AB 816 monies to fund CPO service.

A common misunderstanding regarding the results of the litigation is that the contested funds have been “frozen” by the courts and cannot be used for anything. While it is true that the Governor and Legislature have been forbidden from using the contested funds for medical services, there are no legal restrictions on the use of this money for anti-tobacco education and research, as mandated in the initiative. Judge Warren, however, could only block money from being spent illegally. He could not order money to be spent as the voters specified; only the legislature could appropriate the funds. Monies thus began to build up in reserve accounts, and in 1995-96, the legislature had to consider new legislation.

The Governor and Legislature Try an End Run Around the Courts: SB 493

The public health community attempted to use their success in the courts to secure new implementing legislation for Proposition 99. Senator Diane Watson (D-Los Angeles), a long-time supporter of Proposition 99, proposed SB 949, which would have re-appropriated the Proposition 99 funds that were frozen by the court for health education and research in accordance with Proposition 99 and with the court's judgment. While SB 949 was passed by the Senate Health & Human Services Committee, it was stopped in the Senate Appropriations Committee by the same forces that had supported the use of Health Education and Research Account funds for medical services: the California Medical Association, California Association of Hospitals & Health Systems, and the Western Center for Law and Poverty [43,44].

Gov. Wilson wrote the entire legislature urging them to enact new legislation that continued to divert Proposition 99 funds into medical services, but which would pass legal muster. He said:

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 [40].

On July 10, the California Assembly passed SB 493, which kept intact the spending diversions authorized by AB 816. To do this, the Assembly took bill concerning radiologic technologies, SB 493, and amended it in its entirety to appropriate Proposition 99 funds. The amended SB 493 was approved by the Senate on July 15 and by the Governor on July 27. SB 493 attempted to avoid the problems the courts had identified with AB 816 while also reaffirming the expenditures the legislature had established under AB 816.

SB 493 sought to achieve this goal through two actions. First, it presented a long series of “findings” that were designed to convince the court that the situation regarding tobacco use in California had changed substantially enough that major cuts in the anti-tobacco education and research programs were consistent with the intent of Proposition 99. For example, in response to Judge Warren’s finding that the anti-tobacco education programs could only be cut if the finding in the original initiative that tobacco use was the leading preventable cause of death was no longer true, the legislature included the “finding” that,

The decline in overall tobacco use since 1988, the resulting decline in cigarette and tobacco tax revenues and the decline in the number of Californians with health insurance, such the 6.5 million people are uninsured, make it critically important to reallocate revenue for one year to meet urgent health care needs in a manner consistent with the purposes of the act [45].

Second, rather than simply using Health Education Account and Research Account money to fund medical services, it changed the percentage allocations of tobacco tax revenues in Proposition 99 to put less

money into the Health Education and Research Accounts and put it directly into the Physicians' Services Account, where it was then appropriated to the same medical service programs that the court had ruled illegal in the AB 816 suit. SB 493 only put 10% of the tobacco tax revenues in the Health Education Account, instead of the 20% required by Proposition 99, and only 1% in the Research Account, instead of the 5% required by Proposition 99. The Physician's Services Account was given 22.5% of the revenues instead of the 10% specified by the initiative and the Unallocated Account was given 26.5% instead of 25%.

The voluntaries and ANR sued again, separately, seeking temporary restraining orders against the implementation of SB 493 and requesting the matter be assigned to Judge Warren, who had presided over the earlier case. The state contested the application to assign the matter to Judge Warren, and the case was assigned to Judge James T. Ford. The temporary restraining order was entered on August 1, 1995, and on September 1, 1995, Superior Court Judge James T. Ford issued a preliminary injunction against SB 493. On October 12, 1995, the state appealed the preliminary injunction. The state sought to combine this appeal with the two previously-consolidated appeals, a request that was denied on January 2, 1996.

As with the rulings on AB 816, none of the litigation surrounding SB 493 prevented the spending of \$301,979,000 million in funds that had been legally appropriated for medical services.

The court of appeals has not yet rendered a decision on any of the appeals.

The Current Battle: 1996 Reauthorization of Proposition 99 Programs

The Governor's 1996-97 Proposal. By January, 1996, because of the lawsuits, there were substantial amounts of Proposition 99 money that had not been spent for anything: the courts would not let the Governor use this money for medical services and the Governor refused to spend the money for anti-tobacco education and research. The Health Education Account was projected to have a reserve of \$101,195,00 by the end of June, 1996, and the Research Account was projected to have a reserve of \$58,731,000. Rather than proposing expenditures that conformed with the two court orders, however, the Governor's budget [46] proposed that expenditures for 1996-97 be similar to those authorized -- and ruled illegal -- in AB 816 and SB 493.

The Governor's reasoning behind his proposed plan had some logical problems, particularly when compared to past justifications for diverting education and research funds into medical services.

First, he misrepresents the long-term intent of SB 493. In the governor's report accompanying the budget, he said, "The Governor's Budget reflects expenditures from the Cigarette and Tobacco Products Surtax Fund (CTPSF) consistent with those recently authorized for the last two fiscal years" [46]. The governor went on to note that, "the budget reflects the revenue allocations and program funding levels similar to those contained in Chapter 194, Statutes of 1995 (SB 493)." This meant that the allocations established in SB 493 were now being relied on as precedent, which meant that the Governor put only 10% of the Proposition 99 revenues in the Health Education Account and 1% in the Research Account. In fact, however, the decision to do this runs counter to SB 493 itself, which specifically stated that effective July 1, 1996 the allocations to the various accounts would conform to those established in Proposition 99 [45]. Thus, the diversions of AB 816 and SB 493 that were only supposed to be temporary diversions due to financial exigency were once again included.

Second, the very fiscal crisis that had previously been used to justify the diversions no longer existed. According to the Governor's Budget, "Solid gains in employment and income will continue for the next two years" [46]. Nevertheless, the Governor continued to support the diversion of Proposition 99 funds from education and research into medical services despite the fact that his previous justification -- fiscal

necessity -- had evaporated.

The fact that the Governor's budget does not reflect Proposition 99 or the associated court rulings. The Governor's action makes it difficult to determine exactly what is being done with the money, particularly because he is allowing large quantities of unspent money to build up in the Health Education and Research Accounts (Figure 5). Table 8 shows the effects of the Governor's proposed expenditures, but with the legal rulings included. Revenue allocations show the new revenues allocated in accordance with the initiative rather than the allocations that the Governor uses. Table 8 shows the amounts that are available in each of the six accounts and the governor's proposal for each of those accounts. Three fiscal years are shown for each account: 1994-1995, 1995-1996, and 1996-1997. For 1994-1995, the figures shown are actual expenditures; for 1995-1996, the figures are estimated. For 1996-1997, the figures shown are what the governor has proposed.

PROPOSITION 99 EXPENDITURES & RESERVES
1995-1996 (millions)

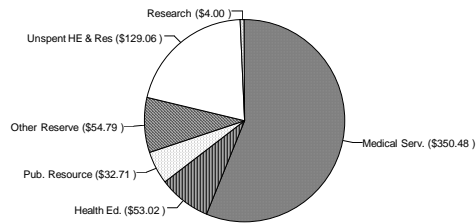


Figure 5. *Governor Wilson and the Legislature have not expended Proposition 99 funds in accordance with the terms of the initiative. In addition, they have permitted large amounts of unspent money to accumulate in the the Health Education and Research*

To understand what is going on with each account, it is useful to start with the Hospital Services and Public Resources Accounts, since they have been handled in the way the voters mandated. The first line shows the carryover from the previous year. Some carryover is to be expected as the accounts are all required to maintain a small reserve. "New Money" is the share of the new tax dollars that account should receive. For the Hospital Services Account that is 35% of the estimated tax revenues; for the Public Resources Account it is 5% of the new tax revenues. The "carryover" and the "new money" combined with the "interest" the account earns add up to the total revenues. For example, the Hospital Services Account has a "Revenue Total" of \$167,396,000 for 1996-1997. The "expenses" section shows what was actually spent from that account, except for 1996-1997, where it indicates what the governor has proposed to spend. For the Hospital Services Account in 1996-1997, the total expenses are \$152,100,000, leaving a reserve of \$15,296,000. The "direct pro rata charges" are overhead charges assessed by the state to cover its expenses in taking care of the accounts. These two accounts take in the correct amount of money, expend it at the correct level on legal expenditures, and maintain reasonable reserves.


The Health Education and Research Accounts, by contrast, have not had the funds they take in expended at the correct level on legal expenditures. As a result, the first line, "carryover," shows an increasing amount of money accumulating in these accounts. For example, for 1996-1997, the Health Education Account shows \$101,195,000 that has accrued from past years. With \$87,031,000 in new money and \$3,000,000 in interest, that leaves \$191,226,000 to be spent on Health Education programs in 1996-1997. The governor, however, has only proposed \$53,018,000 in court-approved Health Education programs. Similarly, the Research Account has \$58,731,000 in carryover funds, \$1,500,000 in interest, and \$21,758,000, leaving it with \$81,989,000 for programs in 1996-1997. The governor has proposed

TABLE 8. PROPOSITION 99 INCOME, EXPENDITURES AND RESERVES

HEALTH EDUCATION ACCOUNT (in thousands)				RESEARCH ACCOUNT (in thousands)			
Revenues	1994-95	1995-96	1996-97(2)	Revenues	1994-95	1995-96	1996-97(3)
Carryover from Previous Year	\$27,162	\$62,603	\$101,195	Carryover from Previous Year	\$22,380	\$40,804	\$58,731
New Money	\$92,880	\$88,684	\$87,031	New Money	\$23,220	\$22,171	\$21,758
Interest	\$2,455	\$2,700	\$3,000	Interest	\$937	\$1,500	\$1,500
REVENUE TOTAL	\$122,497	\$153,987	\$191,226	REVENUE TOTAL	\$46,537	\$64,475	\$81,989
Expenses				Expenses			
Health Education	\$59,795	\$52,705	\$53,018	Research	\$3,650	\$4,000	\$4,000
Direct Pro Rata Charges	\$99	\$87	\$577	Cancer Registry(4)	\$2,036	\$1,696	\$1,696
EXPENSE TOTAL	\$59,894	\$52,792	\$53,595	Direct Pro Rata Charges	\$47	\$48	\$205
Unexpended Funds				Unexpended Funds			
Medical services denied by lawsuits	\$37,607	\$73,169(1)		Medical services denied by lawsuits	\$29,768	\$55,886	
Other unexpended funds	\$24,996	\$28,026		Other unexpended funds	\$11,036	\$2,845	
TOTAL UNEXPENDED FUNDS (Revenues less expenses)	\$62,603	\$101,195	\$137,631	TOTAL UNEXPENDED FUNDS (Revenues less expenses)	\$40,804	\$58,731	\$76,088
HOSPITAL SERVICES ACCOUNT (in thousands)				PUBLIC RESOURCES ACCOUNT (in thousands)			
Revenues	1994-95	1995-96	1996-97	Revenues	1994-95	1995-96	1996-97
Carryover from Previous Year	\$4,133	\$10,778	\$14,593	Carryover from Previous Year	\$4,639	\$2,457	\$2,419
New Money	\$162,541	\$155,197	\$152,303	New Money	\$23,220	\$22,171	\$21,758
Interest	\$503	\$725	\$500	Interest	\$247	\$150	\$150
REVENUE TOTAL	\$167,177	\$166,700	\$167,396	REVENUE TOTAL	\$28,106	\$24,778	\$24,327
Expenses				Expenses			
Hospital Services Expenditures	\$156,379	\$152,079	\$152,079	Court-approved Expenditures	\$25,649	\$22,359	\$22,900
Direct Pro Rata Charges	\$20	\$28	\$21	Direct Pro Rata Charges	\$0	\$0	\$0
EXPENSE TOTAL	\$156,399	\$152,107	\$152,100	EXPENSE TOTAL	\$25,649	\$22,359	\$22,900
Unexpended Funds				Unexpended Funds			
TOTAL UNEXPENDED FUNDS (Revenues less expenses)	\$10,778	\$14,593	\$15,296	TOTAL UNEXPENDED FUNDS (Revenues less expenses)	\$2,457	\$2,419	\$1,427
PHYSICIANS' SERVICES ACCOUNT (in thousands)				UNALLOCATED ACCOUNT (in thousands)			
Revenues	1994-95	1995-96	1996-97(5)	Revenues	1994-95	1995-96	1996-97(6)
Carryover from Previous Year	\$2,746	\$4,334	\$5,574	Carryover from Previous Year	(\$6,788)	\$6,946	\$1,336
New Money	\$46,440	\$44,342	\$43,516	New Money	\$116,101	\$110,855	\$108,789
Interest	\$72	\$75	\$75	Interest	\$341	\$100	\$350
REVENUE TOTAL	\$49,258	\$48,751	\$49,165	REVENUE TOTAL	\$109,654	\$117,901	\$110,475
Expenses				Expenses			
Medical Expenditures	\$44,924	\$43,174	\$93,358	Medical Services	\$90,612	\$105,030	\$103,355
Direct Pro Rata Charges	\$0	\$3	\$5	Public Resources	\$11,631	\$11,096	\$11,567
EXPENSE TOTAL	\$44,924	\$43,177	\$93,363	Health Education	\$260	\$313	\$0
Unexpended Funds				Unexpended Funds			
TOTAL UNEXPENDED FUNDS (Revenues less expenses)	\$4,334	\$5,574	(\$44,198)	Research	\$0	\$0	\$0
				Direct Pro Rata Charges	\$205	\$126	\$0
				EXPENSE TOTAL	\$102,708	\$116,565	\$114,922
				TOTAL UNEXPENDED FUNDS (Revenues less expenses)	\$6,946	\$1,336	(\$4,447)


(1) Includes 1994-95 and 1995-96 lawsuits
(2) Reflects 20% required by Proposition 99 instead of 10% proposed by the governor
(3) Reflects 5% required by Proposition 99 instead of 1% proposed by the governor
(4) Medical services expenditure that has not been challenged in court
(5) Reflects 10% required by Proposition 99 instead of 22.5% proposed by the governor
(6) Reflects 25% required by Proposition 99 instead of 26.5% proposed by the Governor

Nominated* for the
**TOBACCO INDUSTRY
HALL OF FAME**



Pete Wilson
Governor

Refuses to fully fund California's tobacco education and research programs, defying court rulings and the mandate of the voters who passed Prop. 99



Steve Thompson
California Medical Association

Tobacco industry cheered when he led CMA's raid on tobacco education dollars. Former top aide to Willie Brown (largest recipient of tobacco \$ in the history of the California legislature).

**If you believe these
Tobacco Industry Heroes
Belong in a **HALL OF SHAME** instead:**

Call:

Governor's office: (916) 445-2841
Tell him to enforce the law we passed.

California Medical Association: (415) 682-5100
Tell them Steve Thompson made them a pawn of the tobacco industry

* Nominated by the American Heart Association and Americans for Nonsmokers' Rights. Who paid for this ad.

spending \$4,000,000.

The Physicians' Services and Unallocated Accounts, by contrast, show a deficit of \$44,198,000, based on the governor's budget. The Physicians' Services account has a carryover of \$5,574,000, new revenues of \$43,516,000, and \$75,000 in interest. The governor, however, has proposed spending \$93,358,000. The Unallocated Account has total revenues of \$110,475,000 and total expenses of \$114,922,000, leaving it with a deficit of \$4,447,000.

It appears that the Governor is planning to use the Health Education and Research Accounts to pay the legal costs associated with his effort to divert funds out of Proposition 99's Health Education and Research Accounts. He has increased the state's overhead charges (direct pro rata charges) charged to the Health Education and Research accounts by \$647,000 (\$490,000 from Health Education and \$157,000 from Research) over past years. The other accounts did not show similar increases. These increases approximate the estimated costs of the litigation surrounding Proposition 99.

Response of the public health community to the Governor's budget. The three voluntary health agencies 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" [47]. They have

organized the Coalition to Save Proposition 99 and have begun working both inside the capitol and in the field to prevent further diversions from the Health Education and Research accounts.

The effort by the voluntary health organizations, however, was only one part of the public effort to bring pressure to bear on the legislature. On January 30, 1996, ANR and AHA joined together to run an advertisement in the *Sacramento Bee* (Figure 6) identifying Governor Pete Wilson and CMA Vice President and chief lobbyist as members of the "Tobacco Industry Hall of Fame." The advertisement was designed

to take on both the CMA and the governor and to expose their previous willingness to divert Proposition 99 funds. AHA and ANR also teamed up to run an ad on February 29, 1996 in the *New York Times* (Figure 7), signed by former Surgeon General C. Everett Koop and others, to support efforts within the CMA House of Delegates to get the CMA to support Proposition 99 implementation consistent with the courts' rulings.

On March 3, 1996, the CMA House of Delegates voted to support full funding of Proposition 99 Health Education and Research programs *if* the Governor and legislature were willing to fund the "challenged programs" from the state general fund [48]. If the Governor and legislature refused to use general funds, the CMA would continue to accept Proposition 99 funds for these programs, despite the series of court rulings that this was illegal. Later, the CMA released a statement saying that it opposed the Governor's proposed budget concerning the use of Proposition 99 Health Education and Research fund for medical services [49]. (It did not say it would refuse to accept these funds.) The CMA also continued to support the Governor in court regarding AB 816 and SB 493. The CMA also called upon the ALA, ACS, and AHA to work with it on Proposition 99.

ALA and ACS chose to work with the CMA to seek General Fund revenues for the challenged programs. AHA and ANR decried the CMA action as no real change in position since the CMA refused to state unequivocally that it would oppose the use of the Health Education and Research Accounts for medical services and because the CMA refused to withdraw its *amicus* briefs in support of the Governor's appeals.

Legislative Proposals

Four bills have been introduced in 1996 to allocate the Proposition 99 funds: AB 2987 (Katz), SB 1971 (Watson), SB 1986 (Thompson), and SB 1773 (Committee on Budget and Fiscal Review). The first two bills are virtually identical and were introduced primarily by Senator Diane Watson (D-Los Angeles) who has historically carried legislation that preserves the Health Education and Research Accounts at full funding levels, and these bills do that. SB 1986 (Thompson) is thought to be backed by the California Medical Association and is similar in structure to AB 816, although SB 1986 lists no specific funding levels. SB 1773 carries the name of the Committee on Budget and Fiscal Review but is thought to be primarily Thompson's bill. It has virtually no language and exists to provide a vehicle for the governor's budget proposals for the Proposition 99 money.

SB 1971/AB 2987. As in past years, there are competing bills concerning how to implement Proposition 99 in the legislature. SB 1971 (Watson) and AB 2987 (Katz) are companion bills supported by the health community that authorize and appropriate the Proposition 99 funds consistent with the initiative and the court decisions. These bills only cover the Health Education and Research Accounts. SB 1971 proposes a sunset date for the legislation of 2005, which means that the fight over the nature and structure of the program will not have to be debated again for nine years. One of the problems facing the Proposition 99 Health Education and Research programs has been the short time frames of previous bills, which have led to program instability. AB 75 sunsetted in 18 months, AB 99 in three years, and AB 816 in two years. SB 1971 establishes a more realistic time frame for program delivery. The bill also reflects public policy recommendations by several agencies that have evaluated the effectiveness of the anti-tobacco education programs.*

*For example, DHS commissioned an evaluation of the anti-tobacco education programs by the federal Centers for Disease Control and Prevention. Among the major findings of that report was that the,

TCS of the Department of Health Services has developed an extensive community-based

Evaluation of the health education programs is to be conducted by a "Tobacco Education Evaluation Committee," which is to have one member from the University of California, one from Department of Health Services (DHS), one from California Department of Education (CDE), and one from a private foundation that is "principally engaged" in health policy analysis. This committee has authority to "prepare, select, and award" the contract for program evaluation. (The Tobacco Education and Research Oversight Committee is eliminated in this bill, as is the designation of specific populations as targets for tobacco control efforts.) It is useful to have the evaluation done by someone other than the agencies who are implementing the program, although they make up 50% of the committee and DHS provides the administrative support to the committee. It is unclear who has authority to appoint the committee. The committee will not be conducting the statewide surveillance, which will continue to be conducted by DHS. There is no provision for requiring the release of the results of the surveillance, which has sometimes been problematic, because senior administrators have not wanted the program to appear successful.

The funding formula for LLAs has been changed to be based on the county or city population instead of on the complicated formula contained in previous legislation. The minimum amount to go to a county has been preserved at \$110,000. As a result of full funding of the Health Education Account, the amount of money going to competitive grants, to the LLAs for tobacco use prevention, and to the media campaign roughly doubles from what was contained in AB 816. A language change has the media campaign focusing on ages 6 to 18 instead of 6 to 14, and there is no longer language that gives priority to advertising in print and broadcast media that appeals to this age group. Too close a focus on youth to the exclusion of adults leads to less successful tobacco use prevention programs [51]. It would improve the bill to have no age restrictions at all.

Funding for schools has been changed to have money distributed based on Average Daily Attendance in kindergarten and grades 1 through 12, instead of just grades 4 through 8. The competitive grants for high schools have been eliminated. A tobacco survey for grades 6 through 12 has been added. A base amount of \$25,000 for each county is included and a base amount of \$2500 has been added for a school district. Special services to pregnant minors have been eliminated.

For both schools and health departments, language has been added that gives the state agencies the ability to take funds from local entities that are not using them appropriately. The funding of the regions by DHS has been made optional; the word "may" has been substituted for the word "shall." By making regions optional, resources can be targeted to those regions that want to have a regional identity.

A CDE staff member has been added to the Research Account Scientific Advisory Committee and the University of California is retained to head the effort. The Thompson bill had proposed dropping the

program and effectively disseminated resources throughout the State, in spite of significant opposition from pro-tobacco forces, a poorly organized constituency, insufficient staffing patterns, unstable State government support, and uncertainty about funding levels [50].

While no clinic or health department that receives support for medical services from Proposition 99 funds is in danger of shutting down without these funds, the situation is quite different for the tobacco control sections of county health departments. Unstable funding and uncertainty can end the program for a year, and with the departure of the staff, longer.

An Open Letter to the California Medical Association

"The CMA believes that it is not in the best interest of physicians to battle the tobacco industry..."
CMA Medical Executives' Memo, June 13, 1988.

IT IS TIME TO CHANGE

In 1988 the people of California enacted the proposition 99 which not only eliminated the sale of at least 100,000,000 packs of cigarettes, but also eliminated the sale of at least 100,000,000 packs of packs of cigarettes. As a result, the state's budget deficit was reduced by \$1 billion.

It is not surprising, given the success of the tobacco industry, that the tobacco industry has done everything it can to prevent Proposition 99. What is surprising, however, is the fact that the California Medical Association has become the largest of the tobacco industry's attack on California's anti-smoking campaign.

The message articulated by the CMA's lobbyists and public relations staff sounds noble - that patients and children need medical care. This is not in itself the fact that 20 years of every dollar Proposition 99 has raised has been heavily used to fund medical research over \$3 billion in total. We cannot believe that the money that is needed for education and research should be used to help support medical services.

The relentless pressure from the CMA - combined with the tobacco industry and the public press, including Governor Pete Wilson, has - but destroyed the anti-obesity education program and shut down the research program.

The result of the CMA's message, whether intended or not, has been an increase in smoking in California, particularly among children. We view this as a clear violation of the CMA's principle of "do no harm."

In its defense, the CMA has argued that the state budget crisis allows diversion of money paid back by the voters for a tobacco education and research. The voters have rejected this claim and it is particularly for the use of Proposition 99 for education and research money to provide medical services is illegal.

Governor Wilson, the defendant in these cases, is appealing. In the meantime, over \$200 million that the voters and the courts said must be used to prevent tobacco use and in the case measures to reduce the use of tobacco to smoke. The CMA and California for Smokers' Rights are the only two organizations in the state to have been in support of the Governor. We are appealing for the Governor to stop supporting these appeals and for the CMA to withdraw its financial support. Wilson's efforts to divert a portion of the money to the public health interest is one of the world.

We believe that current official CMA position is not in the best interest of the state and the people of California. We urge you to speak the membership of the CMA.

There are members of the CMA planning to try and change this rule at a March 3, 1996 meeting of the House of Delegates. They want the CMA to fight against the tobacco industry and support Proposition 99 is in the interest of the voters intended. We appeal, the voters and urge you to support them, it is time for the CMA to break links with Governor Wilson and the tobacco industry and support Proposition 99, the voters intended.

C. EVERETT KOOP, FRCPC, FRCGS, FRCR, FRCR(C) (ret.)
GREGORY W. ARTHUR, MD
JAMES B. BARNETT, MD
DESSA W. BURR, JR., MD
LEONOR BARRON, MD, MPH
RUSSELL PERISSI, MD, MPH
DOUGLAS B. CLAYTON, MD
PATRICK A. B. CLAYTON, MD
WILLIAM G. CHURCH, MD
BRIAN J. COHEN, MD
PATRICIA L. DE PAULI, MD
NANCY B. DE PAULI, MD, MPH
WALTER F. GIBSON, MD
DEBORAH H. HILL, MD
CHRISTINE L. HENK, MD

JIMMY W. COOPER, MD
R. L. COOPER, MD
GEOFFREY L. FINE, MD, MPH
STEPHEN A. G. GIBSON, MD
ROBERT W. GIBSON, MD
BRIAN M. GIBSON, MD
D. M. GIBSON, MD, PhD
KARL E. GIBSON, MD, PhD
HOWARD A. HENK, MD
STEPHEN A. HENK, MD
JOHN HENK, MD
STEPHEN A. HENK, MD
GEOFFREY W. HENK, MD, MPH
TAMARA L. HENK, MD, MPH
MIRIAM J. WOLF, MD

This ad is endorsed by the American Heart Association and was paid for by the American Nonsmokers' Rights Foundation. For more information, write ANRF, 2530 San Pablo Ave., Suite J, Berkeley, CA, 94702.

Figure ANRF 1996

Figure 7 An open letter from former surgeon General C. Everett Koop and other public health advocates to the California Medical Association that ran in the New York Times on February, 29, 1996. The letter criticizes the role of the CMA, the tobacco industry and Gov. Pete Wilson in diverting Proposition 99 funds from health education and research to medical services.

University of California as the implementing organization.

SB 1986. SB 1986, carried by Senator Mike Thompson (D-Santa Rosa) exists to provide an alternate to the Watson/Katz bills. Although it lacks funding specifications and other details, there are several aspects to the bill that are potentially problematic. First, it sunsets in two years. Second, SB 1986 removes the University of California as the administrator of the research program, without proposing a substitute. The language also repeals the research program effective January 1, 1999, unless further legislation deletes or extends the terminal dates. Third, the Comprehensive Perinatal Outreach (CPO) Program is not only still in the legislation but has been moved to a new place in the Health and Safety Code. It is now Article 3, Section 104560, which puts CPO in the chapter on "Tobacco Control," along with the articles establishing the Health Education program and the Research Program. Fourth, all programs that were named for funding in SB 493 and AB 816 continue to be named in SB 1986, although no dollar figures are included, except for county offices of education. Each named program is supposed to be funded from the correct account, in accordance with the lawsuits. It is difficult to understand how this can occur unless the program funding levels are cut or money is again misappropriated. Finally, several important structural changes that are included in SB 1971, including changing the county funding formula for health and giving the state the authority to pull funds from an LLA or school district that is not complying with program guidelines, have not been included.

SB 1773. A final bill has been introduced by the Committee on Budget and Fiscal Review and is believed to also be a Thompson bill. It contains virtually no language at all and is believed to have been introduced to provide a vehicle for Wilson's budget proposal. It includes a one year sunset.

CONCLUSION

Proposition 99 and tobacco control in California are at a cross roads. On one hand, the Proposition 99 programs have been very successful, not only at reducing tobacco consumption (Figure 1) and, until recently, preventing increases in teen smoking (Figure 2), but also in raising public awareness of the tobacco issue generally and securing public support for tobacco control efforts. According to a survey conducted in 1995 for the California Center for Health Improvement by the Field Poll, 83% of Californians rated "not smoking" as very important in reducing preventable illness and death; "not smoking" was tied with "not using illegal drugs." The only behaviors thought to be more important in reducing preventable illness and death were practicing safe sex (88%) and driving safely (86%). They also found significant support for a variety of policies designed to discourage smoking: 88% supported increased penalties on retailers who sell to minors, 75% supported prohibiting vending machines, 73% supported licensing of retailers, and 71% supported ending advertising bans on billboards, on public transportation, and at sports arenas.

Proposition 99 programs have substantial popular support. When asked if state and local efforts to reduce smoking have been successful, 71% of those surveyed thought they had been. Virtually all state and local efforts are Proposition 99 programs. The public perceived the anti-smoking programs as being the most successful of the state and local public health programs. Californians also favor raising tobacco taxes again. Seventy-seven percent support raising the tax by another 25 cents a pack, and 64% support suing tobacco companies to recover state health care expenditures associated with smoking-related illness. When asked how the additional revenues from a tax should be spend, 47% want the money used to fund prevention and treatment of tobacco-related diseases, 37% want it to fund other government services, and 14% want it to offset other tax decreases. Governor Wilson's proposal for 1996-97 expenditure of Proposition 99 funds runs counter to these priorities. The governor wants to decrease taxes, while underfunding prevention, a program more consistent with the interests of the tobacco industry than the public.

REFERENCES

1. Noah T. Politics and Policy: GOP's Chief Pushed Pro-tobacco Bill at State Level, Arizona Lawmaker Says. *Wall Street Journal*. Feb. 20: A20.
2. Noah T. Tobacco Ties. *Wall Street Journal*. March 1: 1.
3. CDC. State Tobacco Control Highlights -- 1996. Atlanta: Office on Smoking and Health. 1996.
4. Levin M. Leaked Memo Describes Wilson as 'Pro-Tobacco'. *Los Angeles Times*. Los Angeles. April 16, 1996: .
5. Williams L. Memo: Candidate Wilson is 'Pro-tobacco'. *San Francisco Examiner*. San Francisco. March 16, 1996: A1.
6. Glantz SAaMB. Tobacco Industry Campaign Contributions are Affecting Tobacco Control Policymaking in California. *Journal of the American medical Association*. 1994;272:1176-1182.
7. Aguinaga S, Macdonald HR, Traynor MP, Begay ME, Glantz SA. Undermining Popular Government: Tobacco Industry Political Expenditures in California, 1993-1994. San Francisco: Institute for Health Policy Studies, School of Medicine, University of California -San Francisco. May, 1995.
8. Macdonald HR, Glantz SA. Political Realities of Statewide Smoking Legislation: California's Assembly Bill 13. *Tobacco Control (Submitted)*. 1996.
9. Common Cause. "Smoke and Mirrors". Washington D.C.: March 14, 1996, 1996.
10. Frankel G. Tobacco Industry Switches Brands. *Washington Post*. Washington D.C. March 15, 1996: A1.
11. Babcock C. Parties Raised Nearly \$60 Million in 'Soft' 1995 Donations. *Washington Post*. Washington D.C. March 11: A17.
12. Mierzewski E. Smoking Them Out: Tobacco PAC Contributions 1986-1995. Washington D.C.: U.S. PIRG. March, 1996, 1996.
13. Begay ME, Glantz SE. Political Expenditures by the Tobacco Industry in California State Politics from 1976 to 1991. San Francisco: Institute for Health Policy Studies, School of Medicine, University of California -San Francisco. September, 1991, 1991.
14. Tran D. Cortese Gets Flak on Gift. *San Jose Mercury News*. San Jose. March 19: 1, 6.
15. Morain D. Campaigns Deluged With Donations as Election Nears. *Los Angeles Times*. Los Angeles. March 23: A1.
16. Morain D, Gilliam J. GOP's Allen Elected Speaker by Democrats. *Los Angeles Times*. Los Angeles. June 6: A1.
17. Glastris P. Frank Fat's Napkin: How the Trial Lawyers (and the Doctors!) Sold Out to the Tobacco Companies. *The Washington Monthly*; December, 1987:19-25.
18. Knapp C. Tobacco, Medical Lobbies Team Up and Draw Criticism. *Orange County Register*. Orange County. July 17, 1989: .
19. Holding R. Legal Grounds -- Why California, Unlike Other States, Has Not Pursued Tobacco Industry. *San Francisco Chronicle*. San Francisco. April 15, 1996: B1.
20. Macdonald H, Glantz S. The Political Realities of Statewide Smoking Restrictions: California's AB 13. *Tobacco Control (submitted)*
21. Traynor MP, Glantz SA. The Development and Passage of Proposition 99: California's Tobacco Tax Initiative. *Journal of Health Politics, Policy and Law*. In press.
22. Stein MA. Those Who Backed Cigarette Tax Face Tougher Job: Seeing That It's Spent Right. *Los Angeles Times*. Los Angeles. November 10: .
23. Begay ME, Traynor MP, Glantz SA. The Twilight of Proposition 99: Reauthorization of Tobacco Education Programs and Tobacco Industry Expenditures in 1993. San Francisco: IHPS, UCSF. March, 1994.
24. State of California Legislative Analyst's Office. Analysis of the 1994-1995 Budget Bill. Sacramento: California State Legislature. 1994.
25. State of California Legislative Analyst's Office. Analysis of the 1995-96 Budget Bill. Sacramento:

- California State Legislature. 1995.
26. Lewin J. Tobacco Wars and the CMA. . *California Physician*; April, 1996:10-11.
 27. California Medical Association . Tobacco Tax Initiative. June 13, 1988.
 28. Walters D. A Lousy Way to Make Policy. *Sacramento Bee*. Sacramento. July 15: .
 29. Weintraub D. Heat Put on Wilson Over Anti-Smoking Funds. *Los Angeles Times*. Los Angeles. Feb. 21: A3.
 30. Skolnick A. Court Orders California Governor to Restore Antismoking Media Campaign Funding. *JAMA*. 1992;267:2721-2723.
 31. Shuit DP. Conferees Vote to Fund No - Smoking Ad Campaign. *Los Angeles Times*. Los Angeles. Sept. 14: 3.
 32. Skolnick A. American Heart Association Seeks to Delay State Health Department Director's Confirmation. *JAMA*. 1992;267:2723-2726.
 33. Kiser D (American Heart Association). Testimony to California Senate Committee. April 22, 1992.
 34. Pierce JP, Evans N, Farkas AJ, al. e. Tobacco Use in California: An Evaluation of the Tobacco Control Program, 1989-1993. San Diego: UCSD. 1994.
 35. Williams L. Former Speaker Swears He's a Foe of the Cigarette Industry, But His Voting Record Tells a Different Story. *San Francisco Examiner*. San Francisco. Sept. 17: .
 36. Foster D. The Lame Duck State: Term Limits and the Hobbling of California Government. . *Harper's Magazine*; February, 1994:65-75.
 37. State of California. Governor. Veto of Senate Bill No. 1088 (Bergeson). . Sacramento 1993.
 38. Dresslar T. Battle Over Tobacco Tax Revenues Likely to Grow Hotter in Courts. *San Francisco Daily Journal*. San Francisco. April 25: .
 39. State of California. Assembly Bill 816. . Sacramento 1994.
 40. Perlite. D., Waters G. Respondents' Brief, Sacramento Superior Court No. 95CS01851. Sacramento: Superior Court. Feb. 23, 1996.
 41. Skolnick A. Judge Rules Diversion of Anti-Smoking Money Illegal, Victory for California Tobacco Control Program. *JAMA*. 1995;273:610-611.
 42. Americans for Non-Smokers' Rights (Americans for Non-Smokers' Rights). Prop. 99 Lawsuit - Background. 1995.
 43. American Lung Association . Prop 99 Legal Victories Abound, but Government Defies Court Rulings. 1995.
 44. American Lung Association . ALAC on Winning Streak with Prop 99 Lawsuit. 1995.
 45. State of California. Senate Bill 493. . Sacramento 1995.
 46. State of California. Governor. Governor's Budget Summary. Sacramento: January 10, 1996.
 47. American Cancer Society, American Heart Association, Association AL . Health Groups Outraged by Governor's Budget. 1996.
 48. California Medical Association . House of Delegates Resolution. March 3, 1996.
 49. California Medical Association . Proposition 99 Funding. 1996.
 50. Novotny T. Structural Evaluation: California's Proposition 99-Funded Tobacco Control Program. Centers for Disease Control and Prevention and UC Berkely School of Public Health. February 25, 1994, 1994.
 51. Glantz SA. Editorial: Preventing Tobacco Use -- The Youth Access Trap. *AJPH*. 1996;86:156-158.

Table C-1. LIST OF ACRONYMS

ACS	American Cancer Society
AHA	American Heart Association
AIM	Access for Infants and Mothers
ALA	American Lung Association
ANR	American' for Nonsmokers' Rights
CDE	California Department of Education
CCHI	California Center for Health Improvement
CHDP	Child Health and Disability Program
CHIP	California Healthcare for Indigent Program
CMA	California Medical Association
CMSP	County Medical Services Program
CPO	Comprehensive Perinatal Outcome
DHS	Department of Health Services
LAO	Legislative Analyst's Office
LLA	Local Lead Agencies
MRMIP	Major Risk Medical Insurance Program
TCS	Tobacco Control Section
TEOC	Tobacco Education Oversight Committee
TEROC	Tobacco Education and Research Oversight Committee
TRDRP	Tobacco Related Disease Research Program
SAYNO	Just Say No to Tobacco Dough
WCLP	Western Center for Law and Poverty