

Thwarting Voters' Will on Auto Insurance Reform

■ **Public policy:** Insurers, officials, courts still put up roadblocks to Prop. 103, five years after its passage.

By HARVEY ROSENFELD

Five years ago today, California voters approved Proposition 103, the insurance-reform initiative. After a withering campaign, in which insurance companies spent \$60 million against the initiative, most voters assumed that victory at the ballot box meant the battle was over. Instead, the front line merely shifted to the corridors of power and privilege, where lawyers and lobbyists, not voters, rule.

In the Legislature, the same politicians who blocked reform in 1987, forcing voters to the initiative process, are now engaged in the piecemeal repeal of 103. One of the proposition's key reforms requires insurers to obtain the approval of the insurance commissioner before increasing rates. Last month, at the behest of the insurance industry, the Legislature changed 103 to

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allow rate increases to take effect automatically unless the commissioner begins a full-scale hearing. Another bill approved by the Legislature allows insurance agents to keep \$625 million in excess commissions that are supposed to be returned to policyholders under 103. A third measure restored the industry's ability to engage in price-fixing, specifically prohibited by 103.

Proposition 103 forbids amendments by the Legislature that do not "further its purposes," but that has not deterred the industry's indentured servants in Sacramento.

And the same insurance companies that complain that consumers file too many lawsuits have filed more than 60 suits to block Proposition 103. The legal delays would allow insurers to keep our money longer. But most important, the insurers are hoping to find sympathetic judges willing to rewrite Proposition 103.

Some judges have accommodated the industry, no matter how preposterous the outcome. One decision invalidated a provision of the initiative that requires insurers to base their rates on driving safety record, rather than ZIP code. The judge ruled that it would be unfair to make bad drivers pay more for auto insurance than good drivers.

More recently, Los Angeles Superior Court Judge Dzintra Janavs ruled that the voters did not intend to give the insurance commissioner the power to limit wasteful insurance company expenses and excessive profits. She went on to cancel \$2.5 billion in rollbacks ordered by insurance commissioner John Garamendi.

In contrast to that exercise in judicial activism, Judge Janavs took a hands-off approach when consumer groups sued to challenge one of the Legislature's hostile amendments to 103. In that case, she ruled that judges should not interfere with the Legislature's authority. These unjust decisions have been appealed.

Finally, many insurers are taking the most direct route around Proposition 103: They simply disregard it. Many companies are evading 103's anti-redlining protections by refusing to sell good-driver policies to qualified drivers. Still others, seeking higher profits, have begun to low-ball claims involving everything from auto accidents to natural catastrophes. Insurance brokers who cut their commissions in order to offer discounted policies to consumers—a practice that was illegal before 103—have been dropped by insurance companies.

As hard as the industry has tried to undermine Proposition 103, however, a total of \$733 million, averaging \$117 per policyholder, has been rolled back. Even more important, 103 has put an end to unjustified growth in premiums. An estimated \$4.2 billion to \$6 billion in rate increases have been averted. California used to have the third-fastest growing premiums in the nation; now it ranks third slowest.

Ironically, the insurance industry's assault on Proposition 103 has become a catalyst for future voter initiatives. Frustration is the force behind the new pay-at-the-pump initiative to be announced today. But selling auto insurance through an arbitrary and Byzantine system that relies on a gas tax isn't going to address the fundamental problems that have enabled the insurance industry to delay 103. California needs legal reform to redress a politicized judicial system that increasingly favors large corporations with unlimited resources. And by subverting 103 in the state capital, the insurers themselves have underscored the urgency for reform of our corrupt political system—particularly the elimination of all private financing of public elections.

Until these structural reforms are enacted, voters must continue to fight the judicial and legislative meddling that threatens to gut 103 and lead to enormous rate increases. The struggle now is not simply about insurance premiums. It is the integrity of democracy that we defend when we insist that the law be obeyed by insurance companies, elected officials and the courts.

Harvey Rosenfeld, the author of Proposition 103, heads the newly created Proposition 103 Enforcement Project.