



Ballot Bullies





Photo by Pandora Young

Ballot Bullies: Why Are Big Tobacco, Pharma and Plastic Doubling Down in California's Election?

By Capital & Main Staff

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Much will be written about this tumultuous election year but when the dust settles after November 8, voters in some states may discover that candidate personalities will have mattered less than the laws they themselves passed (or rejected) in public referendums. No more so than in California, whose 17 ballot measures address everything from taxation and public health to crime and punishment.

This week Capital & Main writers will examine several of those measures in order to take a hard look at corporate influence over California's ballot-box legislation:

- **Judith Lewis Mernit** traces the progressive origins of California's long experiment in direct democracy and how corporate interests have learned to love it.
- **Dean Kuipers** looks at the perennial muscle of the tobacco

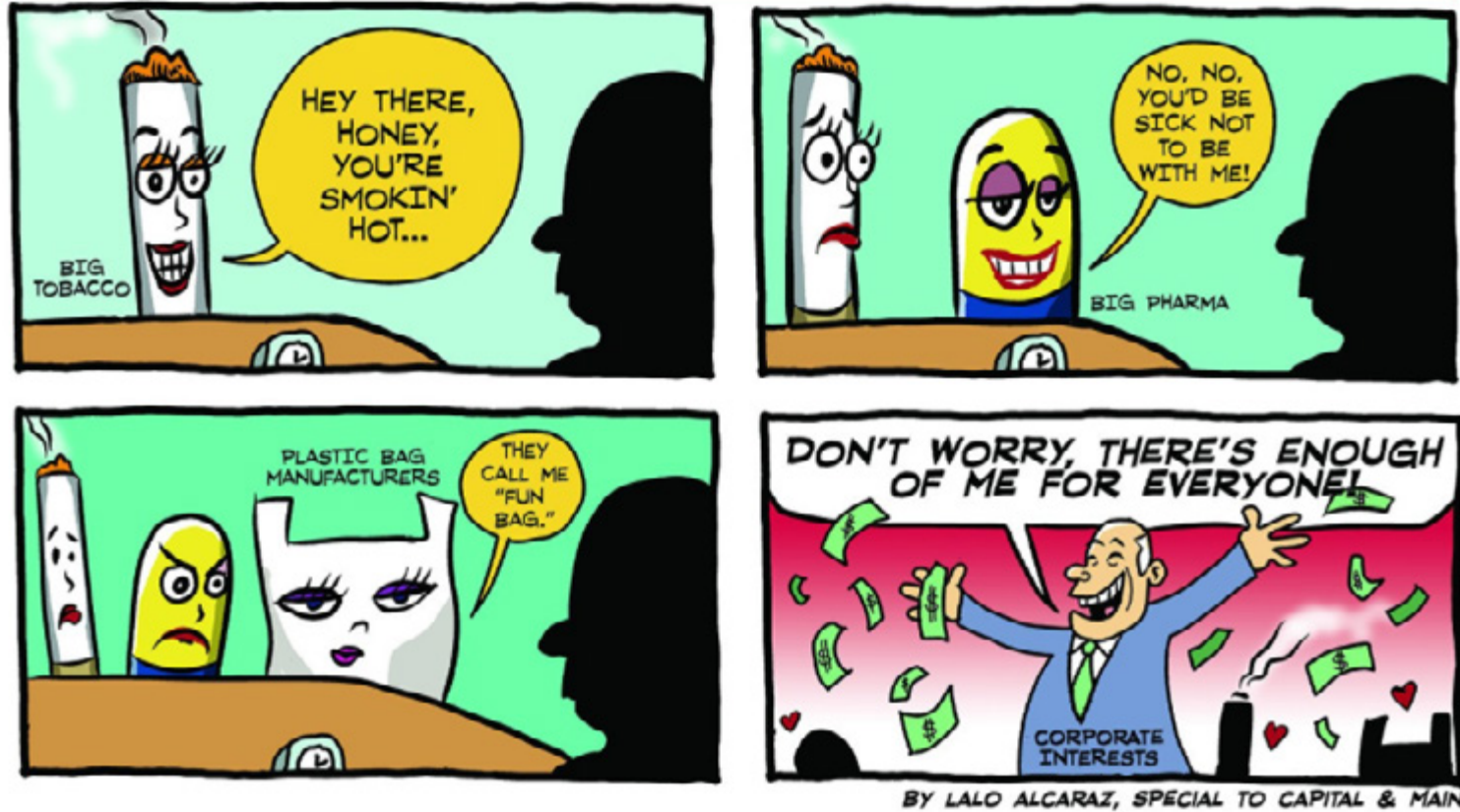
industry, exercised this year over Proposition 56, which seeks an additional \$2 tax on each pack of cigarettes.

- **Judith Lewis Mernit** writes about the deceptive setup that might cause California voters to veto a state law to ban single-use plastic bags even though 60 percent of those polled support it.
- **Jim Crogan** tallies up the enormous contributions Big Pharma has made to oppose Proposition 61, an initiative to control state agencies' prescription drug costs.

Plus illustrations by **Lalo Alcaraz**, videos and infographics.

To date tobacco, pharmaceutical and plastics interests alone have spent nearly \$200 million trying to have their way with California. In two weeks voters will decide what they got for their money. ©

CALIFORNIA PROPOSITIONED: \$PEED DATING



How Corporations Learned to Love Direct Democracy

By Judith Lewis Mernit

It's been 105 years since California voters were granted, by a progressive governor and his forward-thinking allies, the right to make laws at the ballot box. We were not the first to gain the privilege; 11 states got there first. Today 24 states allow for direct legislation, which they exercise with varying degrees of intensity when the need arises.

But no state quite matches the high-roller financial showdown that happens every election season in California. Our ability to attract big spenders on the initiatives, referenda and state constitutional amendments that confront an increasingly confused electorate is unparalleled. As of mid-October, more than \$400 million had been spent on the 17 measures on the 2016 California ballot. Compare that with Colorado, which ranks second in ballot measure campaigns and whose seven initiatives

and two referenda this year cost donors a total of \$67 million, a “high-water mark” according to the Colorado Independent.

This was not what John Randolph Haynes had in mind at the end of the 19th century, when he fought to bring citizen lawmaking to the people. A thoughtful humanist with bold progressive ideas about how to preserve democracy, Haynes came to California from Pennsylvania's coal county in 1887 to find the state legislature in the thrall of the Southern Pacific Railroad Company. Every shred of legislation proposed in Sacramento had to pass muster with the railroad oligarchs; politics were dominated by scoundrels.

More than 20 years later, Haynes' solution, known back then as “direct democracy,” was intended, in the words of Governor Hiram Johnson, to “eliminate every private interest from the government, and to make the public service of the State responsive

solely to the people.” Among its early victories was the abolition of the poll tax—certainly a win for the common man. Less than a century later the ballot initiative and referendum process had become, in the words of journalist David Broder, “not only a radical departure from the Constitution's system of checks and balances, it is also big business,” a playground for millionaires and corporations that view initiative campaigns as a far less cumbersome means of achieving their various agendas than lobbying legislators to pass their bills.

All of the measures we will explore have brought in big money: Pharmaceutical companies have ponied up \$109 million to oppose Prop. 61; the tobacco industry has doubled down with \$66 million to quash the first cigarette tax in 18 years. And four out-of-state corporations banded together to sink \$6 million to overturn a state law passed in 2014 that would ban single-use plastic bags.

Part of the reason wealth concentrates in ballot-box lawmaking is that unlike candidate races, there are no limits on contributions made to initiative campaigns; the U.S. Supreme Court ruled in 1981 that any such restrictions would violate the First Amendment's guarantee of free association. Another part is the price of admission—simply gathering sufficient signatures to get a state or amendment on the ballot costs at least \$2 million and as much as \$6 million, depending on deadlines, timing and the aggressiveness of a campaign.

That pretty much counts out any middle-class activist with an eye on citizen lawmaking. It also gives outsized power to billionaires with big ideas. “A single individual with deep pockets and a pet project can almost single-handedly get an initiative on the ballot,” says Kim Alexander, who established the California Voter Foundation in 1994 to foster a better-informed electorate. And even that single individual can be outspent, in a game of one-upmanship that ends only when one side runs out of cash.

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— Kim Alexander,
Founder, California Voter Foundation

Witness Los Angeles real estate developer Steve Bing's 2006 bid to establish a tax on oil-and-gas extractors. Bing bankrolled his \$61 million Proposition 87 campaign with \$50 million of his own money, but the oil and gas industry spent more—\$94 million—and prevailed. It was, at the time, the most money ever spent on an initiative campaign.

Money, however, isn't everything. “Just as it's not possible to get an initiative on the ballot without money, it's also not possible to win a campaign with only money,” Alexander says. Pacific Gas & Electric, for instance, in 2010 spent \$46 million to effectively outlaw community power companies; the opposition spent less than \$100,000, and won.

In fact, most propositions, no matter how generously supported, fail in California, says Shaun Bowler, a political science professor at the University of California, Riverside, and author of *Demanding Choices: Opinion Voting and Direct Democracy*. And plenty of high-stakes opposition campaigns go down, too, which might make the investment in California's ballot-box governing look dubious to the casual observer.

Anyone, however, who wants to have an influence in national politics, be it industrial lobbyist or environmental activist, ignores California at their peril. “California is massive,” Bowler says. “It's the fifth-largest economy in the world. We're bigger than Canada, bigger than Italy.” Standards and regulations adopted in California become national standards; technologies developed to meet California rules are adopted throughout the nation.

There are also reasons for participating in California's direct democracy that have nothing to do with winning, Bowler says: “Individuals and interest groups spend money in California, basically, because they can.” It's a place where they have an opportunity to make their presence known, to remind people that they matter.

“It’s a little bit like being in a bar fight,” Bowler says. “To prove you’re the tough guy, you kick someone’s dog outside. You’re letting people know you’re in the game.”

Another practiced strategy is to use the initiative process to bleed opponents white, rendering them weakened or even useless for future combat. That’s what happened in 1998, when anti-tax crusader Grover Norquist orchestrated a campaign to force California unions to obtain annual written permission from each and every member before spending a penny on political action. “Paycheck Protection” measures like Proposition 226, Norquist crowed, would “crush labor as a political entity,” and cash flowed in from across the country to support his California foray. Richard Mellon Scaife, the oil-invested billionaire in Pittsburgh, Pennsylvania; Indiana insurance tycoon J. Patrick Rooney; and even Bristol-Myers Squibb, the New York City-based medical supply conglomerate, added tens of thousands of dollars to the half million supplied by Norquist’s anti-tax advocacy outfit, Americans for Tax Reform, headquartered in Washington, D.C.

Thanks to a vigorous grassroots counter-campaign by the California Labor Federation and the AFL-CIO, Prop. 226 was rejected by 53 percent of voters. Norquist, however, still called it a win. After all, proponents of 226 had spent just \$6.5 million, but they’d forced the labor movement to sink more than \$24 million into fighting them— almost as much as the AFL-CIO had spent in 1996 on its entire slate of U.S. congressional candidates.

“Even when you lose,” Norquist boasted to a 1999 conference in Washington, D.C., “you force the other team to drain resources for no apparent reason.” Labor, he argued, had been severely diminished as a political force heading into the November election. (In the presidential year 2012 a like-minded initiative, Proposition 32, also forced labor to outspend the ballot measure’s backers, by \$73 million to \$60 million.)

In the short term, that was probably true. But over the long term, the Prop. 226 battle paid off exactly as AFL-CIO field organizer Ken Grossinger said it would, when he wrote about it in 1998. Beating back an initiative that would have hobbled labor’s political clout in California, he argued, shored up the grassroots base, galvanizing labor’s political forces. In the same way, Republicans under Governor Pete Wilson watched their fortunes decline after 1994, as the state’s sizable Latino population mobilized against Proposition 187, an initiative that would have

denied undocumented immigrants public services. Both labor and Latinos, politically engaged, helped turn California a deeper shade of blue.

John Randolph Haynes and Hiram Johnson, had they lived to see it, might be horrified at direct legislation’s descent into a special-interest cash contest. But they wouldn’t be surprised, says Daniel A. Smith, a political science professor at the University of Florida-Gainesville, and the co-author of *Educated by Initiative: The Effect of Direct Democracy on Political Organizations in the American States*. “The initiative process in California has never been a purely amateur mechanism to alter public policy,” he says. “People decry the amount of money, the special interests involved in ballot campaigns, but corporate interests realized very quickly that they could play the game, too.”

Smith says the “really strong irony” is that Johnson himself inspired early 20th century industrialists to take up the game. “Progressives took over the government,” he says, closing off industry’s former avenue of influence. Moneyed interests then took advantage of the very mechanism progressives had created for the people, only to achieve their own corporate agendas. As early as 1922, so much money was spent on initiative campaigns that the state senate convened a special investigation to look into the issue. “The power of money” over direct legislation, they found, “was made strikingly manifest.”

But the power of money wasn’t enough to move those same senators to end the citizen lawmaking process, and none likely will. For all their gripes, California voters actually like their ballot-box governing. “California voters are deeply protective of their rights,” Kim Alexander says. “As much as people like to complain about it, California voters don’t want to see their right to make laws directly through the ballot eroded.”

The most worthy thing we can all do, then, to safeguard the intent of direct democracy is to exploit the state’s robust transparency laws—“the best in the country,” Alexander attests—to understand exactly what each of our votes will mean.

“We have much more information as voters in California than anywhere else in the world,” she says. “We have much more power, too. If California voters understand that power, every November is an awesome opportunity.” But only if we know what we’re doing. @



Photo by Pandora Young

Big Tobacco Goes All Out to Kill Proposition 56

By Dean Kuipers

The old-school image of a rock star was a guy smoking a cigarette, and Tris Imboden was that guy. As the drummer for the band Chicago for the past quarter-century, or on the road with Kenny Loggins or Chaka Khan, or even writing the legendary cult surf film soundtrack *Five Summer Stories* with his early '70s band Honk, smokes were just part of what it meant to be a musician. What it meant to be cool.

He started smoking at 16 and never thought it might end his career. He was a serious surfer and a runner and a drummer, the most physically demanding job in any band.

“I thought I was bulletproof,” says Imboden, speaking from his home in Malibu. “Personally, it was something that would never happen to me: I would never get sick as a result of smoking. Not me. And boy, was I dead wrong. I am one lung down to prove it. It just ain’t cool.”

In 2008, Imboden was symptom-free when he was suddenly

diagnosed with Stage 3A lung cancer, attributed to smoking. Two-thirds of one lung was removed and he was given five years to live. You can do the math. Now, as a volunteer with the American Cancer Society Cancer Action Network, he is determined to do what he can to stop youth smoking. He is an avid supporter of California’s Proposition 56, which would raise tobacco taxes by \$2 per pack, and hike taxes on other tobacco products and e-cigarettes, in a bid to reduce youth smoking. The estimated \$1.4 billion in new annual revenue generated by the excise tax would pay for smoking-cessation programs, especially in schools, and increase Medi-Cal funding to ease the burden on state taxpayers who pick up the cost of tobacco-related illness.

Tobacco companies have hurled themselves against this ballot initiative with force, pouring more than \$71 million to date into a campaign funding radio and TV ads that have been decried as “supremely sleazy” by the editorial board of the *Mercury News*,

and pilloried by health advocates, the Politifact fact-checking organization and other newspapers including the Los Angeles Times. The opposition campaign, titled “No on 56: Stop the Special Interest Tax Grab,” has so far been 100 percent funded by tobacco companies, with just two companies, Philip Morris (via their affiliate, Altria) and RJ Reynolds ponying up in excess of \$50 million. While Prop. 56 had significant support in polls taken in September, proponents worry that support is slipping under the withering barrage of cigarette company ads.

"It's just unconscionable that Big Tobacco throws so much money at this every time that it comes up for a vote in the state and in Sacramento and everywhere else. They kill the bill. And they're trying to do it again," says Imboden.

“We believe that Prop. 56 is a deceptive measure that is actually a tax grab and that the bulk of the money doesn’t go to helping people quit smoking or preventing them from starting, but rather 82 percent or about \$1 billion a year goes to wealthy special interests, including insurance companies and hospitals,” says Beth Miller, spokesperson for the No on 56 campaign.

The Yes campaign has raised \$30 million in a broad coalition that includes the American Cancer Society, American Lung Association and other health-care interests, the Service Employees International Union and other labor unions, many county chambers of commerce and ranks of civic organizations. The two biggest donations have been \$10 million from the California Hospitals Committee on Issues, a project of the California Hospitals Association, and \$3.5 million from Democrat

"The Institute of Medicine [now the Health and Medicine Division of the National Academies], the U.S. Surgeon General, and the World Health Organization all agree that increasing the price of tobacco products is the single most effective way to reduce youth smoking."

– Michael Roth,
Spokesperson, Yes on 56 campaign

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philanthropist Tom Steyer.

"This is a classic David and Goliath fight, which we're seeing in California repeatedly," says Steyer, "where a really well-funded special interest uses its money and its organization and some questionable tactics to get its way at the expense of the California citizenry. We've been right for a long time but we haven't won." Steyer's mother, a heavy smoker, died of lung cancer.

California currently has one of the lowest tobacco excise taxes in the country, ranked 37th, at \$.87 per pack, and it hasn't been raised in 18 years. Other states have raised their tobacco tax a combined total of 126 times since California has. The tax is now significantly lower than any of the surrounding states, including relatively tax-averse states like Nevada (\$.180) and Arizona (\$.2). New York City has the highest combined city and state tobacco taxes, at \$5.85 per pack. Missouri has the lowest, at \$.17. The Los Angeles Times reported recently that the California legislature has proposed raising the tobacco excise tax 35 times in the last 34 years but, with a two-thirds majority needed for tax measures, was defeated every time by tobacco industry lobbying.

“The Institute of Medicine [now the Health and Medicine Division of the

National Academies], the U.S. Surgeon General, and the World Health Organization all agree that increasing the price of tobacco products is the single most effective way to reduce youth smoking,” says Michael Roth, spokesperson for the Yes on 56 campaign. “In every other state that has significantly raised the tax, smoking rates have gone down. Prop. 56 is about protecting kids from tobacco companies claws, helping smokers quit, saving lives and improving



Photo by Pandora Young

accessibility to quality medical care that Californians deserve.”

The limited increases in the tax that have occurred have happened through California's ballot initiative process. The tax was raised from \$.10 to \$.35 by Proposition 99 in 1988, and then more than doubled to \$.87 in 1998 by Proposition 10. In the last 10 years, two ballot initiatives have sought to raise the tax and failed. Proposition 86 in 2006 would have raised the tax to \$3.47 and was defeated, by 51.7 percent to 48.3 percent of the electorate. Proposition 29 in 2012 was a more moderately proposed hike to \$1.87 and was a squeaker, losing by less than 25,000 votes against over five million votes cast.

The California Medical Association and other groups have calculated that the tobacco industry has spent well over \$200 million in the last decade battling tobacco tax increases in California. The stakes are high: in 2015 alone, Altria and Reynolds American reported a combined \$8.5 billion in net U.S. earnings. Since California is responsible for about 6.6 percent of all cigarette and snuff tobacco sales, a rough estimate (not including cigars and other tobacco products) puts their statewide 2015 earnings north of \$500 million.

The bulk of that \$200 million-plus goes into ads like the current campaign saturating the state, in which the No on 56 campaign

seizes on technicalities that tobacco critics point out have little or nothing to do with the thrust of the initiative, and blowing them up in an attempt at misdirection. For instance, the ads now running claim in alarmed voices that Prop. 56 would “cheat California’s schools out of \$600 million a year.” Politifact ruled that claim “mostly false,” explaining as follows: It’s true that under Prop. 98, passed in 1988, 43 percent of all California general fund revenues must go to schools, and if this initiative generates an expected \$1.4 billion a year in new revenues, that would mean \$600 million to the schools.

But this initiative, like the tobacco excise taxes that already exist and a couple other propositions approved by voters, revises the constitution to bypass the general fund. Instead, 82 percent of the new revenue (minus \$118 million in set-asides for law enforcement and other agencies) would go to Medi-Cal (and so to doctors and hospitals, the so-called “special interests” called out in the ads) which currently picks up \$3.5 billion a year in tobacco-related costs in the state and passes them along to the taxpayer.

“We’re not saying that it robs schools of \$600 million; we’re saying it cheats them out of it,” says Miller, defending the ads. “It does circumvent Prop. 98.”


"Tobacco companies knew that smoking kills and they lied about it for decades. Now they're lying about Prop. 56."

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for their employees,” says Jay Hansen, Chief Strategy Officer for the California Medical Association and vice president of the Sacramento School Board. “So there’s a huge cost to starting smoking. People have turned back from speaking against all taxes as a blanket position to being more open to what we’re trying to accomplish with this measure.”

Hansen points out that the numbers are really simple: Every year nearly 17,000 California kids start smoking and one-third of them will eventually die from tobacco-related disease. Smoking is the number one cause of preventable death in California; it kills over 40,000 Californians every year.

“When my bill was up and did have a hearing, someone asked me, ‘What happens if everybody quits smoking? You won’t get any revenue.’ I said, ‘Well, Californians win and the state wins. Because the cost of tobacco is much greater to the state and the taxpayers than any revenue that we could collect from this tax proposal. So if we have a place where everybody quits, I’d be even happier about that.’” 

Interestingly, more California businesses are supporting Prop. 56 than during similar initiative campaigns in the recent past, including chambers of commerce in the Los Angeles Area, Beverly Hills, North Orange County and across the state. The statewide California Chamber of Commerce, which opposed Prop. 29 in 2012, has taken no position on Prop. 56.

"We're just seeing the steady yet explosive cost of health care is going up five to 10 percent a year, and that financial burden really is breaking the backs, slowly but surely, of everybody who provides health care."

THE BIG SPENDERS

BALLOT BULLIES

Capital & Main examines some major issues that are part of the 17 measures facing voters in November to gauge corporate influence over California's ballot-box legislation.

\$108,954,074

OPPOSITION CONTRIBUTIONS AGAINST PROPOSITION 61, DRUG PRICE STANDARDS

\$66,532,474

OPPOSITION CONTRIBUTIONS AGAINST PROPOSITION 56, TOBACCO TAX INCREASE

\$6,144,383

OPPOSITION CONTRIBUTIONS AGAINST
PROPOSITION 67, PLASTIC BAG BAN AND
CONTRIBUTIONS FOR PROPOSITION 65,
AN INDUSTRY ALTERNATIVE TO
PROPOSITION 67

TOTALING OVER

\$181,630,931

To read more about where the money comes from:
www.capitalandmain.com



Plastics Lobby Hopes Voters Will Unban Its Bags

By Judith Lewis Mernit

When the tiny, picturesque community of Bisbee, Arizona, decided to ban single-use plastic bags in 2014, leaders in the plastics industry worried Bisbee had sparked a trend. Other Arizona cities—Kingman, Flagstaff, Tempe—were considering similar restrictions; soon, the bag makers feared, the whole state would fall. So they did what corporate lobbyists do in a reliably conservative state: They persuaded legislators and the governor to declare bans like Bisbee’s illegal.

Next door in deep blue California, where more than 150 local jurisdictions have already banned the bags, defending the market sector of the single-use plastic bag has proved altogether

more complicated. Sixty percent of polled Californians say they support a plastic bag ban; rescinding the existing bans would be impossible. So instead the industry put its muscle into holding off a statewide ban.

For a while, it succeeded. Assemblymember Julia Brownley authored a bill in 2010 that would have outlawed single-use carryout bags of any material; it failed in the Senate after the Virginia-based American Chemistry Council worked hard to defeat it. But in 2014, State Senators Alex Padilla, Kevin de León and Ricardo Lara collaborated on a less restrictive law, one that would ban most plastic bags but allow grocery

stores to charge 10 cents for each paper replacement. It earned the support of the California Grocers Association, and eventually the United Food and Commercial Workers union. It allows for the continued use of thicker plastic bags that will last for 125 uses or more and directs \$2 million in loans to job creation in the recycled and reusable grocery bag industry. In August of that year, the bill made it all the way to the governor’s desk.

So the bag lobby pursued its last available option. Before 2014 was out, the plastics lobby had collected enough signatures to place the plastic-bag ban, Senate Bill 270, on hold and put it to a referendum on the November 8, 2016 ballot.

“Our contention is that it’s a special-interest giveaway to grocers in the state,” says Jon Berrier, spokesman for the American Progressive Bag Alliance, a consortium of mostly out-of-state plastic-bag manufacturers and an offshoot of the American Chemistry Council. “It bans a 100-percent recyclable product produced in America with American labor, that according to the U.S. Environmental Protection Agency accounts for only 0.3 percent of the waste stream.

“The idea that you’re going to reduce waste or litter banning plastic retail bags,” he says, “is simply false. Sacramento special-interest politics threw data and science out the window.”

Berrier is right that plastic bags account for only a small percentage of our garbage. (The vast majority of it is paper, yard trimmings and food.) But single-use plastic retail bags

The short list of generous contributors to the No on 67 campaign contains only one in-state individual or company, **Durabag of Tustin, California**, which contributed a mere \$50,000 early on.

The rest of the donors list consists of out-of-state companies whose futures depend on the persistence of their industry:

ADVANCE POLYBAG
Sugar Land, Texas
\$946,833

FORMOSA PLASTICS
Livingston, New Jersey
\$1,148,441

HILEX PLASTICS
Hartsville, South Carolina
\$2,783,739

SUPERBAG
Houston, Texas
\$1,238,188



are a singularly pernicious kind of trash. Easily airborne, they float away from conscientious neatnik and litterbug alike, to find their way into mountain streams, storm drain culverts, ocean gyres and, eventually, the gullets of marine animals from cetaceans to sea birds. Sea turtles mistake them for jellyfish and suffer excruciating deaths by starvation; pelicans spear through them and strangle. On a recent paddle down the Los Angeles River, I saw white plastic bags clinging to the trees; my fellow kayakers playfully dubbed them “grocery-bag flowers.”

Plastic bags can be recycled at special, dedicated facilities, but you can’t just toss them into a blue bin. Sent to ordinary processing centers, they clog up sorting screens and have to be cut out with hook knives and saws. They don’t degrade, but disintegrate, turning ocean and freshwater into a diluted chemical soup.

But they are also big business, earning their manufacturers \$100 million to \$150 million every year in California alone. The short list of generous contributors to the No on 67 campaign contains only one in-state individual or company, **Durabag of Tustin,**

California, which contributed a mere \$50,000 early on. The rest of the donors list consists of out-of-state companies whose futures depend on the persistence of their industry: Advance Polybag of Sugar Land, Texas (\$946,833); Formosa Plastics of Livingston, New Jersey (\$1,148,441); Hilex Plastics of Hartsville, South Carolina (\$2,783,739); Superbag of Houston, Texas (\$1,238,188).

It has already been money well spent, and not just because a victory in the nation’s bellwether state could set a trend, while a loss could spread bag bans like a virus. As the San Francisco Chronicle reported, simply by delaying Padilla’s bill for 18 months, the industry has bagged \$15 million in profit.

Steve Maviglio, a spokesperson for the Yes on 67 campaign that supports the ban, says that the plastics lobby’s concern over the predicted job losses rings hollow, considering that almost no single-use plastic bags are made in California. The thicker plastic bags allowed in Padilla’s law will, on the other hand, add to the state’s manufacturing economy, adding several hundred jobs. The plastic industry’s claim of 2,000 jobs lost “is incredible and nonsense,” Maviglio says.

The plastics lobby could, however, win this one—not least because the wording of the referendum on the ballot is confusing. “It’s not intuitive that we need to vote ‘Yes’ for the law to go into effect,” says Diz Swift, a member of the League of Women Voters in Berkeley. “People might say, ‘Oh, no, I don’t want the law vetoed, I want it to go into effect,’ and mistakenly vote ‘No.’” (To be clear, a “No” vote on Proposition 67 will overturn the bag ban; a “Yes” will uphold it.)

Even more confusing is that the plastic bag alliance has put another proposition on the ballot – Proposition 65 – that would direct the 10-cent bag fee toward a special wildlife conservation fund. Berrier says the measure came out of the bag alliance’s research. “Only 25 percent of the people we asked had any idea where that 10 cent bag fee would go,” he says. “A lot of people thought it was going to the environment, or to local government.” When they find out it’s going back to the grocers, he says, “They’re outraged. They want it to go to an

“The plastics industry has no regard for the environment. It would be hypocritical of them to put something on the ballot to help wildlife.”

– Steve Maviglio,
Spokesperson, Yes on 67 campaign

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bag, “and that doesn’t include delivery and stocking,” Maviglio claims. “There’s no windfall there.”

If that’s not persuasive enough, he asks voters to consider the source. Prohibitions against plastic bags have been carried by the most grassroots of efforts—community organizations, moms, local environmental groups. The Arizona ban on plastic-bag bans, he says, comes straight out of the American Legislative Exchange Council, a think tank that assists corporations in state lawmaking, with an emphasis on preempting local control.

“The plastics industry has no regard for the environment,” Maviglio says. “It would be hypocritical of them to put something on the ballot to help wildlife.”

To be fair, Berrier doesn’t argue that helping wildlife is the point: The goal of Prop 65, he says, is only to highlight where the bag-fee money goes after grocers collect it.

“The language is very plain and simple,” he insists, “and it will have its intended effect.” ☞

environmental purpose.”

To Swift, however, putting Proposition 65 on the ballot above Proposition 67 is a blatant attempt to skew the vote. Only the most sophisticated and well-informed voters will understand what it all means. “The money goes into a fund that sounds really good,” she says. “It’s for drought mitigation, clean drinking water, regional parks, litter removal and habitat restoration. But it requires creating a bureaucracy that doesn’t really help.”

Maviglio is more blunt. “We call 65 the Screw the Grocers Initiative,” he says flatly. “They’re trying to send a message to grocers in other states who would hop aboard a statewide ban.” Single-use bags cost grocers anywhere from six to 16 cents per



Big Pharma Breaks the Bank to Kill Proposition 61

By Jim Crogan

There is a fiercely fought and extremely expensive political battle raging in California over the passage of Proposition 61, an initiative that’s intended to lower pharmaceutical prices paid by the state. The November ballot measure’s official name is the California Drug Price Relief Act, although its opponents call it the “Deceptive Rx Proposition.”

The measure has turned out to be one of the most expensive proposition battles ever fought in California as prescription drug companies are throwing more money at defeating this initiative than has ever been collected by one side in a ballot fight.

As of October 25, the No on 61 campaign has received about \$109 million — an increase of \$22,038,414 since the end of September, a little more than 20 percent increase in just three weeks, according to the California Secretary of State’s office.

Most of that money has come from the drug companies and the

Pharmaceutical Research and Manufacturers of America (PhRMA), a trade group representing those firms.

The struggle over passage of Proposition 61 has pitted AIDS groups, patient advocacy organizations and veterans against each other. Even doctors have sided against nurses.

In fiscal Year 2014-2015, the state spent about \$3.8 billion on prescription drugs, according to California’s Legislative Analyst Office. Prop. 61 would mandate that California’s Medicaid, and state agencies such as California’s Department of Health Care Services and the Department of Corrections and Rehabilitation, along with the California Public Employees Retirement System (CalPERS), pay no more for prescription drugs than the lowest price paid by the federal government’s Department of Veterans Affairs (VA). The VA typically gets the largest discounts in the country from the pharmaceutical industry when it buys prescription drugs.

Roger Salazar, a spokesman for the Yes on 61 campaign told Capital & Main, “This initiative will reduce the cost of drug purchases by the state by lining up state purchases with the lowest prices paid by the VA.”

Jamie Court, president and chairman of the board for the Santa Monica-based Consumer Watchdog organization, and one of the member organizations in the Yes on 61 campaign, added, “This isn’t just about Big Pharma’s outrageous drug prices. This is also about an idea. It’s the idea of bulk drug purchases at very low cost, and when 61 passes here, this idea is going to spread like wildfire across the country and that scares the hell out of the pharmaceutical drug industry.”

Prop. 61, however, would not cover the state's managed care systems, only its fee-for-service programs. Medi-Cal is the state's program that provides health care to low-income citizens. Its managed care system covers about 75 percent of the people enrolled in that program, and those enrollees would be excluded, as the No on 61 side has repeatedly claimed in its TV and online ads, and in campaign literature.

One of those managed care clinics, the No on 61 side points out, is run by the Los Angeles-based AIDS Healthcare Foundation (AHF), the primary sponsor and funder of the Yes on Prop. 61 campaign. Kathy Fairbanks, a spokesperson and one of the lead “No” strategists, insisted to Capital & Main the proposition was “deceptive and misleading.”

“Prop. 61 would only cover about 4.4 million people,” Fairbanks said. “That’s 12 percent of the people, which means that 88 percent of the population is not covered and that includes more than 10 million low-income patients in Medi-Cal.”

"If you can overcharge people by billions of dollars, it just makes good business sense to spend \$109 million to try and defeat a proposition that is going to cut into your obscene profits that are putting peoples' lives at risk."

– Jamie Court,
President and Chairman of the board,
Santa Monica-based Consumer
Watchdog organization

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– Jamie Court,

alone reported revenues in 2015 of \$17.5 billion, just in the U.S., and total revenues of \$39.5 billion worldwide.

“If you can overcharge people by billions of dollars, it just makes good business sense to spend \$109 million to try and defeat a proposition that is going to cut into your obscene profits that are putting peoples’ lives at risk,” Court told Capital & Main.

Consumer Watchdog points to an investor query to Johnson & Johnson made by Jami Rubin, a Goldman Sachs analyst, regarding what the drug industry's response will be if Prop. 61 passes in November, as the catalyst for the new influx of money to the No side.

Johnson & Johnson's executive vice president responded by telling the investor conference call listeners, "Pharmaceuticals represent 14

Court dismissed the charge of AHF's self-interest as one more in a long list of "straw men" the No on 61 side has advanced to scare people and distract from the real issue of out-of-control prescription costs. The No on 61 contributions, which account for more than 88 percent of the total contributions received by both sides, have dwarfed the money given to the Yes on 61 campaign, which has received a total of \$14,780,024 in the same time period.

Most of that Yes money has come from AHF (\$14,709,556), which is also the primary funder behind a similar initiative headed for the Ohio ballot in 2017, and the California Nurses Association PAC (\$54,930), according to the California Secretary of State's office. (Disclosure: The California Nurses Association is a financial supporter of this website.)

And though the biggest pharmaceutical firms have contributed millions to the No on 61 campaign, their contributions are not even a drop in the bucket when compared to their sales figures. Merck

percent of total expenditures, and we understand that we need to work with different stakeholders in order to try to manage our health-care costs.”

It was after that investor conference call that another \$22 million was given to the No side by the pharmaceutical drug companies.

Fairbanks acknowledged the conference call, the \$22 million in new contributions this month and the issue raised by investors. She said the drug firms clearly understand the cost of prescription drugs is an issue that needs to be dealt with. However, she declined to talk about how the No on 61 campaign would be spending its newly enriched war chest.

“That comes under the heading of campaign strategy and we don’t discuss our campaign strategy in the press,” she said.

However, an examination of the latest expenditures report filed by the No on 61 campaign covering the period up to the third week in September indicates it has spent a total of \$46,226,148.

Those expenditures have included: television time and production costs, web services, print ads, campaign literature, mailings, polling, research, travel, information technology, accounting, campaign workers, reimbursements to friendly veterans groups for meetings and appearances, and campaign consultants. Those consultants include such well-known names in political circles as Cerrell Associates, Inc, David Mixner and Pete Conaty & Associates, a high-profile lobbyist for veterans groups in Sacramento.

Based on its current filings with the California Secretary of State's office, this left the No on 61 campaign as much as \$62,727,926 to spend in the final month of the campaign. Most of the No money has come from out of state, which is not surprising since most of the pharmaceutical manufacturing firms are based in the Eastern U.S.

These are the current top five contributors to the **No on 61** campaign.

(Source: Maplight and the League of Women Voters.)

MERCK:
\$9,420,395

PFIZER:
\$9,420,395

JOHNSON & JOHNSON:
\$9,301,646

AMGEN:
\$7,635,768

ABBVIE:
\$6,859,873

prevents the pharmaceutical industry from raising their prices to offset their losses.”

“If Big Pharma threatens to raise prices on vets and everyone else once the proposition passes, that is called blackmail,” AHF General Counsel Tom Myers told Capital & Main. “Prop. 61 will be a benchmark and will create pressure for downward pricing of drugs across the board.”

Roger Salazar remained optimistic. “California is the drug companies’ largest market,” he said. “They’re not going to pull out of here. And if they decide to raise the prices on veterans out of spite, they will have to explain that to the American people and to the Congress, and I don’t think they will want to take the PR hit this will deliver.” ²⁰

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