

# The Justice Report



Fall 2000

An update from the Foundation for Taxpayer and Consumer Rights

## Oaks Project Volunteers Celebrate Multi-City Campaign Finance Victory in Unprecedented All-Volunteer Campaign



Paul Herzog, Oaks Project Organizer, and Oaks volunteers at press conference to call for S.F. City and County Supervisors' support on Prop. J.

**V**olunteers with the Oaks Project celebrated a resounding victory at the polls in Santa Monica, San Francisco, and Vista--the first part of their multi-city drive for campaign reform in California. The outcome was a double success: both curbing the influence of special interest money in politics and proving the power of volunteer-based organizing to accomplish the task when public officials will not act.

The measure, known in each city as the "Taxpayer Protection Amendment," is intended to keep special interest influence

out of local politics by preventing politicians from trading taxpayer dollars for future campaign contributions or other personal benefits.

"Our victory at the polls proves that well-organized citizens can take on city hall and win," stated Robert Seldon, a volunteer Oaks organizer in Santa Monica. "The months of signature gathering and voter education by volunteers shows that ordinary people can pass the real reform that voters support but that the political establishment will not address."

Oaks faced unique circumstances in each city:

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## Industry-Backed California Electricity Deregulation Plan Fails, FTCR Developing Energy Solution

**I**n a November 28 press conference, FTCR presented a draft initiative to the governor, legislators and the public that it will place on the 2002 ballot if the Legislature fails to take steps to protect consumers in the wake of the failure of the state's electric utilities deregulation law. Developed with national energy experts and economists, FTCR's "California Power Act Initiative Concept Draft" is aimed at restructuring oversight and control of electricity in California.

The proposal would require state regulators to set electric rates that are fair and affordable, and it would allow the state to build and purchase electricity generators and other energy system assets. The state would then own and operate reliable, efficient and clean-burning power plants, as do many municipal and regional public power companies throughout the country. The act will also institute a statewide Citizen Utility Board to advocate on behalf of consumers on energy issues.

This initiative proposal by FTCR is part of an effort to ward off another

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## FTCR Outlines Insurance Policyholder Bill of Rights, Legislature Enacts Major Reforms

**F**TCR-sponsored legislation to make state reports on insurer misconduct public was signed into law this Fall. In the wake of the resignation of Insurance Commissioner Chuck Quackenbush, FTCR brought together a coalition of California's consumer groups to call for a comprehensive Policyholder Bill of Rights that will protect insurance consumers from the kind of abusive insurance company practices that former Commissioner Quackenbush covered up.

As a result of FTCR's efforts, two components of the Policyholder Bill of Rights were introduced at the end of the legislative session: Senator Martha Escutia introduced a bill to make Department of Insurance examinations of insurers' claims practices publicly available on the internet, and Senator Jackie Speier introduced legislation to strictly limit insurers' campaign contributions to the Insurance

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## ADVOCATES' MESSAGE

### Join Our Fight, Become An FTCR Member

This election, more than any other in recent memory, reminds us that a small group of individuals can make a huge difference.

The all-volunteer Oaks Project did just that in passing three local November ballot initiatives to demonstrate that all-volunteer qualified initiatives can create a new kind of politics. Props LL in Santa Monica, J in San Francisco and W in Vista all require that no politician can receive campaign contributions, gifts, or jobs from a person or corporation that he or she has awarded taxpayer money to (as through a city contract, zoning variance or tax break). These are among the toughest campaign finance conflict-of-interest laws in the nation, and they were put on the ballot entirely by volunteer signature gatherers.

FTCR's Oaks Project turned in over 65,000 volunteer-gathered signatures for the same initiative in six cities. There will be identical March ballot initiatives in Claremont and

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## IN THIS ISSUE:

- New Study Finds Cause of Midwest Gasoline Price Spikes
- AG Gives Go-Ahead to Remove PUC Commissioner
- Auto Insurance Update
- New Patient Rights Guide available Jan. 2001
- and more...

## Patients' Rights Tour Rallies U.S. Senator's Support For HMO Reform



Jamie Court holds press conference with local legislator and HMO patient to call for Missouri Sen. John Ashcroft to change his vote on Federal Patients' Bill of Rights.

This fall, FTCCR's executive director, Jamie Court, traveled across the nation on a press tour to persuade key U.S. senators and representatives to support the bi-partisan, patients' bill of rights.

FTCCR organized events in Kentucky, Michigan, Missouri, Montana, New York and Washington. Court, author of *Making A Killing: HMOs and The Threat To Your Health* ([www.makingakilling.org](http://www.makingakilling.org)), joined with local patients, doctors and advocates in calling on Senators John Ashcroft, Spencer Abraham, Conrad Burns, Slade Gorton and Representatives Ann Northrup and Rick Lazio to change their "no" vote on the bipartisan patients' bill of rights. Court also delivered a waiver for the legislators to sign. The waiver asked the legislators to either support the right of all patients to sue an HMO or waive their own unique right as government workers to sue an HMO. Successful publicity led to Senator Ashcroft announcing the week after the Missouri event that he would change his position on the patients' bill of

rights. The bi-partisan Norwood-Dingell legislation passed the House of Representatives, but failed by one vote in the U.S. Senate in June 2000. A second vote was not taken in the Senate before the election, but election losses for Ashcroft, Abraham, and Gorton would seem to give the measure enough votes to succeed.



Jamie Court joined with Chuck Packevicz, husband of HMO victim Judith Packevicz, and other advocates to call for N.Y. Rep. Rick Lazio to change his vote on Patients' Bill of Rights.

## AUTO INSURANCE UPDATE

### Court of Appeals Hears Case to End ZIP Code-Based Automobile Insurance Rates

#### LOWER COURT RULED QUACKENBUSH REGULATION DEFECTIVE

Twelve years after California voters passed Proposition 103 in 1988, the Court of Appeal heard oral arguments in an FTCCR case this Fall that could finally enforce the provision of that initiative requiring automobile insurance premiums to be primarily based on how people drive, rather than where they live. In June 1998, an Alameda County Superior Court judge struck down a defective Quackenbush regulation that allowed insurers to continue the practice of basing premiums primarily on ZIP-code, ruling in favor of the Proposition 103 Enforcement Project

(a project of the Foundation for Taxpayer and Consumer Rights) and other plaintiffs, including the Spanish Speaking Citizens Foundation, Consumers Union, Southern Christian Leadership Conference and the Cities of San Francisco, Oakland, and Los Angeles. Former Insurance Commissioner Quackenbush and insurers, Farmers and State Farm, appealed that ruling.

Proposition 103 requires the Insurance Commissioner to issue regulations relating to the methodology for determining auto premiums. By law, the regulations must be written in a manner

such that territory (where the driver resides) and other optional factors (gender, marital status, academic standing, etc.) are given less weight than any of the three factors specifically mandated by Proposition 103: driving record, annual miles driven and years of driving experience. Quackenbush's regulations have allowed insurers to continue to determine premiums with the most weight given to territorial-based factors.

A decision from the Court of Appeal is expected by the end of December 2000.

### FTCCR Successfully Reforms "Lifeline" Low-Cost Auto Insurance Regulations

After submitting comments criticizing the proposed rules for California's Low-Cost Auto Insurance Program as not keeping with the spirit of the law's intent to provide an affordable policy, the Department of Insurance revised virtually all of the anti-consumer aspects of the regulations. FTCCR urged the Department to do away with rules that would have created difficulties for the low income motorists who are meant

to benefit from the new insurance program. The "Lifeline" low-cost insurance law was developed by FTCCR in 1998 and adopted by the State Legislature in 1999.

In particular, FTCCR challenged rules that did not allow low income drivers to spread the payments for the policy over the entire year. FTCCR also rejected the Department's proposal to require a non-refundable \$100 deposit on the policy. Under the new regulations, drivers can

pay on a bi-monthly installments basis, and only \$15 of the policy deposit will be non-refundable.

FTCCR is presently working with community groups, consumer groups and state agencies to educate low-income drivers about the Lifeline plan. FTCCR will host an outreach workshop for community groups in late February to increase the number of drivers in Los Angeles who have insurance coverage.

## Public's Right to Know Trumps Secrecy Deals

JUDICIAL COUNCIL ADOPTS RULES MAKING SEALING OF COURT DOCUMENTS DISFAVORED

Court rules adopted in October by California's Judicial Council that take effect January 1, 2001 will prohibit the sealing of any records filed in a court case merely upon an agreement of the litigants. Corporations often seek to hide key papers that would expose their fraudulent or dangerous practices by coaxing plaintiffs into signing such secrecy agreements in exchange for a favorable settlement.

Under the new rules supported by

FTCR and other consumer groups, sealing of documents would be disfavored by the courts. Only if the court determines that there is an overriding interest that outweighs the public's right to access court records could records be sealed. Members of the public would also have the right to ask the court to unseal previously sealed documents.

FTCR had supported a stronger "Sunshine in the Courts" measure introduced in 1999, SB 1254 (Schiff), that would

have extended to discovery materials and confidential settlement agreements. That bill was held in committee by its author in deference to the Judicial Council. FTCR will advocate for further rules to be adopted by the Judicial Council or through the Legislature that would ban secret settlements.

## FTCR Challenges Insurance Industry Attempt at National Insurance Deregulation Plan

FTCR provided testimony to the National Association of Insurance Commissioners and to the California Department of Insurance in recent months deploring the proposed nationwide deregulation plan for insurance companies. The proposal would undo the states' strong consumer protection laws and submit to much weaker, generic rules that would send rates skyrocketing and would decimate insurance company oversight.

The insurers' proposal, which has the support of many of the nation's Insurance

Commissioners, comes on the heels of a 1999 federal law that will allow banks and investment houses to sell insurance products and insurance companies to sell financial products. Fresh off that victory in Washington, the nation's large insurers and other financial institutions are pushing to end state insurance regulation. FTCR pointed out in its testimony that many of California's protections, however, were established by Proposition 103 in 1988 and cannot be thrown out by the Legislature.

## POLICYHOLDER BILL OF RIGHTS

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Commissioner.

After successfully moving out of the Assembly Elections Committee, the campaign reform bill was voted down on the Assembly floor by the very legislators who receive some of the largest campaign contributions from the insurance industry. The insurance company examination bill, SB 1805, drafted by FTCR, secured passage in the Assembly and Senate in the last hours of the session and was signed by the Governor. The new law will require the Department of Insurance to place all "Market Conduct Examinations" of unfair and deceptive business practices on its website beginning in 2001.

## CALIFORNIA ELECTRICITY DEREGULATION

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bailout of the utility companies at the expense of taxpayers and consumers. After the State Legislature unanimously passed the electricity deregulation bill in 1996, FTCR led a coalition of consumer, environmental and taxpayer groups in gathering signatures to place an initiative on the 1998 ballot to stop the \$28 billion bailout of Southern California Edison, Pacific Gas & Electric and Sempra's San Diego Gas & Electric. The three utilities mounted a \$40 million campaign to defeat the ballot measure, Proposition 9, and, with the help of some phony grassroots organizations (all of which received sizable donations from the utilities), the utilities defeated FTCR's reform initiative.

This summer, San Diego residents became the first Californians to pay "market prices" for the energy that flows into their homes and businesses under deregulation. As greedy power

marketers manipulated the unregulated power markets and gouged San Diego consumers for hundreds of millions of dollars, many ratepayers there saw increases of up to 300%.

**...greedy power marketers manipulated the unregulated power markets and gouged San Diego consumers for hundreds of millions of dollars.**

In response, FTCR teamed up with San Diego representatives and activists to demand an end to the price gouging—and call for refunds to consumers. In the last days of the 2000 legislative session, the legislature and Governor Davis enacted a policy criticized by FTCR that temporarily caps electric rates, but will force consumers to pay for the outrageously high energy prices sometime in the future (but not until after the

next election in 2002). The utilities are now pressing the Governor to allow them to back-bill consumers for at least \$6 billion that the companies overpaid for energy as a result of their own deregulation law.

Things got even worse in the first week of December as the state experienced a series of Stage Two Energy Shortage Alerts and California's first Stage Three Emergency, in which residents were threatened with rolling blackouts. FTCR has called on the Governor to make concrete proposals to end the deregulation experiment, which it believes to be at the root of the energy crisis, and initiate the development of a state power agency that can mitigate future shortfalls. You can read FTCR's draft initiative proposal online at <http://www.consumerwatchdog.org/utilities/pr/pr00842.php3>.

# New Study Finds Cause Of Midwest Gasoline Price Spikes

## OIL REFINERS' MANIPULATION OF INVENTORIES & EXPORTS BLAMED

Seeking to educate the public about the high price of gasoline, FTCR commissioned and released in October a landmark study on the cause of gasoline price spikes in the Midwest during the spring of 2000. (The full report can be downloaded from [www.consumerwatchdog.org](http://www.consumerwatchdog.org)) The study, which received widespread media attention in the Midwest, found that oil refiners' manipulation of supply and inventories created artificial shortages that drove up the price of gas over \$2 per gallon. Refiners had claimed OPEC production cuts and a new environmentally sensitive gas formulation were to blame, claims the study found to be fallacious.

Grants from Consumer Watchdog, The Agua Fund of the Tides Foundation, and Public Interest Projects allowed FTCR to commission the report from petroleum expert Tim Hamilton, who has over twenty five years experience in the industry. FTCR's executive director Jamie Court released the report with Hamilton in Chicago. Both have served on California Attorney General Bill Lockyer's Gas Pricing Task Force.

The study, entitled "The Causes and Effects of the Price Spikes In the Midwest During 2000," finds:

- Just prior to the price spikes, hundreds of millions of gallons of gasoline were shipped by Midwest refiners to other parts of the country and exported to for-

eign destinations - inventory manipulations that precipitated the shortages which led to the price spikes;

- Despite repeated oral and written assurances to the Environmental Protection Agency (EPA) that inventories were at adequate levels, the oil companies drew the inventories down to critically low levels and chose not to restore the inventories;

- An estimated \$374.4 million was artificially tacked on to pump prices during a ninety day period in the State of Illinois alone.

The Chicago legislature held hearings in

response to the report's findings. In addition, U.S. Senator Tom Hoskin asked that FTCR's report findings be included in a report expected to be released by the FTC. The study concludes that state and federal officials should launch a bipartisan effort to:

- Adopt a single nationwide standard for gasoline formulations so oil companies can no longer manipulate inventories in a manner that creates price spikes;

- Close loopholes in antitrust laws and commodity trading laws to provide for prosecution of individuals and corporations involved in the creation of price spikes; and

- Pass measures to control the flow of crude and refined product exports to ensure that the multinational oil companies do not abuse the interests of this nation and its citizens.

An estimated \$374.4 million was artificially tacked on to pump prices during a ninety day period in the State of Illinois alone.

## FTCR to Produce Comprehensive Guide to Patients' Rights and Remedies

How can patients get copies of their medical records? What rights to patients have to emergency care? What can patients do if a health plan denies coverage for a particular treatment? FTCR's new guide, entitled "The California Patient's Guide: Your Health Care Rights and Remedies," will arm California patients with the knowledge of what their rights are and what steps they can take if they encounter problems. The guide has been written by medical and legal experts under the supervision of FTCR through a grant from the California Wellness Foundation.

The guide will be current, to the extent possible, through the 2000 legislative session, including new state health care laws signed by Governor Davis in September of 2000.

The California Department of Consumer Affairs has generously agreed to lend its staff time and resources to editing, designing the layout, and printing over 250,000 copies of the guide to be distributed to patients throughout California. The final guide is expected to be ready for publication in January 2001. A user-friendly version of the guide will also be available online at [www.patient-guide.org](http://www.patient-guide.org).

### ADVOCATES' MESSAGE continued from page 1

Pasadena. (An additional measure submitted in Irvine failed to qualify by 81 signatures.) The Oaks Project offers the best hope for a new political brand that the California initiative process is in a unique position to incubate - V.Q.I. or the volunteer qualified initiative. The Oaks and FTCR will now dedicate themselves to making California the epicenter of local and statewide V.Q.I. efforts.

The civic energy behind the Oaks and V.Q.I. can save California's initiative process from abuse by corporations and special interests. Imagine this political future: When statewide initiatives are qualified on a volunteer basis, they receive a special des-

ignation in the ballot pamphlet as V.Q.I. efforts. This alerts voters to give special consideration to any initiative that motivated enough volunteers to collect over 700,000 signatures. Disclosure in television advertising also shows whether ballot initiatives qualified on an all-volunteer or paid basis. All-volunteer efforts receive state matching funds for campaign promotion so that they can be seen on television.

If this is a future you seek, become an FTCR member.

FTCR's victories in 2000 also include passage of insurance policyholder rights measures in the wake

of the Quackenbush scandal, advance of a national HMO patients' rights bill so that it now has enough votes to reach the president's desk, and exposure of price gouging by electric utilities and Big Oil.

FTCR invites you to become a part of our new membership structure. If you share our convictions, please use the back page of this newsletter today to make a contribution of fifty dollars or more and count yourself as an FTCR member.

## Attorney General Gives FTCR the Go-Ahead to File Lawsuit to Remove PUC Commissioner Henry Duque from Office

In a strongly worded opinion issued November 29, the California Attorney General Bill Lockyer said that it appears Public Utilities Commission (PUC) Commissioner Henry Duque's office "became vacant" when he violated a conflict-of-interest law that prohibits PUC Commissioners from having a financial interest in companies they regulate.

In papers filed with the Attorney General, FTCR had alleged that Mr. Duque violated section 303(a) of the Public Utilities Code when he owned stocks in Nextel Communications, a mobile telecommunications company that is an authorized California utility subject to regulation by the CPUC. That statute states that "[a] public utilities commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission." Mr. Duque contends that Nextel is not regulated by the CPUC and that any conflict of interest he may have had should not subject him to an action removing him from office.

The Attorney General opinion gave FTCR permission to bring an action in *quo warranto*—a civil action that allows a court to order a public official's removal from office. The Attorney General has the authority to grant permission to private individuals and organizations to bring such an action in the name of the People of the State of California.

FTCR plans to file its action in state court before the end of 2000. Duque has publicly stated that he will not resign prior to any lawsuit.

For the latest FTCR news and commentary, visit our website at:

<http://www.consumerwatchdog.org>

### OAKS' VICTORY continued from page 1

**Santa Monica** - When the city council failed to keep Ralph Nader's name from appearing on the Prop. LL ballot argument, the city attempted to kick the entire argument out of the voter pamphlet. The Oaks sued and won. The city's liberal establishment groups even sent out mailers with a recommendation to vote against the initiative, calling it "phony reform." The voter's response: a resounding 58% of the vote.

**San Francisco** - In true grassroots fashion, Oaks took to the streets to run a fact-based campaign of leafletting and generating free media coverage. Their hard work paid off: the Democrats, Republicans, Greens and community groups endorsed the Oaks measure. 82% of the voters agreed—a landslide that sends a clear message to every public official in San Francisco.

**Vista** - After losing a pre-election legal challenge to invalidate the Oaks initiative, Vista's city council placed their own phony reform measure on the ballot to confuse the voters. The city's measure contained a "poison pill" clause seeking to nullify the Oaks' initiative. Even though 59% of the voters were in favor of real reform and voted YES on the Oaks' initiative, because the phony measure received slightly more votes, it may block the Oaks' measure from taking effect. The Oaks Project plans to bring a legal challenge to the "poison-pill" provision and compel the city to implement the Oaks initiative.

Oaks Project volunteers look forward to further victories in March 2001, when the Taxpayer Protection Amendment is on the ballot in Pasadena and Claremont. Volunteers in Irvine came up 81 signatures short for qualifying for the November ballot. However, a week after missing the ballot, an Irvine councilman was caught taking kickbacks from a developer. Irvine volunteers are now pushing to have the initiative adopted as a city ordinance.

The Project is considering their next campaign, including the possibility of reintroducing their initiative reform measure, SB 1220, which passed out of the State Senate in 1999. The new measure would require disclosure of financial sponsors of initiative ads as well as provide recognition in voter guides for those campaigns that are Volunteer Qualified Initiatives, or VQI.

For more information on FTCR's citizen volunteer force and how you can become involved, go to the Oaks' Project



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FTCR will continue to educate the public and the legislature about the need for a full Policyholder Bill of Rights.

webpages at: <http://www.consumerwatchdog.org/citizen>.