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February 7, 2003

**Via Facsimile and U.S. Mail**

Governor Gray Davis  
State Capitol Building  
Sacramento, CA 95814  
Fax: 916-445-4633

Dear Governor Davis:

I am writing on behalf of the Campaign for New Drug Policies and the Drug Policy Alliance to urge you to reconsider your proposed 2003-04 Budget with respect to funding for Proposition 36 drug treatment programs. Based on my legal analysis, the current proposed Budget, if enacted, would be inconsistent with the purposes of the initiative and frustrate its implementation, and would therefore be unlawful.

Proposition 36 was enacted by the voters of California in November 2000. Section 9 of Proposition 36 forecloses amendment of the initiative by the Legislature except by two-thirds vote, and requires that any amendments "shall be to further the act and shall be consistent with its purposes." This language is straightforward, and Courts will invalidate any legislative enactment that does not meet this standard. *See, e.g., Amwest Surety Ins. v. Wilson* (1995) 11 Cal.4th 1243, 1265. As currently conceived, the Budget unlawfully conflicts with Proposition 36 and will not withstand scrutiny by the courts. Although my clients hope to avoid a legal challenge, they are prepared to bring a suit to ensure that the will of the voters in passing Proposition 36 is not stymied.

Four ways in which the proposed Budget is unlawful are as follows:

First, Proposition 36 requires creation of, and continuous appropriation to, the Substance Abuse Treatment Trust Fund through 2005-06. Health & Safety Code §§11999.4, 11999.5. For fiscal year 2003-04, the initiative guarantees \$120,000,000 will be appropriated from the General Fund to the Trust Fund. Health & Safety Code §11999.5. But the proposed 2003-04 Budget includes no funding whatsoever for the Trust Fund from the General Fund or any other source. It is irrelevant that the proposed Budget contemplates another means of providing some funding for drug treatment programs. By failing to meet an express requirement of Proposition 36 to fund the Trust Fund, the proposed Budget does not "further the act" and is not "consistent with its purposes" as required by Section 9 of Proposition 36.

# Signers to Letter to Gov. Davis, Sen. Burton, Speaker Wesson Opposing Proposition 36 Realignment

## **PROP. 36 SPONSORS**

Campaign for New Drug Policies  
Drug Policy Alliance  
Gretchen Burns-Bergman, Chairperson, Prop. 36 Campaign  
Cliff Gardner, Official Proponent, Prop. 36

## **STATEWIDE ORGANIZATIONS**

California Nurses Association  
California Opiate Maintenance Providers  
California Public Defenders Association  
California Society of Addiction Medicine  
Center on Juvenile and Criminal Justice  
San Francisco Medical Society

## **INDIVIDUALS BY AFFILIATION**

### **American Liver Foundation**

Diane Lane, San Diego  
Martha Saly (Bd Member), Rohnert Park

### **Any Positive Change – Clearlake**

Dannson Dorman  
Rebecca Smith  
Jayleen Johnson

### **Asian American Drug Abuse Program, Inc – L.A.**

Linda Johnson  
Cindy Parks

### **Aware Liaison Behavioral Human Services**

Michelle McKee, Long Beach  
Luther Gregg Wilson, Tarzana

### **Behavioral Health Services**

LaShade Frank, Gardena  
Travestine Casey, Hawthorne  
William Davis, Hawthorne

### **Bi-Valley Medical Clinic – Davis**

Jack McCarthy, M.D.

### **Bienestar Human Services – L.A.**

Laura Zamora  
Alfred Rey

### **Breaking Barriers – Sacramento**

Vicki Ryan (Women of Color Coordinator)

### **Cache Creek Lodging, Inc – Woodland**

John Madsen

### **CAL Pep – Oakland**

Dayvell Roso

### **Calif. Assn. Of Addiction Recovery Resources – Sacramento**

Susan Blacksher (Executive Director)

### **California Public Defenders Association – Sacramento**

Joe Spaeth

### **California Society of Addiction Medicine**

Gary Jaeger, M.D. (President), L.A.

### **Cares – Sacramento**

John Hy Hon

### **Center Point, Inc. – San Rafael**

Sushma Taylor, Ph.D. (CEO)

### **Children's Hospital L.A.**

Jessica Hyah

### **Coalition on Homelessness**

Steven Chester, San Francisco  
L.S. Wilson, Sr., San Francisco  
Jenifer Friebach, San Francisco  
Mike Zapien, Modesto

### **Common Ground**

Daniel Gohaff (Director of Prevention),  
Santa Monica

### **Community Recovery Resources – Grass Valley**

Warren Daniels (Executive Director)

### **Computers & You – Oakland**

Cheryl Dockery

### **CRASH, Inc – San Diego**

David Haskins

### **Cri-Help, Inc. – North Hollywood**

Ruben Villalobos (Senior Intake Specialist)

### **Department of Health – Sacramento**

Keith Anderson

### **Drug Abuse Alternative Center – Santa Rosa**

Danny Gutierrez  
Joseph Fleming III  
Willma Wemman  
Diana Eslick  
Richard H. Larrie  
Barbara Lenfat

### **East Bay Recovery Project – Oakland**

Madelyn Stone

### **Fresno Cnty. Public Defender's Ofc.**

Garrick Byers

### **Green Pasture Church – San Pablo**

John Gordon

### **Haight Ashbury Free Clinic Inc. – San Francisco**

Ginger Mark, San Francisco

### **Highland Hospital Substance Abuse Program – Oakland**

Michelle French

### **HIV Education & Prevention Project – Oakland**

Michael D. Northcutt  
Barbara Flowers

### **HIV Planning Council – Sacramento**

Mahara Leong

Note: Individuals listed by affiliation for identification purposes only.  
Organizations that have formally joined opposition to realignment listed separately.

# Signers to Letter to Gov. Davis, Sen. Burton, Speaker Wesson Opposing Proposition 36 Realignment

## **INDIVIDUALS BY AFFILIATION** (continued)

**HIV Task Force – L.A.**  
Phillis Barlawn

**HIV/HEP Project – Oakland**  
Michael Haronk, RN

**Homeless Health Care – L.A.**  
Carlos Rivas  
Denise Shuler

**HOPE – Oakland**  
Betty Swenson (CEO/Director)  
Shante Randles  
Maurice Thompson

**Hope Project – Ukiah**  
Kristine Ross

**House of Metamorphosis – San Diego**  
Ken Hooks

**Largaespada Ent. – Sacramento**  
Ingrid Largaespada  
Marsalia Largaespada  
Miguel Largaespada

**Linda Vista Care Center – San Diego**  
Kenneth R Hooks

**Livers for People with Hep C on  
MediCAL – Sacramento**  
Ramon Jose Largaespada  
Leticia Largaespada

**L.A. County Commision on HIV  
Health Services**  
Richard Corija, San Pedro

**Mama's Kitchen – San Diego**  
Alberto Cortez

**Marin AIDS Project - Needle  
Exchange – San Rafael**  
Rachael Wade

**Marin County Now**  
Debra Kohn (Immediate Past President)

**Marina Treatment Center – San  
Rafael**  
Beth Lillard (HCV Case Manager)

**New Hope Recovery House –  
Modesto**  
Ralph Overend  
Anita Garnica  
John Stolarz  
Lorne Crow  
Larry Hearn  
Henry Delgado

**New Start – Sacramento**  
Mitch McLean  
Julie Debbs

**Nirvana Drug & Alcohol Treatment  
Center – Modesto**  
Anita Sumple  
Barbara Rogers  
Sam Hiserman, Jr  
Melissa Koessil  
Larry Oak  
Debbie Sanders  
Breth McClain  
Trenna Debow  
Randy Walters  
Dale Cripe  
Thomas Lany  
Daniel Child  
Richard Nichols  
David Russell  
Ronie Purdue  
Michael Nichelson  
Kristan Baptista  
James Halker  
Hugo Ramirez  
Sherri Codey

**North County Serenity House**  
Francine Byrd, Escondido

**Oakland Independence Support  
Center**  
Calvin N. Candy  
Patricia Balles  
Bobby Herren  
Dolores Connors  
Sydney Loggins

**OASIS Clinic**  
John Fading, Alameda  
William Blagford, Berkeley  
Shelly Qunerl, Hayward  
Kevin L Camp, Loomis  
Whitney Costa, Sonoma  
Samantha Honner, Oakland  
Christine S. Miller, Oakland  
Jay Plath, Oakland  
Sharon Bertlucci, Oakland  
Deborah R. Greene, M.D., Oakland  
Michael Esconedo, Oakland  
Tim Maginnio, Oakland  
Dwane O. Parish, Richmond

**Optimal Health Services – Bakersfield**  
Maggie Damron

**Parents for Addiction Treatment and  
Healing – San Diego**  
Gretchen Burns-Bergman

**RAFT - Recovery Advocates for  
Treatment**  
Tracy W. Rea, Vacaville  
Shelene Ellis, Vallejo  
Erin Doyel, Vallejo  
James Canady, Vallejo  
Christene Hofmann, Vallejo  
John A. Webb, Vallejo

Erroc Schmit, Vallejo  
John Deyoung, Vallejo  
Jeannie Villarreal, Vallejo

**Ray's Awareness – Vallejo**  
Ray Hernandez

**Riverside Recovery Resources –  
Lake Elsinore**  
Jack Ketsdever (Executive Director)

**S.A.A.C.S. – Hayward**  
T. Robert Moreno (Prop 36 Specialist)  
Michael E. Nunes Sr

**Sacramento Americans for Safe  
Access**  
Amanda Whitmore

**Sacramento County Dept. of Health &  
Human Services**  
Vickie Murphy, RN

**San Diego Youth + Community  
Service**  
Daniel Lee Anskin

**San Joaquin Public Defender's Office  
– Stockton**  
James Larsen

**S.C. Reachout – Oakland**  
Madlynn Johnson

**Sierra Foothills AIDS Foundation –  
Madera**  
Marilynn McSeneg, LCSW

**Sonoma County Dept. of Public  
Health – Santa Rosa**  
Gabriella Trubach  
Donna Geriger

**St. Mary's Center – Oakland**  
Raven Jackson  
Roy M. Mills  
Ivy N. Dean  
Lynn Hoberg  
Judy Jackson  
Joseph Shaw  
Thomas McLoughlin  
Cindy Preston-Pile

**Tarzana AWARE**  
La Tanya Coney

**Tarzana Treatment Center**  
Eric Zimmer, Lancaster  
Jennifer Lester, Tarzana  
Fontaine Shockley, Tarzana  
Barbara Squire, Tarzana

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# Signers to Letter to Gov. Davis, Sen. Burton, Speaker Wesson Opposing Proposition 36 Realignment

## **INDIVIDUALS BY AFFILIATION** (continued)

### **Turning Point Homeless Intervention**

Steve Leinfus, Rancho Cordova  
Richard Cook, Santa Rosa  
Brenda Lante, Santa Rosa  
Mark Fort, Santa Rosa  
Harlan Moore (Prop 36 Client), Santa Rosa

### **Vietnam Veterans of California**

Peter Cameron, Santa Rosa

### **Woman With a Dream – Oakland**

George Jacobson

### **USC - California Hospital – L.A.**

Maurene Stohm, MD

### **USC - Family Program – L.A.**

Condessa Curley, MD, MP

### **USC Hospital Medical Center – L.A.**

Sandra Wong, DO

### **VA Medical Center – San Francisco**

Jennifer Rose

## **INDIVIDUALS**

Donna Brown, Hep C Counselor, Oakland

Cynthia Cos, NNCLA Case Manager, L.A.

Clyde Darrington, Certified Community Outreach Worker, Vallejo

Florence Horton, Recovery 25 yrs., Sacramento

Kelly Johnson, Veteran, Sacramento

Glenda Kelmes, University of California, Irvine

Maria Kerbleshi, NCSGNA, San Francisco

Larry Peichoto, Hep C Counselor, Hanford

Darrell Strickland, Certified Counselor, Hayward

Martha Williams, Oakland

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Second, Proposition 36 provides that the State Department of Alcohol and Drug Programs (“ADP”) is to distribute Trust Fund monies to the counties using a formula developed by ADP based on factors set forth in the initiative and further permits ADP to withhold a portion of the funds from the counties and give it directly to service providers. Health & Safety Code §11999.6. The proposed Budget, however, provides drug treatment money directly to counties as part of your “realignment” plan, thereby bypassing ADP. This proposal again conflicts with express provisions of Proposition 36 that require ADP to distribute the funds according to an ADP-developed formula and permit ADP to give money directly to service providers.

Third, Proposition 36 guarantees funding for drug treatment programs in two ways: The initiative requires an appropriation of \$120,000,000 to the Trust Fund, and further provides that no funds distributed from the Trust Fund may be used to “supplant funds from any existing fund source” for drug treatment. Health & Safety Code §11999.6. In other words, the initiative requires drug treatment funding in the amount of \$120,000,000 plus existing funds that may not be decreased due to the anti-supplantation language. (In addition, Health & Safety Code §11999.5 requires the unspent portion of each year’s Trust Fund allocation to remain in the Trust Fund for future use.) Under realignment, there is nothing guaranteeing direct distribution to the counties of even the \$120,000,000. Moreover, it appears that any money intended for Proposition 36 drug treatment programs will be provided to counties along with funds for other programs such as mental health and there will be no method of requiring the counties to spend money on Proposition 36 programs. Additionally, because the anti-supplantation language applies only to funds distributed from the Trust Fund, the realignment proposal would circumvent the anti-supplantation clause and permit the money going directly to counties to be used to supplant existing funds. By failing to guarantee drug treatment funding of \$120,000,000 plus existing funds, the proposed Budget would violate the language of Proposition 36 guaranteeing funding and instead permit substantial decreases in funding for drug treatment programs, thereby conflicting with the purposes of the initiative.

Fourth, Proposition 36 expressly provides for an oversight role by ADP to (i) provide up to 0.5 percent of the Trust Fund for a long-term evaluation by a California university of the effectiveness and financial impact of Proposition 36 programs pursuant to Health & Safety Code §11999.10; (ii) itself conduct an annual study of the programs under Health & Safety Code §11999.9; and (iii) conduct an annual audit of expenditures made by counties and require counties to repay to ADP misspent funds pursuant to Health & Safety Code §11999.12. These provisions provide the information necessary to decide how best to allocate drug treatment money and hold counties accountable for the money they receive. Under the proposed Budget, ADP has stated that it will be unable to conduct its oversight responsibilities. As there will be no Trust Fund, ADP will be unable to allocate any money from the Trust Fund as required to fund the long-term evaluation. ADP has indicated that there is no other money available for the long-term evaluation. Similarly, there is no money for the annual study or audit. The inability of ADP to fulfill these mandated responsibilities is again in conflict with Proposition 36.

In addition to these unlawful conflicts with Proposition 36, there is ample practical reason to exclude drug treatment funds from realignment. Two are of particular importance. First, regardless of the level of funding provided for drug treatment programs, the sentencing provisions of Proposition 36 will still require diversion from prison. It makes no sense to “sentence” offenders to non-existent or barely functioning drug treatment programs, thereby providing no deterrent to drug crimes and no rehabilitation for drug offenders. Second, the loss of the long-term evaluation promises to be devastating to the State’s ability to determine how to fund drug treatment programs once Proposition 36 funding expires in 2006. The whole point of Proposition 36 was to provide a guaranteed amount of money for several years, evaluate the use of that money, and then allow the Legislature and the Governor to decide how much to spend in the future. The absence of a long-term evaluation will completely undermine the ability of elected officials to know what worked and what did not, and therefore what to fund and in what amounts.

Governor Gray Davis  
February 7, 2003  
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Thank you for taking into account the views of the Campaign for New Drug Policies and the Drug Policy Alliance on the Budget. My clients hope that changes will be made to the current proposal now so that they will not need to bring a lawsuit to force those changes later. We would appreciate an opportunity to meet with the appropriate representative from your office to discuss these issues.

Sincerely,

Jonathan Weissglass

cc: Barry Goode, Legal Affairs Secretary