



The aim of the Foundation is to provide an effective voice for taxpayers and consumers in an era when special interests dominate public discourse, government and politics. To this end, the Foundation has assembled some of the nation's leading and most effective public interest lawyers, advocates, strategists and organizers under one roof, working on the issues that affect people every day...

About The Foundation

The Foundation for Taxpayer and Consumer Rights (FTCR) is a tax-exempt, nonprofit organization deploying an in-house team of public interest lawyers, policy experts, strategists, public educators, and grassroots activists to advance and protect the interests of consumers and taxpayers. Founded in 1985 and led by nationally known consumer activist and attorney Harvey Rosenfield, FTCR works with public interest groups in Washington, D.C., and throughout the nation. FTCR's day-in, day-out consumer protection and advocacy work embraces a wide variety of issues affecting the daily lives and pocketbooks of millions of Americans.

CURRENT FOUNDATION PROJECTS INCLUDE:

- **Consumers for Quality Care (CQC)** promotes and protects high quality health care in today's rapidly changing, complex, managed care environment. CQC has fought to expand and safeguard patients' rights; educated the public about medical negligence; and launched a national campaign for HMO accountability in the courts. CQC pioneered the "casualty of the day" campaigns to teach about the plight of patients injured by HMO medicine and malpractice. The watchdog group also provided the research and background for the 1996 California ballot measure Proposition 216, the Patient Protection Act, dramatically increasing consumer sensitivity to health care issues.
- **Proposition 103 Enforcement Project** keeps a watchful eye on national insurance prices and practices that affect the pocketbooks of consumers and businesses alike. It promotes full implementation of the landmark insurance reform ballot measure approved by California voters in 1988; a measure that has already delivered more than \$1.2 billion in premium refunds and saved individuals and businesses another \$14.7 billion by blocking unjustified premium increases in auto, home and business insurance. Through 103's mandate for consumer participation, FTCR attorneys and experts successfully challenge unfair insurance premiums and practices.
- **Center for Technology and Personal Privacy (CTPP)** advocates on behalf of the privacy of taxpayers and consumers in a rapidly changing, technologically revolutionary time. The Center's premise is simple: the technological ability to do something is not the same as whether it should be done. By increasing public awareness of the challenges that lie ahead and prodding public officials into confronting these challenges now, when legislation can still be effective, the Center serves as a strong voice on behalf of such traditional values as personal dignity.
- **Citizens against Utility Taxes (CUT)** scrutinizes the "deregulation" plans of electric utilities. Under "deregulation" legislation proposals now under consideration throughout the nation, utility companies will pay off bad energy investments by placing a new utility bail-out tax on small business owners' and consumers' monthly utility bills. To disguise this new tax, the utility companies are promoting fake residential and small business rate reductions. CUT works to educate the public on utility issues. It sponsors legislation to ensure that consumers receive the benefits of deregulation. In 1998, it sponsored a ballot measure in California to prevent a ratepayer bailout of private utility companies.



■ **Citizens for Corporate Accountability and Individual**

Rights (CCAIR) concentrates on the third branch of government — the judicial branch. This is the only branch of government in which the average American can still take on the powerful, where truth and justice still have a fair chance over money and influence. The rights of injured consumers to force changes in dangerous corporate behavior is currently jeopardized by special interest-led efforts to limit state and federal laws that allow consumers access to the courts. CCAIR educates the public about the important role of the civil justice system. It promotes balancing reforms that enhance public access and corporate accountability.

■ **The Oaks Project** devotes itself to public participation and democracy. Public advocacy groups, however skilled, cannot prevail merely by virtue of the merit of their positions. Democracy ultimately depends on active public participation. Unfortunately, many citizens are alienated from the public policy process today. To give citizens a chance to learn how to make their democracy work for them, the Oaks Project enlists volunteers — “citizens as sturdy as oaks” — in a long-term educational and participatory effort. The Oaks Project sponsors public forums that recruit, train and empower citizen volunteers to become community leaders who will, in turn, recruit others into the democratic process. Their skills are honed by working with experienced FTCR advocates.

■ **The Bills Project** directs its energy towards every consumer who has a bill to pay as well as the biggest bill payer of all — the Federal Government. This year, the Bills Project will publish a ten-year study of incomprehensible, useless and erroneous bills issued by credit card companies, hospitals, banks, utility services, and grocery stores. The report should serve as a landmark guide for bill-payer and bill-issuer alike. Accompanying the study will be model “Truth in Billing” legislation for federal and state lawmakers.



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About The Foundation Staff

THE FOUNDATION FOR TAXPAYER AND CONSUMER RIGHTS SENIOR STAFF

■ **Harvey Rosenfield**, the Foundation's President and founder, is one of the nation's foremost consumer advocates. A public interest lawyer, Rosenfield authored Proposition 103 and organized the campaign which led to its passage by California voters in 1988 despite over \$80 million spent in opposition (still a record). He has co-authored groundbreaking initiatives on HMO reform (Proposition 216, November 1996) and, most recently, on utility rate deregulation (Proposition 9, 1998) as well as lead the campaigns for their enactment. In 1996, he organized successful grassroots opposition to three anti-consumer "tort reform" measures on the California ballot.

Rosenfield graduated magna cum laude from Amherst College in 1974 and obtained a joint law and masters degree in foreign service from Georgetown University in 1979. He worked for the Federal Trade Commission, the U.S. Congress and a private law firm in Washington before serving as a staff attorney for Ralph Nader's Public Citizen Congress Watch between 1979 and 1981. After three years as Program Director for the California Public Interest Research Group (CalPIRG), Rosenfield established the Foundation in 1985.

■ **Gina Calabrese**, the Foundation's Litigation Director and head of the Proposition 103 Enforcement Project, is a national expert on insurance regulatory and rate matters. Since 1994, Calabrese has led the effort to protect California insurance reform, Proposition 103, in the courts and currently directs the Project's legal and regulatory efforts. As lead counsel for the Project, Calabrese recently persuaded an administrative law judge to reject the earthquake insurance rates proposed by the California Earthquake Authority as based upon flawed science — a landmark victory for potential earthquake victims throughout the nation. She has also defeated legislative efforts to thwart key consumer protection laws, including reforms to make auto insurance more affordable to the poor.

Calabrese earned her BA from Columbia University in 1987 and her law degree from Fordham in 1991. Prior to joining the Foundation, she was an associate attorney at Adams, Duque & Hazeltine.

■ **Jamie Court**, the Foundation's Advocacy Director and head of Consumers for Quality Care, is a recognized health care expert and consumer advocate named to the nation's top 50 "Who's Who" in health care by the Los Angeles Business Journal. Court orchestrated the national campaign for legislation to hold HMOs liable for profit-based decisions which lead to death and injury. In addition to spearheading CQC's long list of successes, Court served as Campaign Manager for

Prop. 216, an HMO reform measure on the 1996 ballot. Prior to founding CQC, Court was an advocate for the homeless, serving as Associate Director of Harbor Interfaith Shelter. He was a lobbyist and organizer for JERICHO, a faith based nonprofit advocating basic services for the needy. He has also worked on the grassroots campaign to enforce Prop. 103.

Court received his BA from Pomona College in 1989. He is a frequent media contributor and commentator on consumer issues.

■ **Joanne Doroshov**, head of the CCAIR, is one of the nation's foremost experts on civil justice issues. She is the author of *Safeguarding Democracy: The Case for the Civil Jury* and served as a member of the Brookings Institute/American Bar Association Advisory Committee on the Future of the Civil Jury. She is the author of numerous published reports, including *Goliath: Lloyd's of London in the United States*.

Doroshov was also one of the producers of the Academy Award-winning documentary, *The Panama Deception*, and was a producer for the Emmy-winning television show, "TV Nation."

A graduate of the Temple Law School, Doroshov was lead counsel for TMI Alert, a community group working to block the re-start of the Three Mile Island nuclear power facility. She later became director of the Bhopal Justice Campaign, where she organized community groups to support the victims of the Bhopal gas disaster.

■ **Bill Gallagher**, Foundation Organizing Director and head of The Oaks Project, is an expert in community organizing and grassroots political action. He began his organizing career as a staff person for the group founded by Harvey Rosenfield and Ralph Nader to enact Proposition 103. During those years, Bill was responsible for the training and development of hundreds of interns and volunteers working in local communities. Auto insurance, health care and fair taxation are among the issues that Gallagher has pursued through statewide initiatives, neighborhood organizing and creative press strategies.

In 1994, Gallagher went to work for a large political consulting firm based in the San Francisco Bay Area. In 1996, he accepted an offer to help Connecticut Citizen Action revamp both its field operations and its membership base. Within nine months, he brought in 20,000 new dues-paying members and initiated a successful neighborhood outreach program. He also implemented a public education and media campaign that helped bring to light outrageous safety violations occurring at Connecticut's Millstone nuclear plant.



He returned to the Foundation in the fall of 1996 as Volunteer Coordinator for California's HMO reform measure, Proposition 216. Gallagher received his BA from the University of California at Berkeley.

■ **Ed Howard**, the Foundation's Senior Counsel and Director of Program Development also directs the Foundation's Center for Technology and Personal Privacy. Howard is one of the nation's foremost public interest attorneys and joins the Foundation from the 25-year-old Center for Law in the Public Interest, where he served as Executive Director and senior staff attorney. Howard's record of precedent-setting public interest victories is wide-ranging, embracing insurance reform, civil rights, environmental and land use law as well as consumer protection cases.

Howard serves on the State Bar's Committee on Consumer Advocacy and the California Legislature's Committee on Personal Privacy. Howard is an expert on the initiative process and co-author of "A Structural Theory of the Initiative Process in California." He speaks frequently on insurance, health care reform and personal privacy issues.

Howard received his BA from The George Washington University in 1986 and his law degree from Loyola Law School in 1990, where he won prizes in labor and constitutional law.



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Overbilling Protection

THE BILLS PROJECT

The advent of computers was expected to improve the quality of economic transactions. But there is a dark cloud to the computer silver lining. Billing mistakes and abuse are a multi-billion dollar problem for consumers and businesses alike. The frustration of dealing with incorrect or incomprehensible bills is magnified by the time and expense required to contact a bill-issuer and resolve the problem.

The Bills Project has conducted an ongoing national survey of billing problems since 1985. Its mission is to examine mis-billing across all economic sectors and to develop and promote fair billing practices — from bill clarity to dispute resolution.

Misbilling encompasses many different types of billing errors. It includes phony charges; charges for goods and services ordered but never received; overcharges; padded bills; tabulation and calculation errors; failure to issue credits for payments already made; bill processing charges and improper timing of bills.

Each year, millions of bills are issued to consumers that contain erroneous and fraudulent charges. Many of these overcharges and phony charges remain undetected because they are buried in inscrutable, indecipherable bills that confuse and

overwhelm consumers. If consumers *do* figure out the problems in their bills and ask for a correction, they are often told by the bill issuer that there is no mistake. Consumers who persist in seeking a correction are frequently reported to credit and collection agencies.

In an increasingly complex marketplace in which electronic transactions are replacing traditional forms of commerce, new consumer protection laws are crucial. A report by the Bills Project, “We All Pay the Price: The Prevalence of Misbilling in America,” documents the breadth of the problem and proposes a model “Truth in Billing Act.” This legislation will ensure that consumers receive accurate, timely and understandable bills. The legislation also provides procedures that both consumers and bill-issuers must follow to resolve billing errors.

Upon publication of the report, the Bills Project will work with policymakers and the public to promote better billing practices and protections.



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Citizen Activism

THE OAKS PROJECT

A healthy, vibrant democracy depends on active public participation. Unfortunately, as evidenced by plummeting voter turnout and widespread cynicism, many citizens are disappointed in and disenfranchised by the political process today. This is the overriding dilemma of our age.

We can respond to this crisis in democracy by banding together — bringing our individual and collective power to bear through a movement that lasts beyond Election Day. This movement must be broad-based. It must illuminate the connections among particular issues of the day and long-term systemic problems.

The Oaks Project was activated in early 1997, advised and inspired by consumer advocate Ralph Nader. Under the aegis of the FTCCR, it enlists volunteers — “citizens as sturdy as oaks” — in a long-term effort in the State of California to renew our civic culture. It seeks no less than to create a governing system more responsive to and controlled by the governed.

The Oaks Project promotes citizen involvement in civic life and the political process. The objective is to transform a sense of powerlessness, to which many in our society are resigned, into a sense of power through the development of personal and organizational skills and the use of systemic “tools of democracy.”

The philosophy of the Oaks Project asserts that the major “players” in our political economy — those special interests that

largely control our institutions — will continue their dominance so long as there is no authentic and long-lasting grassroots movement to counteract them. Principles of democracy require more direct participation by citizens. A real, civic democracy depends not simply on the elected leadership of a representative structure, but also on an active and engaged citizenry. The Oaks Project takes on this responsibility to restore our democracy by empowering our citizens; those who, in the words of Adlai Stevenson, are both “law giver” and the “law abiding.”

The Project directs its resources towards the training of effective and active citizen-leaders at the grassroots. In California, the nation’s most populous state, it aims to recruit 1,000 Oaks from a diversity of backgrounds and with different levels of experience to participate in this social and political movement. Each Oak commits to fulfill a set of concrete requirements geared towards building citizen power.

Participants receive invaluable experience and skills. They learn about law and government, psychology and economics, mass media, history and technology, public systems and corporate structures. The Project trains citizens to use the available tools of democracy and to become civic leaders through classroom-style workshops and actual “hands on” training. It then turns that training into tools to build a powerful democracy that works for everyone.



The nonpartisan Oaks will form a powerful citizen force, challenging the public to rebuild a democracy subverted for decades by special interests. A statewide community of like-minded women and men, the California Oaks will become standard bearers for corruption-free political activism, and achieve what no other political grouping in the state now can: tangible good for millions of ordinary people.



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Corporate Accountability

CITIZENS FOR CORPORATE ACCOUNTABILITY AND INDIVIDUAL RIGHTS (CCAIR)

For over a decade, insurance companies, chemical conglomerates, the tobacco industry, Wall Street and other interest groups have pressured state and federal lawmakers to shield them from liability for their misconduct. But “tort reform,” the PR euphemism, severely restricts the right of injured consumers to obtain just compensation from culpable corporations. It weakens the legal system’s power to deter corporate wrongdoing by eroding the most effective tool individuals have to hold corporations accountable — taking them to court.

The court system is the only remaining branch of government in which an average American can take on the wealthy and the powerful, where truth and justice still have a fair chance over money and influence. It is thus not surprising that wrongdoers want to eliminate the right of citizens to hire a lawyer, go to court and punish companies that maim and kill with the only kind of lesson a wrongdoer understands: a substantial financial whack at the bottom line, in the form of a damage award.

CCAIR is a national organization dedicated to raising public awareness of the risks inherent in tort reform, stopping or repealing some proposals, and instilling a new appreciation for this country’s civil justice system.

CCAIR was founded to counter the multimillion dollar propaganda and legal barrage unleashed by such well-organized industry-backed research, public relations and legal advocacy groups as the American Tort Reform Association (ATRA), Citizens for a Sound Economy, the Civil Justice Reform Group, and others operating through conservative think tanks like the Manhattan and Hudson institutes and state-level front groups such as “Citizens Against Lawsuit Abuse.”

CCAIR is headed by former Public Citizen and Ralph Nader staff attorney Joanne Doroshow. It has received key support from Ralph Nader and seed money from filmmaker Michael Moore. CCAIR’s Board of Senior Advisors include representatives from major consumer organizations, churches, labor unions, and groups that focus on seniors, children and women. The public little understands who is hurt and who benefits from so-called tort reform. In essence, the impact of tort reform on corporate responsibility and the rights of individuals with legitimate lawsuits to hold companies accountable has been buried beneath a barrage of lawyer bashing.

The organization’s goals include national networking, development of effective educational materials on the civil justice system, model legislation, and research support for lobbying in Washington, D.C. The organization plans a sophisticated, full-scale free media campaign to alter public perceptions of “tort reform” and enhance support for the civil justice system.

- Teaching torts: The Project will assemble a speakers bureau of victims, jurors, and civil justice advocates (including retired judges) to speak out in public forums on the virtues of the civil justice system — and to debunk myths about it. The speakers bureau will draw media attention as a “civic revival” of the defense of individuals’ rights.
- Research and reports: CCAIR will produce periodic research and reports for the public, the media, public officials and schools on the importance of the civil justice system and the pecuniary interests of those corporations who seek to limit consumers’ rights.



- “Re:Tort” newsletter: The Project will produce a regular newsletter on the corporations behind tort reform and specific instances of wrongdoing will be produced and distributed to the public, media and opinion leaders. This “who’s who of wrongdoers behind tort reform” will expose the real agenda and strategies of tort deformers.
- Tort curricula: Materials will be developed for high schools and universities dealing with the history and importance of the civil jury and the Seventh Amendment and how the common law of torts reflects and renews legal and ethical traditions that have deterred unsafe practices, disclosed potential hazards to the public, and bred a respect for human life that distinguishes our country from others. Law schools and law-related education groups will be encouraged to publish and distribute these materials, and to enlarge the information available in libraries and on the Internet.
- Internet server for tort defenders and the media: Defenders of consumers’ rights often have too little information to act as effectively as corporations which spend tens of millions annually to propagandize. The Project will create an Internet server for civil justice advocates across the nation that shares the most current information on tort reform campaigns — facts about the substance of proposals and the special interests who are behind them.
- Media education: The Project will work with reporters and editorial writers to develop a “tort beat.” Too few reporters understand and cover tort issues today. CCAIR will also frequently “fax blast” press releases to alert these reporters to the tort system’s benefits, detail assaults on the system, and provide background on the corporations funding the attacks.
- Jury reform: CCAIR will organize an Association of Civil Jurors equipped to give interviews, speak in public forums, and generally project a new presence in the conflict over tort reform.



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Electric Deregulation

CITIZENS AGAINST UTILITY TAXES (CUT)

Nationally, the rush to deregulate important industries has proven to be a mixed experience for consumers and taxpayers. As structured by lobbyists and politicians, “free market” competition in telephone, cable television, air transportation and natural gas has often led to higher prices, consumer and marketplace confusion, and poorer service.

The deregulation of electric utility companies threatens to become a major disaster for residential and small business ratepayers. As promoted by the utility industry and big business in virtually every state in the nation, deregulation proposals uniformly include multibillion dollar corporate welfare schemes in which consumers will be forced to bail out the mistakes and mismanagement of utility monopolies. They also exclude meaningful protections against fraudulent marketing practices.

On January 1, 1998, California’s electric utilities were allegedly “deregulated.” The 1996 legislation that ordered deregulation promised big savings and competitive choices. However, the law only benefits a few big corporate utility customers; residential and small business ratepayers will be penalized. Similar legislation has been proposed by utility companies in other states.

For consumers, a truly deregulated climate should provide vigorous competition leading to lower prices. The California deregulation/utility bailout law is an excellent example of what happens when lobbyists for utility companies and big business are not met with truly effective counterbalancing pressure from the public.

The 1996 California legislation freezes all residential and small business utility rates for 4 years at June 1996 levels, which were approximately 50% above the national average. The freeze forces ratepayers to pay off the costs of so-called “stranded assets” — nuclear power plants and other inefficient, uneconomic investments that would otherwise force the utility companies to keep their rates uncompetitively high under deregulation. The

\$30 billion in “stranded assets” are mostly nuclear power plants that no one wanted except for nuclear manufacturers General Electric and Westinghouse, and bedazzled utility executives, who ordered them despite widespread public opposition and warnings that nuclear power would never be economical or safe.

Legislators packaged the deregulation bill to include a rate “rollback” of 10% off rates that are frozen at levels 50% higher than they should be. Moreover, under legislation subsequently approved by the state lawmakers, consumers are required to guarantee and pay for new “bailout bonds” that will repay the rate cut, with interest.

Higher prices aren’t the only problem with the 1996 deregulation law. Under the new law, anyone can offer to provide energy suppliers with billing services. The legislation provides few protections for consumers; yet if consumers don’t pay the bill as they are told, their electricity can be shut off. Worse, these billing firms have the unfettered right to obtain, analyze and then sell information about private consumption patterns and equipment to the highest bidder. Finally, the California Legislature gave the California Public Utilities Commission authority to undertake a \$90 million advertising campaign on behalf of deregulation — paid for by ratepayers.

Citizens against Utility Taxes (CUT), established in 1997 and operating under the aegis of the Foundation, educates the public about electric deregulation. The project’s goal is to protect residential and small business ratepayers against the inequities of the deregulation legislation under consideration throughout the nation. Full disclosure of charges, protection of privacy and a ban on forced ratepayer bailouts and subsidies for utility companies are key reforms.

Another goal is to establish a non-governmental, nonprofit, democratically elected and voluntarily-funded Consumer



Utility Board (CUB) to protect ratepayer interests. The CUB would solicit ratepayers to join by utilizing an informational insert which utility companies would be required to enclose in their utility bills. With modest dues, CUB would hire attorneys and other experts to represent the public interest in the implementation of deregulation.

To protect California residential and small business ratepayers against the unfair bailout tax, CUT coauthored Proposition 9, a citizen-sponsored initiative which qualified for the November 1998 ballot in California.



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CENTER FOR TECHNOLOGY AND PERSONAL PRIVACY (CTPP)

- You walk up to an ATM and it recognizes your face.
- You arrive unconscious at the hospital and all your medical history is stored on a strip on the back of a card in your wallet, downloaded from massive, central computers storing all your medical data, from your first childhood cold to date.
- Every second, thousands of databases are transferring your most personal financial information — unlisted phone numbers, individual purchases, air trips, credit purchases, Social Security Numbers — to thousands of other data bases, for purposes unknown.
- Loans and credit are no longer granted by human beings evaluating your credit history but by powerful computers using complex “creditworthiness” algorithms.
- Insurers require a sample of your DNA before issuing life, health or disability insurance, to check for the likelihood of genetic-based diseases later in your life. And this information is now routinely accessed by insurers, employers, and creditors, and is available for everyone to see on-line, with a few clicks of a mouse.

This isn't science fiction — it is science fact. These business practices are either already technologically feasible, and on the cusp of widespread use, or commonplace. As even more people have access to these technologies, little will remain “private” about our private lives.

The Foundation's Center for Technology and Personal Privacy was founded to advocate on behalf of the privacy of taxpayers and consumers in a rapidly changing, technologically revolutionary time. The Center's premise is simple: the technological ability to do something is not justification for doing it.

During the last eight years, we have gone from a society where PCs were rare to one where they are a fixture, like a phone or a calculator, in every home and office. During this same brief period, the explosion of the internet as a means of communication and of commerce has opened both amazing new opportunities for consumers as well as serious dangers. Whatever the new technology, one theme has remained constant. It has all happened so fast that we as a people have been unable to react fast

enough and ask the question “is this a good thing?”

Before the computer revolution in the last decade, the consequence of an invasion of your privacy by someone who, for example, steals your Social Security number, was relatively easy to fix. Not all of your records (deeds to your home, arrest records, for example) had been digitized, so even if a thief got some of your information, he or she couldn't change all of your records.

Now, so-called “identity thieves” can alter everything, from creating a false arrest record to opening up charge accounts all over the country in your name. And now, because computers make instant credit so easy, it is also easier for the thief to steal thousands of dollars from you in a few hours.

To add insult to injury, because there are so many data-bases that are always “talking” to one another, it is extremely difficult and time-consuming to clean up your records.

Meanwhile, you can't get a job because employers check credit reports; you can't get insurance because insurers now check them too, and the bill collectors just won't stop calling and the police refuse to help, siding with vendors against you.

At the same time, the potential upsides for these technologies are as great as their disadvantages. Genetic engineering permits human cloning, as well as the eradication of devastating genetic diseases. Internet scams pose a huge threat to innocent consumers, but the Net is the single greatest comparison-shopping tool ever invented for consumers. Biometric identification presents the possibility of a new mind boggling form of identity theft, but also provides a foolproof way to avoid using the already compromised identifiers like SSN, or birth date.

The rapid pace of technological change compared to the relatively slow pace of legislation means that confronting the challenges of tomorrow must be confronted today, before the new technologies are fully in use, before the proverbial genie is irrevocably out of the bottle.

This is the Center's role: to increase public awareness of the challenges that lie ahead, to prod public officials into confronting these challenges now, when legislation can still be effective, and to be a strong voice on behalf of such traditional



values as personal dignity as we advance into the next century; as we must advance.

Heading the Center is the Foundation's Senior Counsel and Director of Program Development, Ed Howard. Howard is routinely consulted by decision makers and media throughout the nation on technology and personal privacy issues. While Executive Director at the Center for Law in the Public Interest, Howard spearheaded litigation efforts against the "Big Three" credit reporting agencies for their failure to curb identity theft. One such case resulted in a then-record setting verdict of \$200,000 for the victim.

Similarly, Howard crafted the public education efforts that have led to innumerable stories about "identity theft," on all three major networks and hundreds of publications. He also drafted California's sweeping reform of credit bureau practices, which went into effect in 1998, and crafted the legislative strategy that led to its enactment. The law has since been copied in 15 states. His ability to form a coalition of consumer and business groups was featured in the *Wall Street Journal*.



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Insurance Reform

PROPOSITION 103 ENFORCEMENT PROJECT

What is Proposition 103?

California's Proposition 103 was a landmark insurance reform proposition approved by California voters in 1988. It was written and sponsored by Harvey Rosenfield, President of the Foundation for Taxpayer and Consumer Rights. Backed by consumer advocate Ralph Nader and hundreds of consumer and community grassroots organizations, Proposition 103 called for an end to skyrocketing auto, homeowners and business insurance rates and required a 20% discount to motorists with good driving records. It forced insurance companies to end a practice called "redlining" — charging higher rates to people in poor neighborhoods.

Insurance companies unsuccessfully opposed Proposition 103, spending a record-breaking \$80 million trying to defeat it. Insurance companies subsequently sued to block the initiative, however, the United States and California Supreme Courts have rejected the industry's arguments and Proposition 103 is the law today. Proposition 103 rewrote California's insurance laws to do the following:


- Force insurance companies to provide refunds for charging excessive rates. Over \$1.2 billion has been repaid to consumers so far.
- Provide for mandatory 20% discounts for "good drivers."
- Require insurance companies to base rates primarily upon a driver's safety record, rather than where he or she lives.
- Provide for an elected insurance commissioner, rather than one appointed by the governor (and traditionally an executive from the insurance industry).
- Require insurance companies to open their books and obtain the "prior approval" of the insurance commissioner before raising rates.
- Make the state's antitrust and civil rights laws applicable to the insurance industry.
- Enable the public to directly challenge excessive rate requests and discriminatory practices by insurance companies.

Ten years after California voters approved Proposition 103, the measure still remains the subject of an all-out battle waged by insurance companies, primarily in the courts and in the state Legislature. While the campaign for the passage of Proposition

103 necessitated the creation of a grassroots political advocacy operation, the fight for its implementation requires the presence of committed, skillful and energetic public interest lawyers, actuaries and regulatory experts.

The Proposition 103 Enforcement Project

The Proposition 103 Enforcement Project watchdogs the implementation of Proposition 103 and monitors insurance prices and practices throughout the nation — core issues that affect the economy. Operating under the aegis of the Foundation and using 103's authority for consumer participation in insurance regulatory matters, Project attorneys and experts successfully challenge unfair insurance premiums and practices. The achievements of the Proposition 103 Enforcement Project team are as follows:

- Proposition 103 has saved California motorists an estimated \$14.7 billion by preventing unjustified rate increases. The savings do not include insurance rollbacks already paid to auto insurance policyholders. Under Proposition 103's authority, former Insurance Commissioner John Garamendi ordered a freeze on all rate increases for those insurance companies that refused to pay their Proposition 103 rollback. Other insurance companies were required to comply with stringent controls on rate increases, including limits on the pass-through of excess overhead and expenses. That regulatory action is responsible for California's remarkable turn around from out-of-control growth in insurance prices to modest reductions.
 - \$1.2 billion in Proposition 103 refunds have been paid to more than 7 million California policyholders. Among those companies that have voluntarily complied with the rollback are 10 major auto insurance companies.
 - Hearings requested by the Proposition 103 Enforcement Project have recently helped lead to an average 11% rate reduction for California Earthquake Authority policyholders.
 - By opposing a proposed 38% increase for Commercial Union Insurance Company's earthquake policyholders, the Project saved consumers \$621,612.
 - The Project successfully fought a request by SAFECO Insurance Company to raise its earthquake insurance rates by 44.56%, saving consumers \$13.2 million.
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- Due to public scrutiny and testimony given to legislators, the Project forced Commissioner Quackenbush to issue a bulletin he had suppressed for eight months compelling insurers to pay Northridge earthquake claims. The bulletin concluded that insurers were improperly relying on a narrow interpretation of a policy provision that requires policyholders to file claims within one year of an earthquake. Carriers were relying on the provisions to deny claims by earthquake victims who did not discover serious damage until more than one year after the 1994 earthquake.
- The Project successfully sued to overturn state laws which tampered with Proposition 103. In *Amwest v. Wilson*, the California Supreme Court unanimously agreed with the Project that a 1990 law exempting surety insurance from 103's rate and rollback requirements did "not further the purposes" of the initiative.
- The Project successfully sued in *Project v. Quackenbush* to overturn a 1993 law which reduced Proposition 103 refunds to policyholders. The insurance agent's lobby had sought the law to allow them to keep excess commissions on high rates later reduced by Proposition 103.
- The Project successfully sued to stop commissioner Quackenbush from allowing insurance companies to base auto rates on zip code, rather than a driver's safety record as required by Proposition 103.
- The Project has blocked repeated attempts by the legislature to repeal Proposition 103's good-driver provisions. Three attempts in the 1995-1996 legislative session to repeal 103's provision that auto insurance rates be based primarily on an insured's driving record failed after a year-long, intense public information and educational campaign by the Project.
- The Project successfully blocked insurance industry supported attempts in the legislature to repeal Proposition 103's reform that the insurance commissioner be elected by the voters.
- Project studies have exposed politicians who have accepted hundreds of thousands of dollars in campaign contributions from insurance companies and then supported insurance industry-backed legislation. These efforts have led to countless editorials opposing anti-consumer legislation, holding lawmakers accountable for their actions.



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CONSUMERS FOR QUALITY CARE (CQC)

Each year, medical negligence causes more deaths in the U.S. than highway accidents, crime and AIDS combined.

Wall Street-driven health maintenance organizations (HMOs) and other for-profit health care corporations are increasingly maximizing profits by limiting care — often putting profits before patients' health.

If you were shocked and appalled by so-called "drive-thru" baby deliveries, then you already know about CQC, which led the nationwide effort to ban it.

Politicians, state regulators and health care administrators who *should* act on a patient's behalf have, too often, turned a blind eye to many abuses because of the cash-clout and political influence of the medical-insurance lobby. Patients are left to fend for themselves when they are least able to.

Consumers for Quality Care (CQC) was established in 1994 to investigate and report publicly on the epidemic of medical malpractice and reckless corporate care-cutting by HMOs. CQC has worked diligently to become a nationally recognized, highly effective consumer watchdog group that:

1. champions greater accountability for cost-cutting HMOs and dangerous doctors;
2. preserves and expands the legal rights and remedies of consumers; and
3. protects high quality health care.

CQC works closely with advocates in many other states and has played a significant role in health care legislation in Washington, D.C. and throughout the nation. In 1996, CQC wrote and led the fight for Proposition 216, the HMO Patient Protection Act that has served as the model for nationwide "Patients' Bill of Rights" legislation.

CQC's goals for 1999 include supporting federal and state-based efforts to end an unintended loophole in a 1974 federal law — the Employee Retirement Income and Security Act or ERISA. The ERISA loophole prevents patients with employer-paid health care from obtaining damages against HMOs that deny them medically necessary treatment. Currently, no matter how outrageous the corporate conduct, or serious the consequence of the treatment denial, patients who receive their health care through their employers cannot hold their HMO accountable.

Recently, Texas became the first state in the nation to offer its citizens a way around ERISA by holding HMOs liable for medical negligence and poor quality of care, which in contrast to coverage employee-employer disputes, are not preempted by ERISA.

In 1998, CQC launched a national effort to encourage state legislatures, beginning with California, to adopt the Texas law. The organization is also working with a national group of physicians to expand the breadth of the coalition backing health care reform.

Also in 1998, CQC began a public interest HMO litigation program. An unfair business practice claim was filed in August 1998 against PacifiCare over its "economic profiling" of physicians — under which doctors are tracked, paid and fired based solely on the cost of their prescriptions without regard for how old or needy their patients are. A key CQC amicus brief resulted in a landmark California Court of Appeals decision that an HMO patient who claims fraud or misrepresentation is not limited to binding arbitration, but can pursue the claim in the open forum of a court (*Broughton v. CIGNA*).

Nationally, CQC faxes 1,000 legislators and opinion leaders a different picture and story of an "ERISA Casualty of the Day" during the Congressional session. CNN's Brooks Jackson reported, "Far more effective [than HMO industry ads] is this shoestring California consumer group: no ads, just a fax a day to keep the HMOs at bay. Featured daily: a 'Casualty of the Day'; emotional stories about alleged HMO victims, many deceased." ("[CNN Inside Politics](#)," July 23, 1998). In California, CQC is sponsoring a Texas-like HMO liability law. Another bill sponsored by CQC requires that an HMO cannot deny a patient doctor-recommended care unless an equally qualified doctor performs a physical exam.

The continuing battle for high quality health care requires the presence of committed, skillful, and energetic public interest lawyers, advocates, and experts. Working together over the years they have successfully achieved the following:

1997

- Passed legislation protecting seniors' long-term care insurance benefits by requiring that insurance companies offer a wide range of policies with full disclosure about each policy.
- Forced a 73% increase in the enforcement budget of California's HMO regulatory agency. Held up the confirmation of the state's HMO regulator until California Governor Wilson agreed to boost Department of Corporations \$8.9 million enforcement budget by another \$6.5 million.
- Guided HMO reform legislation through the California Legislature. CQC-sponsored Assembly Bill 794 (Figueroa) — prevents an HMO from denying a patient treatment



unless a qualified doctor has physically examined the patient and made a medical determination. The bill passed the State Assembly and State Senate, but was vetoed by Governor Wilson, on the grounds he had not yet finished a study of the problem. Efforts to promote AB 794 included a press campaign highlighting the plight of HMO victims who did not receive doctor-recommended treatment.

- Led a national media campaign against HMO bureaucrats' interference in the patient-doctor relationship, including making national news with a former HMO medical director's disclosure that she was promoted for denying a \$500,000 heart transplant recommended by a patient's cardiologist, even though the denial led to the patient's death.
- Forced Kaiser, the nation's largest HMO, to divest \$6 million in bonds from tobacco giant Phillip Morris.
- Exposed arbitration abuse at HMOs. Filed an amicus brief that led to a key California Supreme Court decision, *Engalla v. Permanente Medical Group*, permitting an injured consumer to opt out of binding arbitration if an HMO misrepresents its arbitration process.
- Forced California to demand modifications from HMOs seeking to merge. CQC opposed the PacifiCare and FHP merger, and pressured the state to demand an end to PacifiCare's exclusive contracts with medical groups. Also, CQC opposed the Health Systems International and Foundation Health merger and forced fair doctor reimbursement rates.
- Saved long-term care benefits for California seniors. Led a public campaign which prevented Insurance Commissioner Chuck Quackenbush from allowing insurance companies to sell insurance policies which disqualify the most common form of disability, inability to walk, from home care coverage.
- Organized the public to reverse 22-year limits in California on the legal rights of medical malpractice victims.
- Urged the Presidential Advisory Commission on Consumer Protection in Managed Care and California Governor Wilson's Managed Health Care Improvement Task Force to adopt stringent HMO reforms.

1996

- Forced PacifiCare to reverse its position and provide Varivax Vaccine and Hepatitis B Vaccine by leading a public campaign against PacifiCare for muzzling doctors' vaccine choices. The state of California forced PacifiCare to inform its customers about the availability of vaccines.
- Led an educational campaign about HMO Reform, Proposition 216 on the November 1996 California ballot,

after which public concern about health care doubled, according to polls.

- Exposed various managed care contracts and internal documents revealing the existence of gag orders, loyalty oaths, and the fact that financial incentives paid to HMO doctors for care denials are kept from patients.
- For two months, faxed daily the picture and story of a new HMO victim to the press and opinion leaders in order to raise awareness about HMO abuses and the need for reform — the "Casualty of the Day" campaign. A front-page story in the *New York Times* began by noting this effective tool: "When Californians lament 'the casualty of the day,' they are not referring to victims of gang violence, drug abuse or reckless driving. Rather, they are referring to people injured or mistreated by health maintenance organizations." (*New York Times*, "Stakes High as California Debates Ballot Issues to Rein in H.M.O.s," by Robert Pear, September 29, 1996, p. A1)
- Led doctors to burn their American Medical Association cards and boycott the AMA to protest the association's support for Medicare cuts that forced millions of seniors into HMOs.
- Defeated federal legislation sponsored by the medical insurance lobby to limit the rights of victims of medical malpractice and helped to prevent passage of Medicare cuts containing limitations on legal rights of consumers.

1994-5

- Exposed the cost-slashing in Kaiser Permanente's 1995-1997 Business Plan, including bonuses paid to doctors for rationing high cost drugs and limiting hospital admissions. Subsequently, Kaiser ended these practices.
- Led the nationwide campaign against eight-hour ("drive-thru") discharge for newborns. Sponsored legislation to establish a 48-hour floor on newborn discharges. CQC's release of documents — where the term "drive-thru delivery" was first coined — fueled the drive for national reform which was enacted by Congress.
- Led national media campaign to heighten awareness of medical malpractice.
- Defeated federal legislation backed by medical insurance lobby to limit rights of medical malpractice victims. For five months, faxed daily the story and picture of another injured patient to members of the U.S. Senate and the news media to promote patients' plight. CQC pioneered the use of the "casualty of the day" to dramatize the difficulties medical negligence victims face today — placing the face and story of a new medical malpractice victim in front of hundreds of opinion leaders across the nation every day for months at a time.

- The *Los Angeles Times* summarized CQC's work on the medical malpractice cap:
"Twenty years after the landmark law putting a monetary 'hard cap' on general damages for medical negligence took effect, the state's malpractice system is more controversial than ever. In recent months, Californians angry with the malpractice system have demonstrated in wheelchairs and on crutches, dumped manure at a congressman's office, testified against organized medicine at legislative hearings in Sacramento and stuffed photos and case histories into a coffin and delivered them to a senator's office....So many people claim to be victims of California malpractice law that a Los Angeles consumer group, Consumers for Quality Care, began a 'casualty of the day' campaign in April that involved releasing a case study each workday that detailed a medical mistake and a person's unhappy brush with the legal system. The campaign lasted until August, stopping only when the AMA-backed federal legislation failed." (*Los Angeles Times*, "Controversy Malpractice Grows Over Cap" by Doug Shuit, January 29, 1996, p. A3)
- Promoted greater state oversight of the medical profession and educated public about the faulty national medical board system. Sponsored state legislation establishing a public member majority on the doctor-run state Medical Board of California. The bill passed the State Assembly but failed in the Senate.

CQC will continue to be a watchdog for patients and to educate the public and opinion leaders about threats to health quality. CQC will also continue to challenge HMO profiteering, work to end corporate interference in the doctor-patient relationship, establish public utility-like controls over the HMO industry, and promote reforms that will protect nonprofit medical institutions from the greed of Wall Street-driven managed care.



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