

Statement of Harvey Rosenfield
“Why I Support the Recall of Gov. Gray Davis”
August 8, 2003

I support the recall of Governor Gray Davis, which I now believe is a foregone conclusion.¹ Californians should focus on which candidate to replace the Governor has the best plan to restore the California Dream and the courage to defy the Sacramento special interests who stand in the way.

Why I Support the Recall

Fifteen years ago, Gray Davis wiggled into a press conference I convened outside the state capitol in support of Proposition 103, the insurance reform initiative that was facing an \$80 million campaign by the insurance industry. On his long slog toward the state’s highest office, Davis was then State Controller and always on the lookout for an opportunity to associate himself with a popular cause. Davis endorsed 103 and proclaimed it “destiny’s child.”

But that was then. Last Saturday, now-Governor Davis signed a measure, sponsored by an insurance company that is among his largest campaign donors, to repeal a provision of Proposition 103 that forbids insurance overcharges. Davis had vetoed a bill identical in substance just one year ago.

The Mercury Insurance fiasco is by no means my only grievance against Governor Davis, but it is one that in my view epitomizes how he has dishonored his office. The bill (SB 841, authored by State Senator Don Perata) symbolizes the cash register politics that the Governor practices and that has now become standard procedure for Sacramento politicians of both political parties.

There can be no leadership, much less any honest policy debate, in this state when its highest ranking public official presides over and partakes in a system that allows cash to determine critical public policy decisions.

- ✘ The car tax on beleaguered motorists has been tripled. Why? Because Gov. Davis ignored alternatives that would have required his biggest corporate campaign contributors to pay their fair share of state services.
- ✘ Californians are saddled with \$12 billion in utility company debt and \$35 billion in over-priced contracts for electricity generated by gouging California power plants. Why? Because Gov. Davis refused to take decisive steps to protect Californians from the deregulation heist – steps that would have offended his energy industry contributors and Wall Street.

¹ I will not be a candidate for governor. To quote Harry Truman, I already hold the highest office in the land: citizen.

Note: The views I express in this statement are my own and not those of any organization. August 8, 2003.

- ✘ Gov. Davis vetoed legislation last year to hold corporate executives accountable when they cover up financial fraud, despite the lessons of Enron, WorldCom and other crooked corporations. Why? Because the Governor favors the interests of corporations with contributions over seniors with pensions.
- ✘ There has been no policy answer to the price-gouging of patients and profiteering by health care companies that is crushing California consumers and businesses. Why? Because Gov. Davis cares more about what the insurers, hospitals, HMOs, and drug companies have to offer him.

I support the recall, not because of his public policy decisions, but because, in my view, Gov. Davis makes few policy decisions based on what's best for the public, but rather on what's best for his personal political aspirations.

And because in making executive decisions, Gov. Davis has disregarded state law.

In my twenty-five years of work to protect and defend the interests of average citizens, I have done what most Californians do in their daily lives: I played by the rules. These are the Constitution and laws, as adjudicated by the courts and enforced by the executive and administrative agencies of our state. These are the rules that make democracy work and obeying them is what maintains public faith and confidence in our system of government.

On insurance and energy issues, Governor Davis and his appointees have ignored and flouted these rules. This is a supreme threat to the integrity of our democracy.

In his years-long quest to achieve ever-higher office, Gray Davis has raised more than \$127 million. In the process, he has mortgaged himself, and thus California, to a panoply of special interests. As he cannot lead without offending them, he cannot lead at all.

Each Californian who walks into the ballot box must make up their own mind on the recall. These are the reasons for my decision.

The Recall Process

Some Californians are aghast at the use of the recall process. They complain that a handful of very wealthy, highly partisan individuals are behind the recall.

What else is new? It is an unfortunate fact that, for years, politics in this country has been dominated by monied interests and wealthy individuals whose motives

and goals often do not comport with those of average Americans.² Extreme partisanship has become the norm. This election is no different.

Nor is it any more dismaying that a relatively small number of Californians might elect the next Governor of California. Large majorities of Californians who are eligible to vote now typically don't bother. Politicians are regularly elected to public office by a minority of citizens. Don't get me wrong. The abysmally low voter turnout is a devastating indictment of our politics today. It largely reflects the public's sense of disgust and outrage at the political establishment. Perhaps this recall election will inspire those who care – about the Governor, or another candidate, or California's future – to go to the polls.

Finally, some say the recall process should only be used for criminal misconduct in office. I disagree. The Constitution does not specify such a prerequisite. Meanwhile, prosecutors seem unable or unwilling to police the blatant bartering of votes and money in Sacramento by charging and convicting elected officials for obvious graft. (Remember Chuck Quackenbush?) What are the people to do in the face of the systemic corruption in Sacramento?³

Like all other aspects of our political system, the recall system is messy and susceptible to abuse. But I do not share the disdain for direct democracy that I have heard lately from some quarters. I believe Californians are taking this election seriously. Over one million voters signified their concern by choosing to place this matter before the broader electorate – the first time the mechanism has been invoked to completion since the initiative/referendum/recall process was established. And most important: in the end, the election will still be decided by the voters of California. That is the sine qua non of our democracy.

Looking Forward

As a registered independent, I have no particular privilege to challenge the strategy of some leaders of the California Democratic Party. However, as a citizen I offer this observation: The effort to discourage alternative candidates – and the unseemly threat by some union leaders of retaliation against such candidacies – can only be viewed by the electorate as an endorsement of Gov. Davis's policies and practices. Some might argue that this was no mistake. The Mercury bill was sponsored and squired through the legislature by Democrats, who were greased with a majority of the \$1.2 million from Mercury. Like Davis, these lawmakers placed personal financial interest over the public interest and the Constitution.

² Let's not forget that Gray Davis spent far more last year to engineer the opponent he would face in the general election than Congressman Issa did to collect the signatures needed to qualify the recall.

³ There are 33 million people in California. At most, only 120 of them would say that there is no connection between money and votes in Sacramento.

But the entry of other Democratic candidates is an encouraging sign of disagreement with both the “Davis, take it or leave it” recall strategy and the Governor’s conduct in office. There should be, and now will be, an active contest involving many political persuasions. What others describe as a circus I see as the manifestation of a vibrant democracy. It is long overdue.

California voters have a fateful responsibility. They must determine whether Gray Davis will remain in office. But they must also decide who will lead the state for the next three years. The latter issue is of far greater importance, and voters should insist that the future, not the past -- not Gray Davis -- is the principal issue in the election campaign.

Befitting its size and diversity, California faces a set of complex problems unlike any other state in the nation. Measuring our quality of life, we have fallen far behind our historical achievements. The voters deserve to know how the candidates plan to solve the problems this state faces. How will we rebuild the schools, housing, highways, and health care system that once made California the Golden State? Where will the money come from? Equally important, how will the candidates put an end to the cash and carry politics as usual that has so undermined and crippled state government? That is a prerequisite to any solution.

Because of the profound importance of the recall issue, and the role that the insurance and energy issues have played in my personal decision, a lengthier explanation of Gov. Davis’s conduct on those matters is warranted. Much more information on the substance of these public policy issues can be found at www.consumerwatchdog.org.

1. The Mercury Bill (SB 841)

Since 1988, I have worked to ensure that the voters got what they voted for when they passed Proposition 103 despite the vast resources of the national insurance industry. We successfully defended 103 against over one hundred legal challenges; fought to force insurers to pay over \$1.2 billion in refund checks to motorists; used the Proposition 103 regulatory process on behalf of motorists, homeowners, renters, and even doctors to forestall over \$23 billion in premium increases; and gone to court to force insurers to obey the laws.

SB 841 is an attempt by one insurance company to overturn the results of the 1988 election by getting the state legislature – whose obeisance to the industry forced the matter to the ballot box in the first place – to repeal parts of the law the company does not wish to obey.

In order to reduce the number of uninsured motorists in California, Proposition 103⁴ prohibits insurers from making those who apply for insurance for the first time, or who have had a lapse in coverage, pay more simply because they were not previously insured. California courts and Insurance Commissioners Low and Garamendi have enforced this law vigorously.

SB 841 repeals this protection. It will increase the number of uninsured motorists on California's roads and will force insured motorists to pay more as a result.⁵

As in most of what goes on in Sacramento these days, public policy had nothing to do with the passage of SB 841. The bill is sponsored by Los Angeles-based Mercury Insurance Company, whose CEO, George Joseph, has been most generous in his efforts to buy the legislative process. Since 2001, when he first proposed gutting this portion of Proposition 103, Mercury has contributed over \$1.2 million to politicians and their causes (such as \$200,000 to a politician-led effort to overturn term limits). Most of that money has gone to Democrats, because they hold the majority of elected offices in the California. Gov. Davis has received over \$220,000 from Mercury Insurance since 1999.

Mercury got a bill to the Gov. Davis's desk last year which was identical in substance to SB 841. But a controversy erupted when it was revealed that Gov. Davis had accepted a \$25,000 contribution to his reelection campaign from Mercury just as the bill got to him. Davis then vetoed the legislation.

So confident was Mercury that it would get Gov. Davis's signature this year that in a letter and other communications to nervous Assembly Members urging them to sign the bill, Mercury implied that it had obtained the Governor's promise to sign the bill. And when the bill did get to Davis's desk, rumors abounded of promises by insurers to fund his anti-recall campaign if he signed the bill... or to support the recall if he vetoed the bill as he did last year.

Particularly egregious is the Governor's use of his executive power to illegally overturn a voter-approved law on behalf of a big donor. Like most initiatives presented to California voters, Proposition 103 forbids the Legislature from amending it unless the amendment "furtheres the purposes" of the measure.⁶ Last year, in vetoing the bill, Davis gave as a reason the fact that the bill "violates the intent of Proposition 103." In signing it this year, Gov. Davis stated that the bill "furtheres the purposes" of the initiative. In fact, the only purposes Davis

⁴ Insurance Code section 1861.02(c).

⁵ For more information on the Mercury bill, visit <http://www.consumerwatchdog.org/insurance/fs/fs003338.php3>.

⁶ In two previous decisions on amendments to Proposition 103, including the unanimous landmark California Supreme Court opinion in *Amwest v. Wilson* 906 P.2d 1112 (Cal. 1995), the courts have voided as unconstitutional insurance industry sponsored legislation that attempted to overturn Prop. 103's protections.

furthered by signing it are his own, and those of insurance companies anxious to evade a voter-approved law.

#2 The Energy Deregulation Crisis

The electricity deregulation debacle is another example of the Governor's unsavory conduct that is especially familiar to consumer advocates. Governor Davis often correctly points out that he had nothing to do with the deregulation legislation that was passed in 1996. However, in 1998, I joined with other consumer advocates in sponsoring a ballot measure to reduce by \$28 billion the cost of utility deregulation to consumers. As part of their \$45 million campaign to defeat Proposition 9, the utility companies donated \$500,000 to both the Republican and Democratic Party coffers. Shortly thereafter, Davis, the Democrat nominee for Governor, began appearing in mailers and other utility campaign advertising in opposition to Prop. 9. In a revealing display of bipartisan unity on behalf of powerful special interests, Davis often appeared in these ads along with Dan Lungren – the Republican candidate. Proposition 9 was subsequently defeated.

Two years later, when energy companies used the deregulation law to begin their systematic blackout blackmail of the state, Governor Davis promised he would not force residential and small business ratepayers to pick up the tab for the greed of the utilities and energy industry. But it became clear that Davis did not want to offend the energy industry or Wall Street with the kind of tough decisions that might have alleviated the crisis – use of his eminent domain authority to keep the plants running, for example. Such decisions might have offended campaign donors. Unwilling to seize the plants, he signed disastrous long term contracts with the thieves who were robbing the state.

Meanwhile, Gov. Davis instructed the California Public Utilities Commission (PUC) – a majority of whose members he controls – to order an immediate 30% rate increase. He then backed legislation to bail out Southern California Edison by requiring small ratepayers to cover Edison's deregulation losses – another \$3 billion. That bill was defeated by consumer groups after a ten month campaign by Edison and the Governor.

Then, in a move reminiscent of his action on the Mercury bill, Davis, through his PUC appointees, gave Edison the bailout that the Legislature had refused to authorize. Flouting the Constitution and California laws, including the open meetings and public participation statutes and the deregulation law itself, the PUC employed the artifice of a lawsuit settlement to agree to order ratepayers to pay off its debts. The Ninth Circuit federal court of appeals has issued an opinion that the PUC's end-run around California's Constitution and laws was illegal, but

the Davis Administration has gone forward to offer a similar deal to PG&E, now in bankruptcy.⁷

Gov. Davis's actions on these insurance and energy matters exemplify everything that is wrong and corrupt with California's government.

- The will of the voters is overturned. We have come to expect the insurance industry, utilities and other arrogant corporate interests to attempt to evade or simply ignore laws they do not agree with. However, citizens have a right to expect elected officials to respect and protect laws enacted by the voters. By orchestrating the illegal ratepayer bailout of the utilities and signing the Mercury legislation in violation of Proposition 103, Gov. Davis betrayed his sworn duty to the People of California.

- Those least represented in Sacramento are the victims. The average Californian has few defenders in Sacramento. This is especially true of the unemployed, those on low incomes, and minorities -- notwithstanding the lip service sometimes paid them by the politicians. After all, most Californians have no money to donate to the politicians.

SB 841 targets these individuals, (along with those who don't drive because they are sick or injured, etc). These Californians are an easy target, even as the Governor is courting the Latino vote by flip-flopping on the matter of driver's licenses for immigrants whose legal status is uncertain. Thanks to SB 841, these newly licensed drivers will discover that auto insurance costs as much as \$500 more when they go to buy it, as they must.

And utility ratepayers must now pick up the multi-billion dollar tab for the fat cat utility companies and the large commercial energy users which joined in the push for electricity deregulation in 1996.

⁷ The Ninth Circuit transferred the case to the California Supreme Court for its review.