

# The Justice Report



December 2001

An update from the Foundation for Taxpayer and Consumer Rights

## FTCR and The Oaks Project Lead Efforts to Protect Ratepayers

### FTCR stops utility bailout in legislature

As California endured an unprecedented combination of statewide blackouts, massive rate hikes, and utility bailout schemes, FTCR led the public fight to protect ratepayers and taxpayers. After garnering an extra \$20 billion from ratepayers as a result of the 1996 deregulation law, the utilities that wrote the law lobbied, with the complete support of Governor Davis, to pass the costs of deregulation's failure entirely onto ratepayers. By mid-spring, PG&E filed for bankruptcy protection while Edison continued to



FTCR's Emily Rhine and Margaret Strubel urge Assemblymember Helen Thomson to vote no on SB 788. She abstained from the vote.

Photo by Steven T. Jones, Sacramento News and Review.

pursue a public bailout through the summer.

FTCR mounted an intense, grassroots lobbying campaign in the final days of the legislative session to defeat the bailout. Thanks in large part to the Oaks Project volunteers working out of FTCR's Sacramento War Room, (see below), the legislature refused to approve the bailout.

Despite the legislature's rejection of the bailout, in October, the Davis-controlled Public Utilities Commission (PUC) struck a secret deal with Edison lawyers through a settlement of

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### Oaks Project Volunteers Serve as Powerful Grassroots Force

The Oaks Project - the citizen volunteer arm of FTCR - has been at the forefront for years fighting, at a grassroots level, for consumers in the quagmire of energy deregulation. Oaks volunteers were again out in force in the summer of 2001 organizing citizens to get involved in the fight for consumer friendly energy policy and against corporate giveaways.

The Oaks Project's hard-working volunteers gathered over 10,000 postcards and letters, urging members of the State Legislature to consider ratepayers and consumers when voting on energy legislation.

Volunteers organized in districts across the state to:

- Stop the legislative ratepayer bailout of Southern California Edison.
- Support a windfall profits tax which would have halted further price gouging by the energy providers.
- End "Direct Access" (part of the original deregulation scheme) which allows big businesses to cut more profitable side deals with energy generators, forcing small business and residential consumers to cover the costs for the poorly negotiated, high-priced state energy contracts.

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Oaks volunteer Marylan Goodman urges a Santa Monica citizen to write her legislator about the energy crisis.

### Insurance Policyholders Gain with FTCR Reform Legislation

Teaming up with Senator Martha Escutia for the third year in a row, FTCR successfully shepherded insurance consumer protection legislation through Sacramento and into the law books. SB 658, signed by Governor Davis in October, expands consumer rights and access to information during the insurance claims process.

The legislation was developed with the assistance of Northridge

Earthquake and East Bay Hills Fire victims to address inequities in the insurance claims handling process. The impetus for the bill was a series of revelations during last year's investigations into former insurance commissioner Chuck Quackenbush, which uncovered a host of claims related improprieties by major insurance companies.

The bill, facing stiff opposition from the insurance industry for most

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### ADVOCATES' MESSAGE

When the world came to a halt on September 11, 2001, some of our advocates, organizers and volunteers were in a Sacramento hotel waking up for another day of battling the energy industry lobbyists to stop the Edison bailout. This bailout would have changed state law to force residential ratepayers to pay off \$3.3 billion in losses Edison incurred under the electricity deregulation law Edison wrote in 1996.

After a day of silence, the legislative battle, which FTCR ultimately won, resumed in the context of a changed world.

The flag has taken on new meaning as the horrific attacks remind Americans of the fragility of life and the sacrifice and duty that has gone hand in hand with being an American since the founding of this nation.

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of the year, was aided by the testimony of policyholders subjected to unduly expensive and time consuming appraisals, interminable insurance company interrogations known as Examinations Under Oath, and the inability to access important information about their own claims. Under the new law:

- The appraisal process becomes voluntary for disaster victims. Currently, insurers can force disaster victims into the appraisal process without their consent, which often becomes a money pit for many policyholders and a graveyard for many claims. When the new law takes effect on January 1, 2002, disaster victims will be able to opt out of the appraisal process.
- The Examination Under Oath (EUO) process is reformed to protect policyholders against abusive interrogations, inappropriate and unnecessary questioning and insurance company "fishing" expeditions. The EUO has become an interrogation-like setting in which insurers treat claimants as though they were criminals. SB 658 affords policyholders rights and protections during this process.
- Insurers must maintain a status report when the company rotates adjusters three or more times during a six-month period. This will protect against a delay tactic used by some insurers in which adjusters are changed frequently, with the new adjuster starting the claims process over at square one rather than building off of previous adjusters' work.
- Consumers will be able to more easily access documents related to their claim. SB 658 requires insurance companies to provide the policyholders, at their request, with a series of claims-related documents that identify important information such as the insurance company's assessments and evaluations of the damage.
- Policyholders must be informed as to their rights to a fair claims process once they file a claim with their insurer by being provided with a copy of the state's Unfair Claims Practices Act.

Insurance Commissioner Hopeful Accepts Half-a-Million From Insurance Industry

In 2002, California voters will have their first opportunity to replace former Insurance Commissioner Chuck Quackenbush, who resigned from the post in disgrace in June 2000. FTCCR

## HEALTH CARE UPDATE

### FTCR Distributes First-Ever California Patient's Guide Statewide

Earlier this year, FTCCR, through a grant from the California Wellness Foundation, published "The California Patient's Guide-Your Health Care Rights and Remedies"-a first-of-its-kind guide-book to California's complex managed health care system and health care laws. Tens of thousands of copies of the guide, available in English and Spanish versions, have been distributed through the Department of Consumer Affairs, the Department of Managed Health Care and doctors' and patient advocates' offices statewide.

In a question and answer format drafted by FTCCR advocates with the assistance of the Department of Consumer Affairs and medical and legal experts, the guide outlines some of the most important recently-enacted California health care protections, includ-

ing the right to sue one's HMO and to have an independent review of treatment denials.



FTCR's California Patient Guide is available online at [www.calpatient-guide.org](http://www.calpatient-guide.org). You can also download a PDF version of the guide in English or Spanish. Californians can also obtain a printed edition of the guide by calling 1-888-HMO-2219 (California Department of Managed Health Care) or 1-800-952-5210 (California Department of Consumer Affairs).

### FTCR Seeks Health Care Consensus

FTCCR has launched an effort to bring together the key stakeholders of the health care system, including employers, to make the future of health care more secure. The aim is to reach consensus on how to best prepare California to meet a full range of health care challenges, including stopping double-digit premium increases, addressing new public health needs, and covering the unin-



sured.

Currently, employers are being surveyed about their views online at [www.businesshealthsurvey.org](http://www.businesshealthsurvey.org). The results will be used as a platform for regional "Town Hall" meetings, Executive Roundtables, and working groups across the State, in which model solutions will be developed.

For more information on FTCCR's campaign for health care consensus, visit its new web pages at [www.businesshealthsurvey.org](http://www.businesshealthsurvey.org)

### Patients Rights Promoted

FTCCR continued its fight for national patients' rights, including promoting the need for a bill of rights, in debates with the HMO industry on NPR's Weekend Edition, The Montel Williams

Show, CNN, and talk radio shows across the nation. The U.S. Senate has passed a strong bill of rights which must be reconciled with a weaker bill from the House of Representatives.

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will be tracking the policy issues and campaign financing of the race. Among the three declared candidates with significant funding - Tom Calderon, John Garamendi and Tom Umberg - FTCCR is most concerned with the contributions received by Assemblymember Tom Calderon who collected \$534,000 in campaign contributions from insurance industry sources as of November 17, 2001. His contributions include

\$100,000 from Mercury Insurance and \$70,000 from Farmers Insurance Company and its affiliated political committees. Both Umberg and Garamendi have formally sworn off insurance industry contributions. A complete list of candidates' insurance-related contributions is available on FTCCR's Web site at <http://www.consumerwatchdog.org/insurance/pr/pr002088.php3>.

## CA Department of Insurance Grants FTCR's Rulemaking Petition to Stop Insurers From Charging Drivers With No Prior Insurance Higher Premiums

Increasingly, automobile insurers are seeking to charge previously uninsured motorists higher premiums in circumvention of the 1988 voter-enacted provision of Prop 103, which prohibits such rating practices. By using a so-called "persistence" rating factor, insurers are giving "discounts" to drivers who can show that they have been with the same insurance company for the previous 1-3 years. What this means is that drivers who have not previously had insurance, or had a lapse in coverage, will end up paying higher premiums on a new policy than someone who previously had continuous coverage, even if they have the same driving history.

Particularly in light of the recent flurry

of rate increases being requested by auto insurers, with many more expected in the coming year, even a 10-15% surcharge on previously uninsured motorists will hugely impact the number of drivers who are unable to afford auto insurance. The door to insured status remains closed to these drivers.

To address this problem, FTCR petitioned the California Department of Insurance (CDI) in May 2001 for a rulemaking hearing to address the abuses occurring on an industry-wide basis against motorists without prior insurance. That petition was granted by Commissioner Low on June 4, 2001 to hold public hearings to address "the use of 'per-

sistency discounts' by insurers" which the Commissioner agrees "has the potential to conflict with the provisions of Ins. Code §1861.02(c)."

FTCR, Consumers Union and the Southern Christian Leadership Conference proposed draft regulatory language which was circulated by CDI to interested parties earlier this Fall. Not surprisingly, insurers and their trade groups strongly opposed the language and deny that they are circumventing the law. FTCR has urged Commissioner Low to move forward with public hearings on the proposed regulations.

## FTCR Launches Project to Stop Junk Faxing

With a grant from the Kirsch Foundation, FTCR has launched a project to stop junk faxing and other consumer privacy abuses through litigation, education and advocacy.

So far, FTCR has successfully stopped four local businesses it sued from sending junk faxes to any personal or business fax machine.

Junk faxes are advertisements sent via fax lines without the recipient's prior permission. Junk faxing is attractive to businesses because they can shift the costs of printing their ads to consumers. In addition to stealing toner and paper, junk faxes can tie

up fax lines and wake people up in the middle of the night when sent to home fax machines. A federal law known as The Telephone Consumer Protection Act of 1991 makes the sending of junk faxes illegal and allows individuals to bring lawsuits in state court to obtain penalties of up to \$1500 per violation.

The settlement agreements FTCR has procured with local businesses provide that they "shall refrain from any and all transmission of their advertising via telephone facsimile machine to any and all California individual or business facsimile telephone lines when such advertising is

wholly unsolicited by the individual or business to whom it is being sent."

Most of the businesses that have settled with FTCR used a blast fax service called "FAXertise" to send out the unsolicited fax ads. FAXertise has denied that it has done anything illegal and so far has refused to stop sending junk faxes on behalf of other businesses.

To learn more FTCR's lawsuits against junk faxers and how you can use the federal law to stop junk faxing yourself, visit FTCR's new JUNK FAX Web page at [www.stopjunkfaxing.org](http://www.stopjunkfaxing.org).

### HEALTH CARE UPDATE

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## Bill to Limit Mandatory Arbitration Passes CA Senate

FTCR-sponsored SB 458 (Escutia), which prohibits HMOs from forcing patients into mandatory arbitration for disputes under California's new HMO liability law,

passed the CA Senate after a tough Floor fight. FTCR expects the bill to be taken up by the Assembly when the Legislature reconvenes in 2002.

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

[www.consumerwatchdog.org](http://www.consumerwatchdog.org)

### ADVOCATES' MESSAGE continued from page 1

Our work to protect consumers and taxpayers - for energy security, better health and insurance coverage protection, good government, fair justice and greater citizen participation - is more important now than ever. In a time of war, the specter of unjustified federal bailouts for airlines and insurance companies, while other Fortune 500 corporations are demanding a return of \$25 billion in federal taxes they have paid over the last fifteen years, are nothing less than profane. We need to keep an eye on these threats to democracy from within as well as from without.

The strength of our nation rests upon its ideals and the principles of democracy we hold dear: fairness,

freedom, justice. Defending democracy has been our business for more than a decade. It is the reason we symbolically fly the flag in our logo. It's an honor that our advocates, organizers and lawyers reflect in their 24/7 dedication.

Some have described us as "relentless;" that's a label we are proud of, because in order to protect the public, we must work harder and longer than our opponents. For instance, immediately after our win in the State Capital, the Edison bailout battle moved to the courts when the Public Utility Commission unlawfully tried to do for Edison what Sacramento politicians would not. FTCR is now seeking contri-

butions for a legal defense of the public against the "deal" cut in federal court between Edison and the PUC.

The flag we fly is in defense of rights for individuals, not giant, multinational corporations. Please help us keep up our fight by making as generous a tax deductible contribution as you can. In these difficult times, our defense of your rights depends on your support.

## Citizen Volunteers Five-for-Five - Campaign Reform Initiative Succeeds in Two More California Cities

Citizens celebrated two more victories for clean government at the polls in March 2001 with the passage in Claremont (55%) and Pasadena (60%) of the state's strongest anti-kickback protections - the Oaks Project's Taxpayer Protection Amendment. This gives FICR's citizen volunteers a five-for-five record in their fight for local campaign reform. Voters in the cities of Santa Monica, San Francisco and Vista embraced similar reforms this November. The sweeping success of these measures demonstrates the desire of voters statewide to reduce the influence of money in politics.

"Claremont residents join voters in four other California cities that won't wait any longer for real reform," said Oaks Project volunteer organizer, Susan Castagnetto. "It's time Sacramento politicians hear the public's desire for clean government and model a statewide bill on these local reforms."

With the unprecedented success of these campaigns over the last year, the Oaks will work in the future to replicate the reform in as many local venues as possible. Citizens in cities

across California have already requested information and guidance as to how to adopt the reform in their town.

City officials initiate court challenge to sink popular measures

Indicative of an entrenched 'business-as-usual' attitude, public officials have not been as eager as citizens to implement this voter-approved reform. City council members in Santa Monica, Pasadena and Claremont have all publicly expressed their distaste for a law which seeks to restrict their ability to personally benefit from holding public office.

The City of Santa Monica's effort to block the law took a bizarre turn when city officials authorized the use of taxpayer dollars to sue itself in order to block the measure

A judge agreed to hear the Oaks Project's plea that the lawsuit against Santa Monica's voter-approved reform initiative is collusive and should be dismissed. The Oaks Project is intervening in the unusual lawsuit, filed by the City of Santa Monica against its own City Clerk, because it believes the City Council's opposition toward the law will prevent the measure from

receiving a strong defense in court. Santa Monica's recent court filings in 'defense' of the measure - where the City argues the court must gut the measure in order to keep it on the books - have substantiated the need for intervention by the Oaks Project.

Claremont and Pasadena also tried to intervene in the case to surreptitiously kill the law in their towns. However, the judge denied their requests.

San Francisco enforces law

In contrast to other cities' efforts to avoid the law, San Francisco is the only city which has not attempted to challenge the measure in court. Oaks volunteers met with members of the City's Ethics Commission to discuss facilitating enforcement of the initiative and the law went into full effect in San Francisco on July 13, 2001.

Oaks Project volunteers will continue to be vigilant to ensure the public's voice is heard and real reform is implemented across California. For more information on how to join their fight, call 310-392-0522, ext. 311 or visit [www.oaksproject.org](http://www.oaksproject.org)

### OAKS PROJECT VOLUNTEERS

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Californians joined FICR's online "Blackout Brigade" to participate in a variety of actions to protect their collective pocketbooks against the utilities, energy companies and the politicians who wanted to saddle Californians with the bill for their deregulation mistakes. These citizens received regular email Action Alerts and signed an online petition to protest the ratepayer bailout of Edison, displaying a groundswell of opposition. Over 30,000 signatures were hand-delivered, with full media coverage, by Oaks volunteers to Governor Davis' office in the final weeks of the legislative session.

The Oaks' grassroots efforts culminated in volunteers storming the Capitol and bringing the citizens' lobby directly to Sacramento during the last three weeks of the legislative session.

In August, Oaks Project volunteer citizen organizers set up the "War Room" near the State Capitol to fight the passage of a ratepayer bailout of Southern California Edison. The room was the resource center for the volunteers, with ready-made infor-

mational literature and vote tracking sheets for each lawmaker. The Oaks Project and Blackout Brigade volunteers became a visible and powerful presence in Sacramento, aided by yellow and black "Bailout Watchdog" umbrellas worn by this citizen lobbying force.

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For three weeks, the Bailout Watchdogs visited legislators, attended hearings, staged press conferences, and even filmed in the Capitol "lobbying pit." Legislators and Edison lobbyists, not used to public exposure, were noticeably shaken up by the volunteers filming the deal-making.

Outside legislative committee rooms, Oaks volunteers sang "bailout carols"

around the theme of "It's Christmas in August for Edison." Those attending the hearings were revelled with volunteer-crafted songs such as "Stop the Bailout" (to the tune of Deck the Halls) and "Bailout, Bailout, Bailout" (to the tune of the Hanukkah Dreidel song).

Even through the tragedy of the September 11th terrorist attacks, Oaks volunteers kept up the opposition to the Edison bailout. The energy lobbyists didn't go home and neither did the citizen lobbyists. In the end, the Bailout Watchdogs were victorious when the Senate refused to vote on bailout legislation, even with the threat of Governor Davis forcing them back to Sacramento for another emergency session. The Oaks Project volunteers' dedication was instrumental in blocking legislation that would have made ratepayers pay for the deregulation mistakes of Edison for years to come. (See related article for information on a federal district court's subsequent approval of a PUC/Edison settlement agreement to bail out Edison.)

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Edison's federal lawsuit against the regulatory body, which will force Edison customers to pay off at least \$3.3 billion of the company's debts. FTCR has actively opposed the back-room settlement deal and is working to invalidate the PUC's actions.

#### FTCR wins public power

As protection against the "blackout blackmail," FTCR advocated a state public power agency, similar to the successful systems in Los Angeles and Sacramento. FTCR lobbied the legislature and conducted a public education campaign in support of such an agency. Governor Davis signed the public power bill, authored by Senate Leader John Burton. FTCR will monitor the development of this new public agency as it builds not-for-profit power plants and implements energy efficiency programs.

#### FTCR exposes phony "crisis"

Throughout the year, FTCR published *Bailout Watch*, a semi-weekly e-mail and fax newsletter providing information and analysis to reporters, state officials, and thousands of other concerned citizens. In all, 86 issues have been produced, with more to come, as consumers endure the energy crisis and its legacy. They are all available online at <http://www.consumer-watchdog.org/utilities/st/>.

A careful analysis of the timing of power outages, detailed in a March 2001 FTCR report entitled "The Manufactured Energy Crisis," shows that the power companies refused to provide power at crucial moments, even when demand for power was relatively low, forcing grid operators to turn out the lights for millions of Californians. The blackouts came on the eve of important state decisions regarding the payment of generators.

When state officials met the generators' demands, the lights came back on. The report can be downloaded at [www.consumerwatchdog.org/utilities/bailout21.pdf](http://www.consumerwatchdog.org/utilities/bailout21.pdf).

#### FTCR pushes alternatives to rate hikes

Unless the Governor and PUC take action, high electric rates will be the enduring legacy of the manufactured deregulation crisis. In response to power companies' pricing abuses, the PUC raised rates by up to 46%, forcing Californians to pay the highest rates in the country. Throughout the year, FTCR advocates have argued against the increases on the grounds that they only served to reward the greed of the power companies. As an alternative to the rate hikes, FTCR sponsored SB 1X (Soto), which would impose a windfall profits tax on price gouging energy companies. The bill passed through Senate and Assembly committees before it was defeated on the Assembly floor. FTCR will continue to pursue this and other remedies for California's disastrous deregulation experiment in 2002.

FTCR will also continue to push for the renegotiation of more than \$40 billion worth of long-term power contracts signed by the Davis administration and energy companies. Consumer advocates and some state leaders, including Treasurer Phil Angelides and Senate Leader John Burton called on Governor Davis to take over power plants that companies were taking off line in their effort to increase profits. Instead Davis signed contracts that lock in the crisis for years to come. Recently, however, public officials have taken up FTCR's call to reform the contracts, which the organization considers to be overpriced by at least \$20 billion.

## FTCR Files Lawsuit to Remove Commissioner Duque From PUC for Conflict of Interest

With official permission from the Attorney General, FTCR filed a lawsuit in San Francisco Superior Court earlier this year in the name of the People of the State of California to remove PUC Commissioner Henry Duque from office. The complaint alleges that Mr. Duque owned stock in a company regulated by the PUC, Nextel Communications, one of the nation's largest provider of wireless communications service, while simultaneously serving as a PUC commissioner—a violation of a state law that

prohibits commissioners from having such interests.

In August, the court denied FTCR's motion for summary judgment and ruled that section 303(a) of the Public Utilities Code does not allow for removal from office when a Commissioner voluntarily obtains stock in a PUC-regulated entity. Commissioner Duque has argued that he did not voluntarily purchase the stock because his stockbroker purchased it on his behalf without his prior knowledge. Under the law, if a

financial interest is obtained involuntarily, such as by inheritance, a commissioner's office is rendered vacant unless he gets rid of it in a reasonable time. Mr. Duque held his Nextel stock for over 15 months while serving as a PUC commissioner. Unless Mr. Duque resigns his post, the case will proceed to trial in December to determine whether the stock purchase was voluntary or involuntary and whether Mr. Duque disposed of his interest within a reasonable time.



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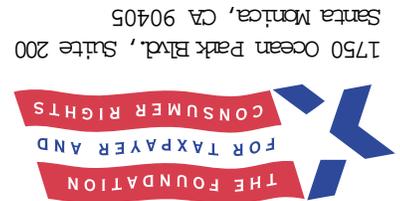
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