

# Insight

## Prop. 103 face-off Insurers begging court to do what voters refused to do

**HARVEY ROSENFIELD**  
Over \$70 million in phony advertising would not defeat Proposition 103. Now, in a separate last stand, the insurers are begging the California Supreme Court to do what the voters refused to do last November: preserve the industry's privilege to plunder the pocketbooks of California consumers.

Responding to massive lawsuits filed by the insurance industry on Nov. 9, the Supreme Court blocked Prop 103. One month later, the court permitted virtually all of 103's reforms to take effect. For example, the insurance industry is now required to obey the state's antitrust, consumer protection and civil rights laws. Beginning next November, insurers will be required to justify all rate increases; auto premiums will be based primarily upon a driver's safety record; and good drivers will receive a permanent 20 percent discount.

However, Prop 103's immediate relief — requiring insurers to roll back all liability insurance premiums to pre-campaign levels, reduce them another 20 percent and freeze them for one year — remain blocked by the court. At stake are billions of dollars in excessive premiums now charged by the industry. The absence of both competition regulation has enabled insurers to raise rates by over 40 percent since 1980. After Revolt's campaign for insurance

reform began in the legislature in 1986. Restrictions on damage awards and certain kinds of lawsuits, passed by the voters in 1986, by the Legislature in 1987, and by court decisions in 1988, have reduced the amount insurers have to pay out in claims. But the savings have not been passed on to consumers.

Worse, insurance companies ruthlessly jacked up premiums during the 1988 initiative wars, in anticipation of Election Day. The industry's lawsuit is nothing more

than a plea of poverty, a request for a judicial rescue, made in order to escape 103's rate reductions.

Insurers contend that the 20 percent cut will unconstitutionally force them into bankruptcy. There is, however, no constitutional right to excessive rates. And 103 provides an exemption from the reductions for companies which demonstrate to the state insurance commissioner that they are "substantially threatened with insolvency."

Rather than open up their books to seek such an exemption, insurers went instead directly to court, claiming that the commissioner wouldn't be able to grant exemptions quickly enough to save companies from insolvency. But this is nonsense, as the industry itself knows. A few years back, in a discrimination case against them, the insurance companies told the Supreme Court that the commissioner — not the courts — has the necessary expertise and authority to handle such complaints. (The court agreed, making it unlikely that it will reverse its position now.)

The industry's attack on the rollback and freeze is coupled with a ridiculous argument that the rest of the initiative should be struck down if the court declares the rollback unconstitutional. Voters approved 103 only because of its rate reduction, the insurers say, and if the rollback goes, voters wouldn't want the rest of the reforms. But this argument is nothing more than self-serving conjecture: how can the court decide what was on the minds of voters on election day? Such judicial intervention into the political arena would set a dangerous precedent.

But the insurers have already demonstrated that they are determined to politicize this case. Hours after Prop. 103 passed, dozens of insurers ceased writing insurance, issued blanket cancellation notices, and threatened to boycott the state.

These actions were rehashed in the industry's legal papers — drafted weeks before the election — as arguments why the court should block Prop 103. A post-election memo by the insurance industry's political consultant presages more of the same. It suggests that the industry's ability to discredit 103 depends upon "an unstable environment where the Auto Insurance System is in continuing turmoil."

But we have seen all this before. The Florida legislature approved a 40 percent rollback for commercial insurance in 1986. Industry executives reacted with the same threats as they have in California; the law's constitutionality was quickly challenged. But the Florida Supreme Court ignored the machinations of the industry and upheld the rollback. Insurance companies continue to prosper in Florida.

The California Supreme Court is not likely to accept the industry's invitation to deprive Californians of the reforms for which they had waited so long. Indeed, California's courts are traditionally loath to interfere in the sovereign will of the people. For the court to act otherwise would be to render itself a "legislature of last resort" for those who refuse to accept the results of democracy. It is impossible to envision the current Supreme Court, with its reverence for the sanctity of the initiative process and its acute sensitivity to maintaining a non-politicized judiciary, taking such a position.

*Harvey Rosenfield is chairman of Voter Revolt, the Los Angeles-based grassroots organization that campaigned for Proposition 103, the insurance reform initiative.*



**ROSENFIELD.**