FACT SHEET ON PROPOSITION 37
THE POLLUTER PROTECTION ACT

What is Proposition 37?

Proposition 37 proposes a constitutional amendment that would prohibit California from levying fees to clean up or mitigate environmental pollution, local nuisances or threats to public health without a two thirds vote of the state legislature or local voters.

The operative language of the measure states that fees “to study, monitor or mitigate the societal or economic effects of an activity,” beyond the cost of the direct regulation would be prohibited and would instead become taxes. Moreover, the language of this measure states that fees which “impose no significant regulatory obligation on the fee payor’s activity other than the payment of the fee” would also be deemed taxes.

This very broad language means that any time state and local government wanted to set up a fund, paid into by a companies of a polluting industry, to study or clean up that pollution, it would be far more difficult. As the Legislative Analyst states, “Prop. 37 would make it more difficult to approve certain regulatory charges.”

Proposition 37 is the first outright anti-environmental measure to be placed on the ballot in many years. It also negatively affects public health, local government and law enforcement.

Who is sponsoring Proposition 37?

Oil, alcohol and tobacco corporations have so far contributed 92% of the money behind this measure, according to their first report with the secretary of state. They spent over $1 million to put this on the ballot. Specifically, the top 5 supporters of proposition 37, in order, are Philip Morris, ARCO, Chevron, Wine Institute, Equilon Services (oil) and RJ Reynolds.

Why did they put this measure on the ballot?

The answer to this is simple. The purpose of Proposition 37 is to shift the burden of correcting environmental and health damage from those companies who cause the damage, to the ordinary taxpayers of California.

How will Proposition 37 shift the burden of cleaning up pollution to the ordinary taxpayer?

Proposition 37 would overturn a unanimous decision of the California Supreme Court in the case of Sinclair Paint vs. Board of Equalization, 1997.
This decision upheld fees on paint manufacturers and oil companies to pay for lead clean-up programs and childhood lead screening, under the “Childhood Lead Poisoning Prevention Act”.

Proposition 37 would label such fees as “taxes.” If classified as taxes, fees levied against oil, alcohol and tobacco companies to offset the damage they do to our environment and health would require a 2/3-majority vote in the legislature in order to be enacted.

Because powerful special interests, such as oil, tobacco, and alcohol, will have no trouble getting 1/3 of the legislature to vote according to their wishes, these fees will be extremely difficult to enact. And, by re-labeling fees as “taxes”, it is much harder to politicians to vote for politically charged “taxes” instead of clean-up fees.

This does not mean that the environmental cleanup will not occur. It simply means that the taxpayers, not the polluters, will have to pay for it. This is why opponents of Proposition 37 have named this measure the Polluter Protection Act.

**How, exactly, will Proposition 37 protect polluters?**

The following is a short list of fees that provide for study, monitoring or mitigation, requiring only the paying of a fee, and thus could not be enacted if Proposition 37 passes.

* An oil spill prevention and cleanup trust fund, paid for by fees on oil companies, currently in existence.
* An emergency railroad response trust fund, passed after the Dunsmuir chemical spill, which was paid for by fees on railroads.
* Recycling fees, such as those used to pay for disposing of tires and used oil.
* Tipping fees at garbage dumps that pay for recycling programs.
* A fee on tobacco to pay for direct public health costs of smokers.
* A fee on toxic chemicals to pay for cleanup of brownfields and other toxic sites.
* A fee on MTBE production to pay for cleaning up polluted groundwater.

**How would Proposition 37 effect environmental and health mitigation fees at the local level?**

At the local level, if the fee is dedicated to a particular purpose then it would be considered a “special tax,” and subject to a 2/3 vote, pursuant to Proposition 37. Since fees to “monitor, study or mitigate” a particular environmental impact are by definition for a specific purpose such fees would also require a 2/3 vote of the people. The following are a few examples, of the many types of local regulatory fees that would have little chance of passing if this measure succeeds.

* A landfill fee based upon land use to reduce illegal waste disposal.
* A fee on liquor store permits to pay for increased law enforcement because of neighborhood nuisance.
* A fee on airlines to monitor neighborhood noise effects of airport expansion.
*A fee based on emissions-based formulas for recovering direct and indirect cost of pollution emissions.
*Hazardous material spill response fees that pay for a public agency’s hazardous material cleanup response.

**Are there other kinds of issues other than environmental mitigation that would be affected by Proposition 37?**

This bill aims to prevent fees to “monitor, study or mitigate societal or economic effects of an activity.” The implication of a measure that would prevent even the study or monitoring of an activity are frighteningly broad. A fee to study or monitor could include a variety of issues beyond the environment, such as a study of economic losses that might occur as a result of a nuisance activity. In addition, law enforcement, such as the California Highway Patrol, receives vehicle fees for policing vehicle theft, and to clean up abandoned vehicles. These would be restricted. Environmental, health and neighborhood damages are the primary mitigations that would be prohibited.

**If Proposition 37 passes, will there be actual negative consequences for the environment?**

The environment will suffer because corporations will not have incentives to strive toward environmentally friendly production practices. As the Supreme Court stated in Sinclair Paint vs. the Board of Equalization, a mitigation fee

“’regulates’ future conduct by deterring future manufacture, distribution or sale of dangerous products, and by stimulating research and development efforts to produce safer alternative products.”

**How would the passage of Proposition 37 affect me?**

The ordinary California taxpayer would have to pay to clean up the pollution of large corporations. Many types of normal fees on polluting or health-damaging activity would become impossible to enact.

**But the 2/3-vote requirement to raise taxes is in the California constitution to protect the ordinary taxpayer. Why would I vote to change that?**

A no vote on Proposition 37 will not change this. It is a fact that all local taxes and homeowner fees must be voted on by taxpayers, according to proposition 13 and proposition 218. Proposition13 requires a 2/3 vote requirement of the legislature on taxes, and this will not change if Proposition 37 loses. In fact, the California Supreme Court case which Proposition 37 aims to overturn states:

“A reasonable way to achieve Proposition 13’s goal of tax relief is to shift the costs of controlling . . . pollution from the taxpaying public to the pollution causing industries themselves.”
This is exactly what a no vote on Proposition 37 would achieve.

**Won’t these fees, levied on polluting corporations, just be passed on to consumers as “hidden taxes” like the proponents claim?**

If the polluters were able to pass on these fees to consumers, why would they be spending millions of dollars to pass this measure?

For example, liquor stores that are charged permit fees for nuisance abatement can not pass those fees on to customers. Large manufacturing companies, in the business of producing anything from computers to pesticides, have the potential to damage our environment. They too would not be able to pass on fees to the Californian consumer, because their prices must remain competitive in the international marketplace. Oil companies charge what the market will bear for gasoline, and currently pay the costs themselves for an oil spill prevention fund.

In the case of the tire disposal fee, the fee is not hidden at all. Consumers know they are paying these costs and are willing to pay to cleanup the mess that tire disposal causes. It’s only the big polluting industries that are trying to avoid the real costs of doing business.

**What about the examples that the supporters of proposition 37 use? Will the government really be able to raise the prices of basic necessities such as food and household products?**

Absolutely not. Looking closely at a few of the examples given by the supporters of Proposition 37, it is easy to see that they are offering the voters examples which would never be legal and are complete distortions of current law.

Here’s why their examples are so absurd:

* a fee on aspirin to pay for poison control centers. This would not be legal, because there must be a direct connection between the product and the damage that is being corrected through the use of the fee. Also, a poison control center is not a mitigation of the aspirin industry. And finally, aspirin is not a poison. Of all the emergencies handled by poison control centers, those involving aspirin are likely to be few. California’s oil companies, on the other hand, are responsible for 100% of the pollution their refining and shipping practices cause. When used correctly aspirin does not facilitate the need for a poison control center. When used correctly, oil refineries still cause pollution, and thus facilitate the need for a cleanup fund. When used correctly, tires still need to be disposed of. When used correctly, airplanes still cause noise pollution.

* A fee on fatty foods to pay for health programs. This too would be illegal. It is written in the California constitution that “neither the State of California nor any of its
political subdivisions shall levy or collect a sales or use tax on the sale of, or the storage, use or other consumption in this State of food products for human consumption” (Art. XIII sec. 34). It is clearly illegal to put any kind of a tax on food. And again, there is no direct connection between the consumption of fatty foods and ill health. Many are able to consume fatty foods on a regular basis with no ill health effects at all. However, no one is immune to the negative health effects of a chemical spill, or contaminated drinking water.

*Fees on movie tickets to pay for parks and recreation programs.

Again, this type of fee would be illegal. There is absolutely no connection between the operations of a movie theater and parks and recreation programs. Trying to create such a connection is an example of the absurdities that supporters of Proposition 37 are resorting to to make their argument. There is, however, a direct connection between tobacco products and the healthcare costs of those individuals suffering directly from smoking related illnesses.

Opponents of Proposition 37 are ordinary taxpayers and consumers too. We are not fighting for the government’s right to tax every conceivable item with zero accountability. Rather we are fighting to protect the taxpayers from the financial burden of cleaning up the pollution caused by oil, alcohol and tobacco companies.

**Who are some of the opponents of Proposition 37?**

The following are a few of Proposition 37’s opponents:

The American Academy of Pediatrics  Natural Resources Defense Counsel
The California Tax Reform Association  The Congress of California Seniors
The Coalition for Clean Air  The Planning and Conservation league
The Sierra Club  American Cancer Society
California Professional Firefighters  California Nurses Association