



THE CAPITOL CONNECTION

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EXCLUSIVE:

INTERVIEW WITH ASSEMBLY MEMBER HARMAN



Assembly Member Tom Harman was first elected to represent the 67th Assembly District in 2000 and was re-elected to represent a redrawn 67th

Assembly District in 2002. In 2002, he was appointed vice-chair of the Assembly Judiciary Committee. Prior to joining the Assembly, he served for six years on the Huntington Beach City Council.

The Capitol Connection recently caught up with Assembly Member Harman and asked him to share his thoughts on his role on the Judiciary Committee, the state's budget crisis, and the need for tort reform.

Capitol Connection: What is the role of

the vice-chair of the Assembly Judiciary Committee?

Harman: First, the vice-chair makes sure that there is a fair, complete and impartial hearing when a bill comes to the committee, whether it is authored by a Republican or a Democrat. I also make sure that certain Republican ideals and philosophies are considered as we look at the bill. Republicans generally favor smaller government and less rules and regulations so I try to make sure that those issues are raised, if applicable to a particular bill. I work closely with the Republican members of the committee. I have considerable input with the Republican staff as well as

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REFORMS PROPOSED FOR UNFAIR COMPETITION LAW

Update: In January 2003, The Capitol Connection reported on informational hearings that various legislative committees held in January on alleged abuses of Business and Professions code section 17200. That section allows public prosecutors and private plaintiffs to bring civil actions to enjoin acts of unfair competition or false advertising. The following is an update on that effort.

The Legislature will soon be considering a number of responses to the highly-publicized practices of law firms who file lawsuits and seek settlements from small businesses over minor administrative violations that have often already been remedied. These practices, which have been called legal extortion by some, are possible under Business and Professions Code section 17200, also known as the Unfair Competition Law (UCL). The UCL allows private persons to bring actions against businesses in the public interest without having incurred any damages as a result of alleged unfair business practices.

The challenge faced by the Legislature will be to determine if reforms are needed and if so to enact those that will prevent abuse without reducing the effectiveness of this widely-used consumer protection law. As one might expect, these competing concerns have resulted in a wide range of proposed legislative remedies, some of which would impose substantive limits on the actions that could be brought under the UCL, and others that seek to prevent abuse through procedural safeguards.

AB 102 (Pacheco) is one of eleven bills that have been introduced this session to address the alleged abuses of the UCL. AB 102 would place a number of restrictions on a private party wishing to bring an action under the UCL, including a requirement that the plaintiff suffer a distinct and palpable injury.

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INTERVIEW: ASSEMBLY MEMBER TOM HARMAN

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the Democratic staff on pending bills.

CC: How does your experience as a lawyer inform your functioning as a member of the Legislature and as the vice-chair of the Assembly Judiciary Committee?

Harman: I practiced law for 31 years before I came to the Legislature. I was a sole practitioner in Huntington Beach, doing all types of civil work – probate, trust, wills, estate planning, family law, an occasional personal injury case, a lot of business cases – small, small cases. My experience as a private practitioner, as opposed to a large law firm, has helped me understand and address the variety of complex issues that we see in the Judiciary Committee. My legal background has also helped me with my communication skills, writing skills, leadership skills – all of these come to bear as a member of the Assembly and vice-chair of a major committee like Judiciary.

CC: You were elected to the Assembly under the open primary law, which has since been held unconstitutional. How has this affected your relationship with other members of the Legislature? What is your view of the goal of the new blanket primary initiative (i.e., to elect more “moderates” of both parties)?

Harman: I ran my campaign based on the open primary and was successful doing so. There have been no repercussions or reaction at all to my having arrived here by way of winning the open primary. I’m not particularly supportive of the proposed blanket primary, even though I’m supportive of more moderates and middle of the road Republicans coming to the Assembly. As I understand it, the proposal says that the top two winners in the primary would face off in the general election. For example, my district, the 67th Assembly District, is a very safe Republican district. There could be a situation where Republicans finish one and two in the primary, so I would run against my primary opponent in the primary and then, assuming I win, I would turn around and run against that same Republican candidate in the general election. It in essence gives the loser a second bite at the apple to run against another Republican. That would be a substantial waste of Republican campaign funds. That is the flaw in the proposal and the reason I don’t support it. But I do support trying to get more moderate candidates elected. I don’t see this as being the solution. I’m anxious to get more moderates in the Republican caucus to make the party more appealing to Republican women and minorities.

CC: What is the role of a policy committee such as the Assembly Judiciary Committee, if any, in the budget process?

Harman: Unfortunately, in my view, it’s somewhat limited. Policy committees like the Judiciary Committee consider important policy issues, but then those policy considerations go to a fiscal committee hearing three months later to determine the impact of those policy decisions on the budget. I think it would be better to give the policy committees more input in the budget process generally. And in fact I think there is a movement afoot as we speak to try to consolidate the budget committee with the policy committees to prioritize budget decisions.

CC: Please describe your involvement in the bipartisan group of Assembly members that is working on speeding up the budget process. How have these efforts been received by the leadership of both parties? What are the group’s specific plans for solving the budget deadlock?

Harman: I’m part of a small informal bipartisan group, about 5 or 6 Republicans and 5 or 6 Democrats, all members of the Assembly. We got together informally after budget talks had bogged down. We were very frustrated with the process. We had been in Sacramento for 83 days and not one thing had been done to resolve the budget crisis. We have a \$26 to \$35 billion deficit, depending on whose numbers you use. And if we don’t do something quickly we’re going to be in even worse trouble. Both the Republican caucus and the Democratic caucus were briefed recently by State Controller Steve Westly, who tells us that the state is going to run out of cash as early as May or June if something urgent doesn’t happen. That’s what prompted this group to get together. Minority leader Dave Cox has been very supportive of our trying to move the budget process forward. I know he’s been in contact with Assembly Speaker Herb Wesson, who I am told is also supportive of it. Right now, local government and school districts have no idea what their funding is going to be. They have to know. And the current process is not going to provide answers any time soon, and certainly not by the constitutional deadline of June 15. Yes, there are some painful decisions that have to be made. Are we going to cut this program, or cut that program? Are the Democrats going to insist on tax increases as part of the deal? These are all painful, difficult decisions. My point is, if we can make those decisions in September or October, why can’t we make them in May

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INTERVIEW: ASSEMBLY MEMBER TOM HARMAN

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or June and get the budget done on time? We don't have any specific plans on solving the budget deadlock. This group was only looking at process and procedure.

CC: On the process side, are there specific process plans that this informal group has outlined and is recommending?

Harman: Yes. We have sent a lengthy letter addressed jointly to the Speaker and to Mr. Cox suggesting several changes. One was to have joint meetings of the budget committees and policy committees to help us better understand which programs might be candidates for cuts, and which ones wouldn't. We've also suggested that a timeline be established so that certain tasks could be accomplished by specific dates, starting with June 15th and working backwards.

CC: What are your views regarding the need, if any, for tort reform?

Harman: I think that there is a need for tort reform in some areas. Some of our jury verdicts are out of control. Multi-million dollar awards for things that seem to be of nominal value is one thing we need to look. Another area is lawsuits under Business and Professions Code section 17200, the Unfair Competition Law. There has been huge abuse in that area that is legal extortion where groups of lawyers are suing small auto repair businesses, hair salons, beauty salons, and nail parlors and settling those lawsuits for token amounts of \$1500 or \$2500. But they sue two or three hundred people at a time. They've sued thousands of people in Southern California. That is an area that cries out for reform.

CC: You are the co-author with Assembly Member Pacheco of AB 102, which proposes a variety of reforms of Business and Professions Code section 17200. Similar legislation in recent years has not been successful. What are the prospects for enacting AB 102 this session?

Harman: Well, I won't say that AB 102 is going to be passed, or be *the* vehicle for reform, but some version of AB 102 will. There have been several legislative proposals brought forward. Certainly, Assembly Judiciary Committee Chair, Ellen Corbett has her sights on reform in this area and a blending of them is probably what will happen to eliminate the abuses under Business and Professions Code section 17200.

CC: Is there something different about this year from prior years that makes you more hopeful that a reform bill will be enacted this session?

Harman: Yes. I think definitely, and I think it's the abusive lawsuits that have been filed particularly by the Trevor Law Group in Southern California that have received a large amount of publicity. I think we will see reform legislation. What form it will take is yet to be seen.

CC: We understand that you plan to introduce legislation this year regarding the inheritance rights of children posthumously conceived. How did you become interested in this issue? What are your goals with this legislation?

Harman: It is an interesting new area of the law that has occurred because of developments in technology. Artificial insemination and the technology that supports it are developing more and more in the United States and around the world. Currently, I think there is only one state that has a law on the books about the inheritance rights of a child born by posthumous conception. In California, the courts do not have any guidelines to go by when inheritance issues arise with these children. This is a policy issue that should be decided by the Legislature.

We've held several informal meetings with interested parties, including members of the insurance industry, financial services industry, and the State Bar. Here is the problem: you're a bank and you have a customer with an individual retirement account. On an IRA account the bank customer can fill out a beneficiary designation form. Typically it's the spouse. But there is also an alternate, contingent beneficiary where the children are often designated. The wife is deceased under this scenario and then the bank customer passes away so it passes to his children. Well, before the bank makes distribution, the bank gets a letter from someone, a girlfriend or a surviving spouse in a different scenario, which says: "I'm holding genetic material belonging to the decedent and I intend to have a child conceived using that genetic material from the deceased bank customer so don't distribute any money to the children because there will be more children of the decedent born after the decedent's death." The bank doesn't want to get sued. They know they owe the money to somebody. So this bill will describe who is entitled to inherit with posthumous conception. I want to stress that I'm not going into the moral aspect of this issue. This is already happening and the courts need guidance. It's new territory that we are charting here, so we will see where it takes us.

LEGISLATIVE REVIEW

The February 21 deadline for introducing bills has passed, and many hundreds of bills were introduced in the days leading up to the deadline. Since bills generally must be in print for 30 days before they can be acted upon, many of the court-related bills included here are not yet scheduled for their first policy committee hearing. *The Capitol Connection* will continue to provide regular updates on these bills as they move through the process.

COURT ADMINISTRATION

AB 782 (Kehoe), as introduced. Trial court employees: employment relations

Grants to the Public Employment Relations Board authority to process claims involving violations of statutes or rules relating to employment relations between trial courts and recognized employee organizations.

Status: Not yet referred to committee

SB 254 (Dunn), as introduced. Trial courts: court attendants

Restricts the use of court attendants to taking charge of a jury.

Status: Senate Judiciary Committee

CRIMINAL LAW

AB 20 (Lieber), as introduced. Victims of crime: developmentally disabled victims

States the Legislature's intent to guarantee that the rights of developmentally disabled victims of crime are vigorously protected and that developmentally disabled individuals who are called upon to testify in a court of law are given all of the rights afforded to minor children in the same situation.

Status: Not yet referred to committee

AB 74 (Mountjoy), as introduced. Police vehicle pursuit: punishment.

Makes it a felony rather than a misdemeanor to intentionally evade, willfully flee, or otherwise attempt to evade a pursuing peace officer's vehicle if the peace officer vehicle is operated by a peace officer, distinctly marked, operating a siren, and operating flashing lights.

Status: Assembly Public Safety Committee

AB 101 (LaSuer), as amended February 18, 2003. Restitution.

Reorganizes and rewrites restitution provisions by deleting various disparate provisions and enacting a more comprehensive provision concerning restitution.

Status: Assembly Floor

AB 135 (Reyes), as amended March 3, 2003. Homicide victims

Makes it a felony to steal, take, or move the body of any person who has been the victim of a homicide into another country, state, or county, or into another part of the same county with the intent to conceal the body from law enforcement, or to prevent or obstruct the investigation or prosecution of any crime related to the homicide

Status: Assembly Public Safety Committee

AB 155 (Kehoe), as amended March 5, 2003. Criminal procedure: good cause continuance.

Provides that "good cause" in a homicide or forcible sex crime case includes, but is not limited to, the temporary unavailability of requested forensic DNA analysis results and reports, when the DNA evidence at issue is pending analysis at a laboratory at the time a motion for continuance is made.

Status: Assembly Floor

AB 865 (Matthews), as introduced. Criminal procedure: jury instructions

Requires the court to instruct the jury, after the jury has been sworn and before the people's opening address, that the integrity of a trial requires that jurors conduct themselves as required by the court's instructions, and that accordingly, if any juror refuses to deliberate, or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis, the other jurors shall immediately advise the court of that fact.

Status: Not yet referred to committee

AB 1273 (Nakanishi), as introduced. Criminal procedure: continuances

Specifies that, for purposes of the law requiring a finding of good cause to continue any criminal hearing, the good cause requirement shall not apply to a prosecution or defense motion to continue a felony trial to a date not more than 60 days from the date of the defendant's arraignment on the information, or to a date not more than 10 days after a trial date set more than 60 days after that arraignment, as permitted with a defendant's consent or a prior finding of good cause. States that this exception to the requirement of a finding of good cause is intended to codify existing case law.

Status: Assembly Public Safety Committee

SB 3 (Burton), as amended January 9, 2003. Death penalty: mental retardation

In response to the U.S. Supreme Court's decision banning execution of a mentally retarded defendant (*Atkins*

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v. Virginia, 536 U.S. 304), establishes a process requiring a court to order a trial, prior to the adjudication of guilt, to determine whether a defendant is mentally retarded. Places the burden on the prosecution to prove beyond a reasonable doubt that the defendant is not mentally retarded.

Status: Senate Appropriations Committee

SB 51 (Morrow), as introduced. Death penalty: mental retardation

In response to the U.S. Supreme Court's decision banning execution of a mentally retarded defendant (*Atkins v. Virginia*, 536 U.S. 304), provides that the determination of mental retardation be held between the guilt phase and the penalty phase. Requires the defense to prove by a preponderance of evidence that the defendant is retarded. Defines mental retardation as the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested prior to 18 years of age. Provides that an IQ above 70 establishes a rebuttable presumption that the defendant is not mentally retarded.

Status: Failed passage in Senate Public Safety

SB 58 (Johnson), as introduced. Police reports: confidentiality

Requires the court to seal a police report, arrest report, or investigative report, and any item attached to it, submitted to the court by a prosecutor in support of a criminal complaint, indictment, or information, or by a prosecutor or law enforcement officer in support of a search warrant or an arrest warrant. Permits these records to be inspected, upon request, after the clerk of the court redacts all personal identifying information.

Status: Senate Public Safety Committee

SB 222 (Margett), as introduced. Juveniles: detention

Requires that persons who are detained in or committed to county juvenile facilities and who attain 18 years of age prior to or during the period of detention or confinement be advised of their ability to petition the court for continued detention in a juvenile facility when he or she attains 18 years of age. Provides that persons who are detained in juvenile facilities and who have attained 18 years of age may come into or remain in contact with minors.

Status: Senate Public Safety Committee

SB 599 (Perata), as introduced. Drug diversion: sealed records.

Expresses the Legislature's intent to permit in appropriate circumstances the sealing of records of persons who successfully complete a diversion program and have had the controlled substance offenses dismissed.

Status: Not yet referred to committee

SB 631 (McPherson), as introduced. Juvenile court records: restitution

Requires a petition to seal juvenile records to include a statement disclosing any outstanding restitution obligation relating to the unlawful act that caused the records to be created. Requires a court, before granting a petition to seal juvenile records under this authority, to find that the statement indicates that there is no outstanding restitution obligation directly relating to, or arising from, the unlawful act that caused the records to be created. Provides that a closed civil case or satisfied restitution obligation relating to, or arising from, an unlawful act does not bar the court from sealing the records of a case.

Status: Senate Public Safety Committee

SB 638 (Burton), as introduced. Criminal procedure: verdict form

Provides that the general verdict upon a plea of not guilty is "guilty," "not guilty," or "not proven." Provides that a defendant shall not be tried again for any offense for which a general verdict of "not proven" is rendered and that a general verdict of "not proven" shall have the same effect as an acquittal for purposes of double jeopardy, and would provide for the rendition of a verdict of "not guilty" or "not proven" where the jurors do not unanimously agree.

Status: Senate Public Safety

SB 718 (Dunn), as introduced. Criminal procedure

Requires a motion by a defendant in a criminal case to return property or suppress evidence to precisely identify the law enforcement or other governmental conduct that is challenged by the motion. Limits the evidentiary hearing concerning a motion alleging unlawful search or seizure to the law enforcement or other governmental conduct that has been precisely identified in the defendant's motion.

Status: Not yet referred to committee

SB 877 (Hollingsworth), as introduced. Criminal procedure: discovery

Permits the court, at any time, for good cause, to deny, restrict, or defer discovery or inspection of evidence, or to grant other appropriate relief. Provides that there is

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no obligation to comply with a discovery request for reproduction of contraband, as long as the prosecution makes the evidence reasonably available to the defense.

Status: Not yet referred to committee

DOMESTIC VIOLENCE

AB 29 (Reyes), as amended February 6, 2003. Protective orders: domestic violence.

When petitioning the court for a protective order, requires any person who has been awarded custody or unsupervised visitation with a minor to serve a copy of the order by mail, to 1) the other parent of the minor, unless the respondent; and 2) if the respondent has any minor child unrelated to the petitioner, the other parent of that minor. The protective order must notify the petitioner of this requirement. An order cannot be issued if the petitioner fails to comply with the service requirement.

Status: Assembly Judiciary Committee

FAMILY LAW

AB 111 (Corbett), as amended February 27, 2003.

Child custody: emotional abuse.

In child custody proceedings, requires the court to consider unjustifiable mental suffering inflicted upon a child when determining the best interest of the child. Also revises the definition of unjustifiable mental suffering in the child abuse statutes in the Penal Code.

Status: Assembly Public Safety Committee

SB 265 (Kuehl), as introduced. Child custody: domestic violence

Changes the operation of the rebuttable presumption against custody to a person who has perpetrated domestic violence. Requires the court to consider specified factors to determine which party is the "dominant aggressor."

Status: Senate Judiciary Committee

JUDICIAL SERVICE

AB 67 (Negrete McLeod), as introduced. Judges retirement

Among other things, makes changes to judges' retirement. Allows members of Judges Retirement System II (JRS II) who have withdrawn accumulated contributions from this system to redeposit those contributions. Permits active and retired members of JRS and JRS II to purchase up to four years of service credit for active military service. Allows a surviving spouse of a judge who dies in office to receive payments to which he or she may be entitled under the Extended Service Incentive Program. Also, provides that a judge who is retired for disability may not receive a retirement allowance while he or she engages in work involving duties substantially similar to those that the judge was unable to perform due to their disability.

Status: Assembly Appropriations Committee

JUVENILE

SB 59 (Escutia), as introduced. dependent children: appeals

States legislative findings that "delays caused by appeals from orders which both determine the placement of dependent children and affect who may adopt the children, adversely affect the children." Requires that the review of any order made at or after disposition that determines the placement of a dependent child and affects who may adopt the child shall be exclusively made by petition for an extraordinary writ.

Status: Senate Judiciary Committee

BUDGET UPDATE

The budget process in the Legislature is moving slowly. Democrats have largely agreed to defer taking substantive action on the budget for the 2003-04 fiscal year until May when revised revenue and spending figures are available.

Hearings on the judicial branch's budget start this week. On Thursday, March 13, Assembly Budget Subcommittee #4 will hold a joint hearing with the Assembly Judiciary Committee to consider the proposals in the Governor's budget that affect the branch. No action is expected until the subcommittee's April hearing.

Also, the Senate Budget Subcommittee responsible for the

judicial branch's budget will hold a hearing on court budgets on March 19.

Regarding legislative action on the 2002-03 spending plan, the Assembly on March 10 approved reductions that reduce current year spending in the overall state budget by approximately \$3.3 billion. The Assembly's previous approval of current year cuts was tied to an increase in the vehicle license fee (VLF), which Governor Davis indicated he would not sign. However, after legal review, the Administration and the State Controller have agreed that the VLF can be increased administratively under the terms of the 1998 law that cut the fee by two-thirds.

RIPPED FROM THE HEADLINES

"Ripped From the Headlines" highlights news stories of interest including headlines and lead paragraphs, without editorial comment from *The Capitol Connection*.

"Privacy Bill Clears a Senate Panel" *Daily Journal* (February 19, 2003)

This year's major financial privacy bill cleared its first hurdle Tuesday but is likely to face tougher challenges ahead.

Senator Jackie Speier's measure would require that companies give consumers the ability to easily opt out of information-sharing agreements between affiliated companies. It also includes an "opt-in" provision, which would require companies to get permission from customers before selling their information to unrelated businesses.

While the bill easily passed the liberal-controlled Judiciary Committee, it will face a harder test in the Assembly, where pro-business Democrats helped kill similar measures introduced by Speier in the last two years.

However, Speier said her bill has a better chance of passing this year because the tenor of the debate has changed. Part of the reason is that consumer groups have frightened financial institutions into negotiations by the threat of a ballot-initiative campaign. A ballot measure wouldn't include the kinds of compromises that Speier has already accepted or indicated she is willing to discuss, the senator said.

"Davis Budget Can Solve Crisis But Is Far From Perfect, Analyst Says" *Los Angeles Times* (February 20, 2003)

California's nonpartisan legislative analyst confirmed Wednesday that the budget submitted by Gov. Gray Davis could resolve the state fiscal crisis, but she also laid out an extensive menu of alternate cuts and tax hikes for lawmakers to consider.

But Hill was critical of key parts of Davis's approach, and lawmakers immediately seized alternatives that supported their own views.

"She's got a lot of ideas that are good," said Senate President Pro Tem John Burton (D-San Francisco), "which are the ones that agree with my thinking, and she's got some that are bad, which are the ones I disagree with ... That's the beauty of the [legislative analyst's office]. "They're independent and they call the shots the way they see them."

Hill urged the Legislature to "put everything on the table, including both program reductions and taxes." Nowhere does she suggest that the "enormous" budget problem can be solved without raising some tax.

With the report, the stage is set for even more serious negotiations and compromises between the Democratic governor and both houses of the Legislature. Although Democrats hold majorities in the Assembly and Senate, they cannot act without some Republican support: The state Constitution requires that lawmakers approve any spending plan by a two-thirds vote.

Davis cannot accept or veto any budget until it reaches his desk, which means that Republicans have significant sway over what is the most weighty legislation of any year.

"Davis Plan Hits A Snag" *Sacramento Bee* (February 26, 2003)

The Legislature's lawyers have issued a legal opinion that could unravel the centerpiece of Gov. Gray Davis' plan to bridge the state's massive budget gap.

The Legislative Counsel's Office, in a privately circulated opinion obtained by The Bee, concluded that California would be legally required to divert billions of dollars in revenues from Davis' proposed tax increases to schools rather than local governments.

The opinion could derail the "realignment" plan in the governor's 2003-04 budget because it will siphon off to schools as much as half of the \$8.3 billion raised from increasing taxes on shoppers, smokers and top earners. Davis designed the realignment plan to shift several state programs to local governments and finance them with new taxes that bypassed the state treasury and theoretically avoided Proposition 98's provisions.

To make Davis' plan work in accordance with the opinion, lawmakers would have to suspend Proposition 98, the 1988 initiative that guaranteed to kindergartens through community colleges a certain amount from the state each year according to a complex formula, including tying school spending to the growth in state revenues.

"Davis Signs Coastal Commission Bill" *Los Angeles Times* (February 21, 2003)

Calling the California Coastal Commission the "guardian angel" of the state's coastline, Gov. Gray Davis signed legislation Thursday to resolve a legal challenge that threatened the future of the commission and its authority to regulate sea-side development.

Davis said the new law, which will take effect in 90 days, should be enough to end a constitutional crisis that arose when a state appeals court ruled in December that the commission's makeup violates the state Constitution's separation-of-powers doctrine.

"The court of appeals indicated that their chief complaint had to do with the ability of the Legislature to remove their appointees at will," Davis said immediately after signing the bill. "We believe today's fix is appropriate and all that is necessary to safeguard the legality of the statutes that underlie the California Coastal Commission."

"Budget-Cut Targets Go To Voters" *Orange County Register* (March 3, 2003)

The Battle of the Budget may be heading to a ballot box near you.

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RIPPED FROM THE HEADLINES

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A parade of interests whose funds are at risk are deciding whether to go directly to voters for protection. There is precedent - Proposition 13 in 1978 and Proposition 98 of 1988 are two well-known examples among many.

But rarely have so many major interests - fearful of the \$34.6 billion budget shortage - plotted so seriously to get on the ballot at the same time. If they succeed, the ballot in March 2004 - a presidential primary year - will be crowded indeed.

All these initiatives could make it tough for voters to pick and choose. Partisans know that, and that's why interests with similar ballot goals try to join together to cut down on the number of propositions. "It's very confusing and chaotic to voters, and in the long run it could be damaging to a number of different efforts," said Megan Taylor of the League of California Cities.

By early April, the flock of proposed initiatives is expected to reach Attorney General Bill Lockyer, who must OK the title and summary of the initiatives before backers can circulate petitions.

After that, it's up to the voters.

"Ninth Circuit Reinstates Homeowners' Fraud Suits Stemming From 1994 Northridge Quake" *Metropolitan News Enterprise* (March 4, 2003)

Homeowners who say they were victimized twice by the 1994 Northridge earthquake—once by the quake itself, then by unscrupulous insurance companies who allegedly covered up the true extent of the structural damage they sustained—had their suits reinstated yesterday by a federal appeals court that upheld a California statute extending their time to file.

Reaching the same conclusion as the California Court of Appeal in a number of earlier rulings, the Ninth U.S. Circuit Court of Appeals rejected claims by Allstate Insurance Company that Code of Civil Procedure Sec. 340.9 was an unconstitutional impairment of contract.

The statute, passed in the wake of a scandal that drove state Insurance Commissioner Chuck Quackenbush from office, extended the contractual one-year limitations period in most of the insurance policies.

"Democrats Rip GOP Plan on Budget Crisis" *Los Angeles Times* (March 4, 2003)

Legislative Democrats declared Monday that a Republican plan to solve the budget crisis by slashing programs another 7% across the board could force the early release of 23,000 prisoners, close some of the state's prized universities and turn state-supported nursing home residents out on the street.

After commending their GOP colleagues for offering a budget-balancing plan of their own, Democrats led by Senate President Pro Tem John Burton set out to illustrate just how deeply the approach -- with no revenue from additional taxes -- would decimate government services.

"I don't necessarily think their plan is realistic as far as solving the problem," said Burton (D-San Francisco). He said making a

7% reduction "sounds like an easy shot, but it really isn't."

Republicans characterized as misleading a seven-page analysis Burton released Monday purporting to show how different services would suffer if cut.

"Bill Widens Harassment Protections" *Daily Journal* (March 5, 2003)

The head of the state Assembly Judiciary Committee won initial approval Tuesday for a bill that would allow workers to sue their employers for on-the-job harassment by clients or customers.

The measure, AB76, introduced by Assemblywoman Ellen Corbett, D-San Leandro, would invalidate an appellate court decision in a case in which a passenger, notorious for repeatedly exposing himself, sexually attacked a bus driver.

The 2nd District Court of Appeal ruled the bus driver could not sue her employer for failing to protect her because the state Fair Employment and Housing Act did not apply to on-the-job harassment by third parties such as the passenger. *Salazar v. Diversified Paratransit, Inc.*, 103 Cal.App.4th 131 (2002).

Although the state Supreme Court has agreed to review the decision, the author said she wanted to make a clear statement of the Legislature's intent that the fair employment statute protect anyone entering a job site.

"Three-Strikes Gets Justices' Approval" *Daily Journal* (March 6, 2003)

A divided U.S. Supreme Court Wednesday upheld three-strikes laws in California and 24 other states against charges they are unconstitutional cruel and unusual punishment when applied to a third-strike petty offense such as shoplifting.

Writing for a five-justice majority in both cases, Justice Sandra Day O'Connor said that both inmates had long criminal records and that their sentences were "justified by the State's public-safety interest in incapacitating and deterring recidivist felons."

The three-strikes law has "sparked controversy," O'Connor said, but any criticism "is appropriately directed at the legislature, which has primary responsibility for making the difficult policy choices that underlie any criminal sentencing scheme." *Ewing v. California*, 2003 DJDAR 2490 (U.S. March 5, 2003).

Opponents of the three-strikes law have tried repeatedly, but without success, to persuade the state Legislature to amend it. Currently, AB112 which was introduced in January by Sen. Jackie Goldberg, D-Los Angeles, would require that a third strike be a "serious" or "violent" felony. But the bill is given little chance of passage.

"Ruling Opens Megan's Law To Net Users" *San Jose Mercury News* (March 6, 2003)

Californians might soon be able to browse the state's registry

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of sex offenders from their home computers after the U.S. Supreme Court rejected claims Wednesday that putting Megan's Law lists on the Internet is an unlawful added punishment.

"We're ecstatic," said state Sen. Dean Florez, D-Fresno, who has introduced four bills to strengthen California's Megan's Law, including one that would put the sex offender database on the Internet. "It means our bill can actually start to push forward."

Until now, California lawmakers have been reluctant to put the Megan's Law database on the Web out of concern over court challenges. Californians currently must go to a police or sheriff's station and fill out a form to see the list.

"Juvenile Board Runs Out Of Cash" *San Francisco Chronicle* (March 7, 2003)

The board that decides whether juvenile wards of the state should be paroled has run out of money and will partially shutter its operations beginning today.

The budget problems for the Youthful Offender Parole Board stem from a yearlong fight between Gov. Gray Davis and Senate President Pro Tem John Burton, D-San Francisco, over the board's performance.

Burton insists that the board is cavalier and out of touch with California Youth Authority programs and that its duties should be given to local juvenile courts. Davis says that stripping responsibility from the board would burden counties and lead to different parole policies in each locality.

Last year, Davis vetoed a bill sponsored by Burton that would have shifted some of the board's power to local juvenile court judges. To encourage Davis to sign the measure, Burton had placed six months of funding for the board in the budget and the remaining \$1.6 million in his bill.

Davis' veto meant the seven-member board would run out of money in January.

"Democrats Delay Action On Davis' Proposed Cuts" *Los Angeles Times* (March 7, 2003)

Senate Democrats, accused by Republicans of dragging their feet in the face of mounting budget problems, nevertheless agreed Thursday to delay until at least next month formal votes on the service cuts included in Gov. Gray Davis' proposed budget for the coming fiscal year.

Senate leader John L. Burton said that because of the magnitude of the proposed cuts, Senate budget writers need more time to examine the implications of reductions before they can responsibly act on Davis' scaled-down budget for the fiscal year that begins July 1. But Republicans attacked the delay as a maneuver to further dodge the unhappy task of making the reductions, especially to education and health programs for the needy.

Normally, budget-writing subcommittees in both houses start hearings and voting in March. Typically, they fashion a relatively firm budget plan that can be amended in May, if neces-

sary, to reflect updated revenue forecasts. This year's process is complicated by the Legislature's grappling with two budget problems at once: the cuts contemplated in next year's spending plan and those that Davis is asking legislators to approve in this year's budget.

Addressing the progress of next year's budget, Burton said that because of the extraordinary money problems, votes in budget subcommittees would be postponed until April, when he believes the magnitude of the needs for higher taxes, deeper spending cuts, or a combination of both would become clearer.

"Veto of Early Release Bill Sought" *Los Angeles Times* (March 7, 2003)

Eleven Assembly Democrats who helped secure passage of a bill last month to release certain prisoners early took another look at the fine print and on Thursday asked Gov. Gray Davis to veto their own work.

The lawmakers said they voted for the bill without realizing that it made prisoners convicted of some serious felonies eligible for early release. The bill, SB 15X, was aimed at saving \$70 million in next year's budget.

The 11 Assembly members asked the governor instead to sign a replacement bill, AB 17X, that would exclude from early release prisoners convicted of such crimes as felony stalking, felony elder abuse, poisoning a food or water supply and fleeing to California to avoid prosecution for a forcible sex crime in another state.

"Trigger Upheld for Car Tax Hike" *The Sacramento Bee* (March 11, 2003)

Lawyers for Gov. Gray Davis and state Controller Steve Westly announced an agreement Monday that ended a weeks-long impasse over midyear budget cuts and could lead to a tripling of the annual vehicle license fee — without a vote of the Legislature or the public.

In a joint legal opinion, the chief counsels for Westly and Davis' Department of Finance concluded that a shortage of state cash can trigger an automatic increase in the fees.

The 10-page legal memo does not spell out exactly when, or if, the fee will be increased, and it largely shields the two elected Democrats from the politically prickly task of raising it.

But it provided the assurance that Assembly Democrats were seeking to approve about \$3 billion in midyear budget cuts three months after the governor had requested them.

Republicans charged the opinion was "contorted" to protect Democrats from political responsibility, and predicted that any increase would be challenged in court and on the ballot.



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UNFAIR COMPETITION LAW

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AB 599 (Dutton) would require that the business practices targeted by UCL lawsuits be both unlawful and unfair and that the plaintiff have a good faith belief that each named defendant had engaged in the alleged misconduct. AB 599 would also require the approval of the court prior to dismissal or compromise of an action.

AB 754 (Bogh) would require that the alleged misconduct of businesses be a practice rather than an act and would define a "practice" as a pattern of conduct.

SB 889 (Johnson) would prohibit the filing of actions against businesses having fewer than 50 employees unless the person bringing the action has sustained a distinct and palpable harm as result of the unfair act or practice that is the subject of the action.

SB 122 (Escutia) would require a plaintiff suing under the UCL to notify the district attorney of the action and to file proof of service of the notification with the court. The remainder of the bills in this area are placeholders, or "spot bills," that have yet

to be amended to include specific reforms.

In a related development, Attorney General Bill Lockyer announced on February 26 that he had filed a consumer protection action against the Trevor Law Group of Beverly Hills. This firm and its practices in filing lawsuits and aggressively seeking settlements under the UCL was the subject of a joint hearing of the Senate and Assembly Judiciary Committees in January. The Attorney General's action is being brought pursuant to Business and Professions Code 17200, the same statutory scheme that Trevor Law Group has allegedly abused. A number of other firms are also being investigated by the Attorney General's Office, and the State Bar is conducting investigations as to whether ethics rules have been violated by the practices of these firms.

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