MAJOR RETURNS

HOW THE INTERVENOR SYSTEM SAVES CONSUMERS $100 FOR EVERY 25 CENTS IN FEES

PUBLIC COMMENTS OF CONSUMER WATCHDOG ON PROPOSED INTERVENOR AND ADMINISTRATIVE HEARING BUREAU REGULATION TEXT

REG-2025-00006

SUBMITTED TO THE CALIFORNIA DEPARTMENT OF INSURANCE

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Consumer Watchdog

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SUMMARY OF KEY CONCERNS AND REQUESTED ACTION

Consumer Watchdog urges Insurance Commissioner Ricardo Lara to withdraw his proposed amendments to the intervenor-compensation regulations (REG-2025-00006). Though billed as "modernization" to "broaden participation" and "ensure accountability," the Commissioner's proposal would do the opposite. It would dismantle the very public participation system established by the voters to ensure independent public oversight of insurance rates and unlawful insurer conduct under Proposition 103—replacing transparency and due process with unchecked executive discretion.

The amendments would:

- Convert guaranteed compensation for consumer representatives who actively participate in and substantially contribute to proceedings before the California Department of Insurance ("CDI" or "Department") into a discretionary, outcome-based privilege, allowing the Commissioner to reduce or even deny compensation when he doesn't expressly state he is adopting a consumer representative's position;
- Authorize denial of compensation for advocacy and witness fees under subjective standards found nowhere in the statute—"vexatious," "duplicative," and "cumulative"—that chill protected advocacy, stifle opposition to the Department's views, and disallow time spent raising similar issues that arise in multiple proceedings;
- Impose arbitrary limits on the number of staff people for which a consumer representative can be compensated, while there are no limits on the number of lawyers, lobbyists, and experts an insurance company can hire at policyholders' expense;
- Eliminate the requirement that insurance companies that challenge the compensation of consumer representatives must reveal their own legal expenditures in the same proceeding;
- Create additional procedural and substantive hurdles to consumer groups' eligibility to seek compensation in Department proceedings, including a confusing new requirement—found nowhere in the statute

—that consumer groups must provide a statement of how they will advocate for views that diverge from their own; and

- Eliminate independent Administrative Law Judge authority to review proposed settlements of administrative challenges over rates and control the course and scope of evidentiary hearings, consolidating all authority within the Commissioner's executive staff.

At their core, the proposed regulations condition reimbursement on an intervenor's fundamental agreement with the Commissioner and threaten to curtail reimbursement for any advocate that criticizes the Commissioner. But the proposal doesn't end there. If a party agrees with the Commissioner (or the Department), compensation will be denied for "duplication" of the Department's positions. Heads, I win, tails you lose—an impossible Hobson's choice.

The proposal goes further still. It conflicts with the provisions of Proposition 103 that require independent oversight of Department proceedings to be conducted by Administrative Law Judges with procedural due process rights afforded under the Administrative Procedure Act ("APA"). These changes would make professional consumer advocacy both economically and legally impossible and would silence the very participants the law was designed to protect.

Collectively, these provisions directly conflict with Proposition 103's public participation provisions, set forth in Insurance Code section 1861.10, by erecting obstacles nowhere expressly or implicitly found in the statute, and would undermine its underlying purposes by making meaningful consumer participation economically impossible, silencing critical voices that counterbalance the highly resourced advocates for insurance companies, returning California to the pre-1988 era of unexamined, industry-dominated rate-setting that voters repudiated by passing Proposition 103.

The Commissioner's proposal would render impossible the vigorous consumer participation and oversight that is particularly needed at a time when insurers continue to push for double-digit rate hikes while denying or low-balling claims submitted by survivors of the wildfires.

The Commissioner claims his proposals will increase the number of consumer intervenors (Initial Statement of Reasons ("ISOR"), p. 2), but not one of Commissioner Lara's proposals address the already substantial barriers to participation. In reality, they will discourage rather than promote participation in the rate-setting process and other Departmental proceedings. By making compensation discretionary, delayed, and deniable *after* the consumer representative has completed its work and made a substantial contribution as contemplated by the statute, the Commissioner would render the technical, professional participation that Proposition 103 envisions economically unsustainable.

The following Public Comments set forth the factual and legal grounds for opposition to the proposed regulations. They explain how the proposal violates both the federal and California Constitutions, conflicts with the express language and purpose of Proposition 103, violates the APA, threatens the viability of professional consumer representation, and —if adopted—would mark the effective end of independent public participation in California's insurance rate regulation.

"Higher rates will inevitably result."

Higher rates will inevitably result. This is not speculation—it is borne out by 35 years of experience, during which only a small handful of organizations developed the professional capacity and institutional continuity to sustain complex insurance rate advocacy against the insurance industry.

Commissioner Lara's proposal represents a stark departure not only from most prior commissioners, but from the strong position the Department articulated in court between 2016 and 2021—which included his tenure—when defending public participation against an attack by State Farm.[1]

Consumer Watchdog urges the Department to withdraw the proposal in its entirety and instead work collaboratively with legitimate consumer groups and policyholders to develop concrete solutions to *increase* the number

[1] *State Farm Gen. Ins. Co. v. Lara* ("*SFG*") (2021) 71 Cal.App.5th 197.

of consumer intervenors that would truly strengthen public participation and transparency—by streamlining the process for intervention, mandating pre-hearing procedural protections, eliminating lengthy delays in compensation, providing interim reimbursement for nonprofit public interest organizations, and modernizing public access to Department records—without compromising an intervenor's independence or accountability.

Consumer Watchdog has long welcomed broader public participation and has routinely shared institutional knowledge, data models, and technical expertise with newer or smaller groups to help them engage meaningfully. Under past administrations, Consumer Watchdog has led workshops at the Department to educate other advocacy groups about the intervenor process, including by providing training materials and sample petitions, testimony, and briefing. True reform would build on that foundation by simplifying eligibility determinations and offering Department-sponsored technical assistance for community groups without in-house expertise. These are the kinds of reforms that expand the statute's promise of public accountability.

Consumer Watchdog at State Farm rate hearing in Spring 2025 where Consumer Watchdog's intervention forced $166 million in rate reductions.

I. PROPOSITION 103 PROVIDES A STATUTORY GUARANTEE OF COMPENSATED AND INDEPENDENT PUBLIC PARTICIPATION

"The laws regulating insurance rates before Proposition 103 'were widely viewed as ineffective' and public dissatisfaction with such laws was the 'primary impetus for Proposition 103.'" (*Association of California Ins. Cos. v. Poizner* ("*ACIC*") (2009) 180 Cal.App.4th 1029, 1036, internal citations omitted.)Proposition 103 was enacted to ensure that insurance is fair, available, and affordable for *all* Californians. (*State Farm Mutual Automobile Ins. Co. v. Garamendi* ("*Garamendi*") (2004) 32 Cal.4th 1029, 1045, emphasis added.)

As the California Supreme Court explained, "[t]o achieve this goal, the drafters established a public hearing process for reviewing insurance rate changes . . . . In doing so, the drafters sought to enable consumers to permanently unite to fight against insurance abuse." (*Ibid.*, internal citations omitted, emphasis added.) "By subjecting insurance premium-setting practices to an open, evidence-driven regulatory process, the voters both replaced the former laissez-faire competition framework with one calculated to prevent arbitrary practices and ensured their right of access and participation in the regulatory process." (*Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1372.)

To this end, Proposition 103 expressly provides for consumer participation in proceedings before the Department and the courts. The statute says:

> Any person may initiate or intervene in any proceeding permitted or established pursuant to this chapter, challenge any action of the commissioner under this article, and enforce any provision of this article.
>
> (Ins. Code § 1861.10(a).)

To further encourage public participation, section 1861.10(b) requires payment of reasonable advocacy and witness fees and expenses for any person who "represents the interests of consumers" and "has made a

substantial contribution to the adoption of any order, regulation, or decision by the commissioner or a court."

When the statutory criteria are met, compensation of reasonable advocacy fees and expenses is mandatory. (*Id.*) This affords consumers the ability to have their interests represented on an equal basis with the interests of insurers who hire large private law firms and lobbyists to defend their rates and practices before the Department and in the courts.

Per the voters' instruction, the mandate of section 1861.10(b), like all the provisions of Proposition 103, must be "liberally construed and applied in order to fully promote its underlying purposes." (Prop. 103, Section 8(a).) Accordingly, courts have repeatedly construed section 1861.10 and other provisions of Proposition 103 in a manner "consistent with Proposition 103's goal of fostering consumer participation in the rate-setting process." (*Garamendi*, *supra*, 32 Cal.4th at 1045; see also *ACIC*, *supra*, 180 Cal.App.4th at 1052 [stating "the goal of fostering consumer participation in the administrative rate-setting process" as "one of the purposes of Proposition 103"]; *Econ. Empowerment Found. v. Quackenbush* ("*EEF*") (1997) 57 Cal.App.4th 677, 686 [interpreting section 1861.10(b) in a manner "which best facilitates compensation" consistent with the purpose of the statute "to encourage consumers to participate in insurance rate proceedings by compensating them for their contribution"]; *SFG*, *supra*, 71 Cal.App.5th at 217 [construing "substantial contribution" standard consistent with purpose of "broad consumer participation"].)

Despite repeated attempts by insurance companies to turn section 1861.10(b) into a more restrictive "prevailing party" standard, the courts have rejected those arguments: "Section 1861.10(b) does not require a party to 'prevail'" and prevailing party statutes offer "no insight into the meaning of section 1861.10(b)." (*SFG*, *supra*, 71 Cal.App.5th at 217.) As the Court of Appeal explained, unlike fee statutes designed to compensate "successful" litigants for achieving their litigation goals, section 1861.10(b) serves the "wholly distinct purpose" of encouraging "broad consumer participation." (*Ibid.*)

II. THE DEMONSTRATED IMPACT OF EFFECTIVE CONSUMER ADVOCACY IN RATE REVIEW AND OTHER DEPARTMENT PROCEEDINGS

Intervention in the rate review process by consumer advocates is both fundamental to Proposition 103 and proven to save money for California consumers. At the same time, the complex and lengthy nature of these proceedings presents an exceedingly high bar for those seeking to participate.

A. Rate Review Advocacy Requires Specialized Knowledge and Expertise

Applications for changes in insurance rates and premiums—which each insurance company must submit and justify in order to obtain the Commissioner's approval—are among the most complex administrative submissions in state government. They span thousands of pages of actuarial exhibits, statistical models, and loss-trend justifications, supported by terabytes of data. They often incorporate catastrophe-modeling assumptions, loss-trend methodologies, reinsurance loadings, risk-transfer algorithms, and multivariate trend analyses, all of which will determine how much Californians will pay for their insurance coverage.

Effective participation demands sustained, interdisciplinary capacity: it requires the collaboration of attorneys, actuaries, economists, and data scientists who understand Proposition 103 and statutory precedents, the Department's regulations, its methodologies and practices, and the evolving structure of California's insurance marketplace, the fourth largest in the world—and who can translate that knowledge and expertise into coherent, evidence-based professional advocacy before the agency (and with the understanding that the insurance companies may seek review by the courts of decisions they disagree with). These advocates must deconstruct the filings, determine compliance with California law, interpret actuarial models, perform statistical validation, review discovery, and present technical testimony under cross-examination.

The same expertise is required when the commissioner chooses to exercise his authority to propose or amend the numerous regulations that govern the agency's operations under Proposition 103.

Meaningful consumer advocate participation is not just demanding, it is extraordinarily time consuming. If the matter proceeds to a full-blown hearing (which has occurred only twice in the last ten years), the ensuing proceedings can require months of work, if not years, depending on whether the insurer cooperates or resists, and the number and complexity of appeals.

These practical financial considerations are the reason why Consumer Watchdog has challenged only approximately 160 rate applications between 2004 and 2025—a tiny fraction of the total number of rate applications filed by insurers during that period.[2]

But as previous insurance commissioners and the courts have consistently recognized, the involvement and advocacy of "consumer representatives is an important tool to ensure that [insurance companies] comply with the statutory and regulatory prohibition on 'excessive, inadequate, and unfairly discriminatory' rates, or rates that otherwise violate the law[.]" (*ACIC*, *supra*, 180 Cal.App.4th at 1041.) Through the public participation provisions of Proposition 103, consumer organizations have played a key role in countering the positions of the insurance industry, securing lower rates and correcting violations of the Insurance Code through rate and noncompliance actions, as well as advocating for stronger consumer regulations to enforce the initiative's provisions in the rulemaking process.

B. Consumer Participation Results in Lower Premiums and Greater Transparency

Consumer Watchdog's extensive track record stems from decades of hard-fought experience in the Proposition 103 public participation process. Consumer Watchdog is a nonprofit, nonpartisan organization founded in 1985 by the author of Proposition 103 and headquartered in Los Angeles,

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[2] CDI's reported data shows that it approved over 4,000 filings last year alone. See https://www.insurance.ca.gov/0250-insurers/0800-rate-filings/0100-rate-filing-lists/rate-filing-approvals/.

California. Since the enactment of Proposition 103 in 1988, the organization has served as the state's leading independent consumer representative in insurance rate and other proceedings before the Department, including rulemaking proceedings and noncompliance proceedings to enforce the initiative's protections. A key goal of Consumer Watchdog's consumer protection mission is to ensure that insurance rates and practices remain fair, transparent, and consistent with the consumer-protection purposes of Proposition 103. (Cal. Ins. Code §§ 1861.01–1861.16.) It should come as no surprise then that the insurance industry has made Consumer Watchdog the target of its intense ire.

The organization has intervened in over one hundred rate proceedings, reviewed tens of thousands of pages of actuarial and underwriting data, and secured billions of dollars in consumer savings through challenges to rate applications and other administrative and civil litigation.[3] Recently, Consumer Watchdog has brought challenges to homeowners' and auto rate filings by State Farm, Allstate, Mercury, Farmers, USAA, CSAA, 21st Century, and Liberty Mutual, among others—cases that collectively affect millions of California policyholders.

The organization's interventions have regularly exposed inflated loss projections, unauthorized expenses, and unsupported catastrophe-model assumptions, leading to measurable reductions in proposed rate increases and reforms in Department policy. Consumer Watchdog interventions have also led to insurers being required to eliminate unfairly discriminatory underwriting guidelines and make public rating and underwriting information that they had sought to keep hidden from view. Those corrections benefit all California consumers, not just those represented in the proceedings. And they strengthen the evidentiary record on which the Commissioner ultimately relies.

Consumer Watchdog's advocacy teams typically include attorneys and actuaries, and sometimes economists and other experts working in collaboration to evaluate rate filings, provide expert witness testimony, and prepare legal analysis and briefing. These professionals operate under a

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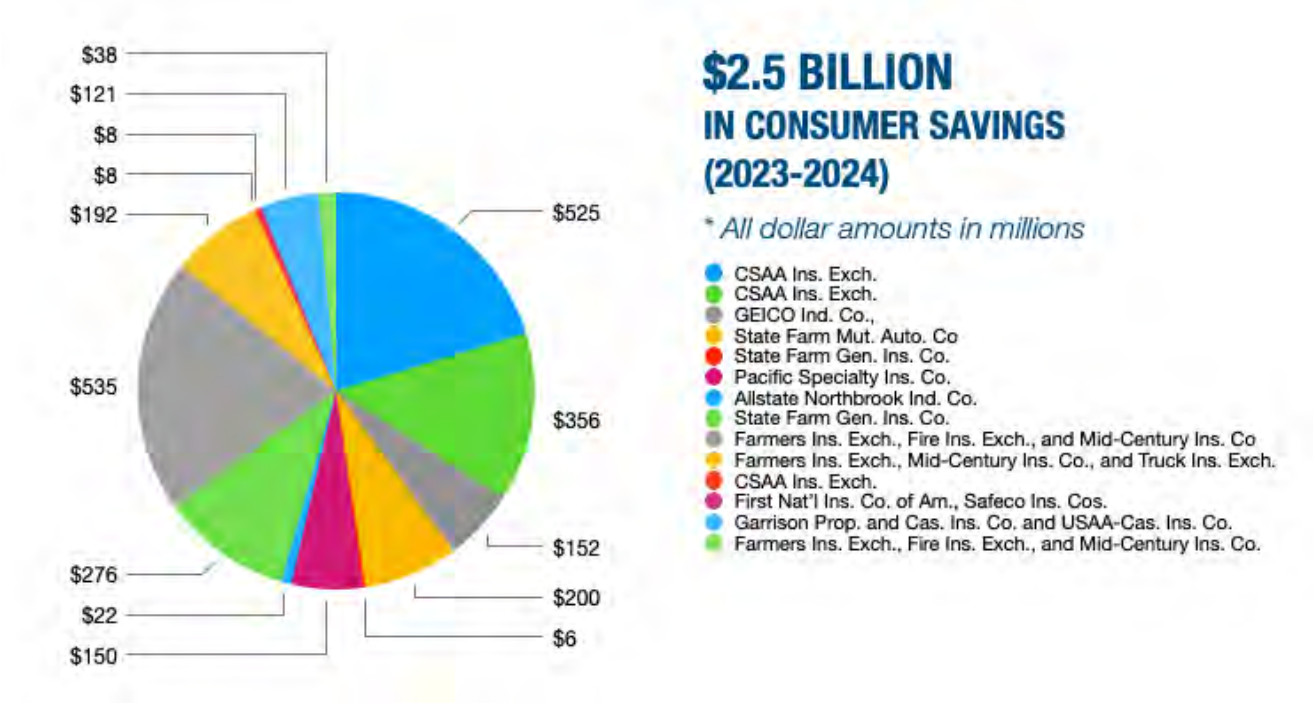
[3] See https://consumerwatchdog.org/prop-103/.

deferred-compensation model: all costs are advanced from Consumer Watchdog's general operating funds and may be recovered only after the commissioner issues a final decision on the administrative matter, and months later, a decision on Consumer Watchdog's request for compensation. The process is thus both rigorous and financially risky, but its record demonstrates the statute's success in fostering independent oversight.



Consumer Watchdog's intervention in rate proceedings to challenge excessive rate hikes under Prop 103 over a two-year period from 2023–2024 saved policyholders approximately $2.5 billion. Its interventions included:

- *In the Matter of the Rate Application of the Standard Fire Ins. Co.*, PA-2023-00017 (Cal. Ins. Comm'r 2024), resulting in annual savings of $37.8 million in dwelling, tenant, condo, landlord dwelling, and landlord condo insurance as compared to the rates the company originally requested;
- *In the Matter of the Rate Application of CSAA Ins. Exch.*, PA-2023-00021 (Cal. Ins. Comm'r 2024), resulting in annual savings of $525 million in auto insurance premiums;

- *In the Matter of the Rate Applications of GEICO Ind. Co., GEICO Cas. Co., GEICO Gen. Ins. Co., and Gov't Emps. Ins. Co.*, PA-2023-00013 (Cal. Ins. Comm'r 2023), resulting in annual savings of $356 million in auto insurance premiums;
- *In the Matter of the Rate Application of State Farm Mut. Auto. Co.*, PA-2023-00012 (Cal. Ins. Comm'r 2023), resulting in annual savings of $151.7 million in auto insurance premiums;
- *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-00007 (Cal. Ins. Comm'r 2023), resulting in annual savings of $199.7 million in homeowners insurance premiums;
- *In the Matter of the Rate, Rule, and Form Application of Pacific Specialty Ins. Co.*, PA-2020-00009 (Cal. Ins. Comm'r 2023), resulting in annual savings of $6.3 million in homeowners insurance premiums;
- *In the Matter of the Rate Application of Allstate Northbrook Ind. Co.*, PA-2023-00014 (Cal. Ins. Comm'r 2023), resulting in annual savings of $149.5 million in auto insurance premiums;
- *In the Matter of the Rate Application of State Farm Gen. Ins. Co.*, PA-2023-00006 (Cal. Ins. Comm'r 2023), resulting in annual savings of $21.5 million in renters insurance premiums;
- *In the Matter of the Rate Application of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.*, PA-2023-00009 (Cal. Ins. Comm'r 2023), resulting in annual savings of $276 million in renters, condo, and homeowners insurance premiums;
- *In the Matter of the Rate Application of Farmers Ins. Exch., Mid-Century Ins. Co., and Truck Ins. Exch.*, PA-2023-00008 (Cal. Ins. Comm'r 2023), resulting in annual savings of $535 million in auto insurance premiums;
- *In the Matter of the Rate Application of CSAA Ins. Exch.*, PA-2023-00004 (Cal. Ins. Comm'r 2023), resulting an annual savings of $192.4 million in auto insurance premiums;

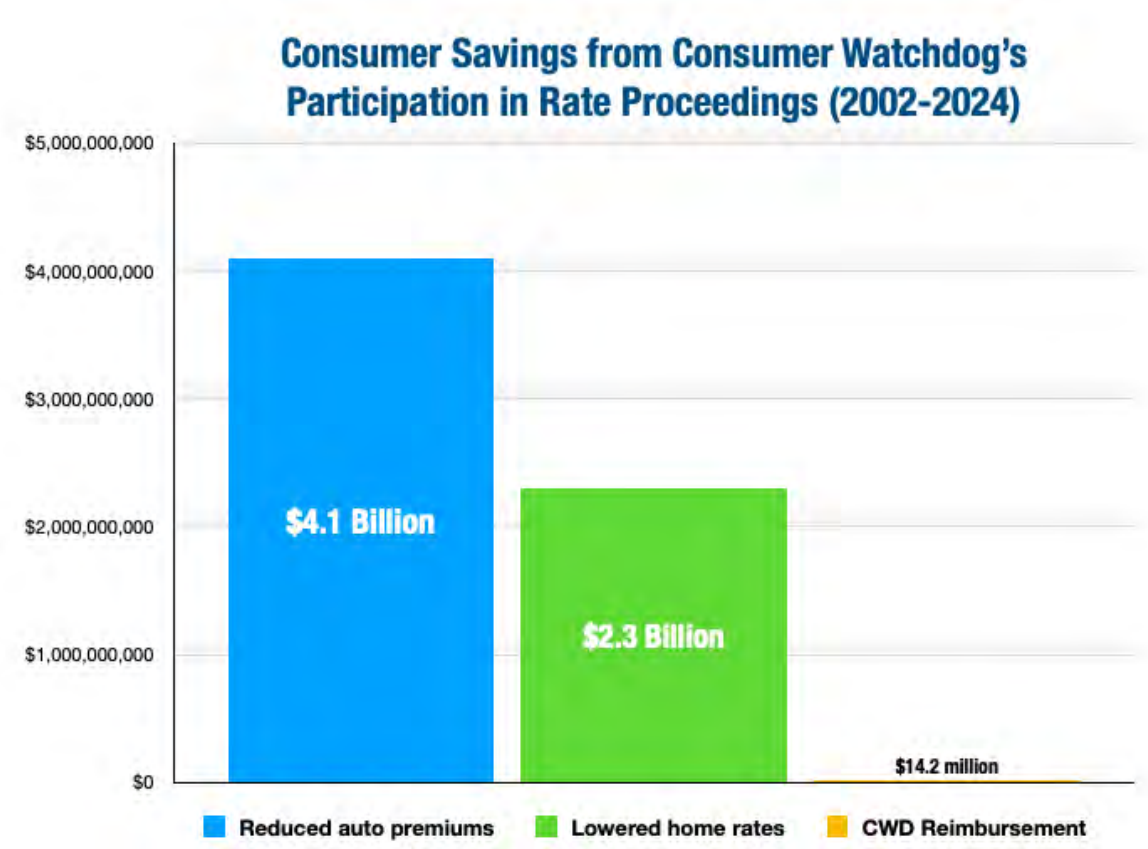
- *In the Matter of the Rate Applications of First Nat'l Ins. Co. of Am., Safeco Ins. Co. of Am., and Safeco Ins. Co. of Ill.*, PA-2022-00002 (Cal. Ins. Comm'r 2023), resulting in annual savings of $7.8 million in homeowners multiple peril insurance premiums;
- *In the Matter of the Rate Applications of Garrison Prop. and Cas. Ins. Co. and USAA-Cas. Ins. Co.*, PA-2021-00004 (Cal. Ins. Comm'r 2023), resulting in annual savings of $8.47 million in homeowners, unit-owners, renters contents, and renters liability insurance premiums;
- *In the Matter of the Rate Applications of Farmers Ins. Exch., Fire Ins. Exch., and Mid-Century Ins. Co.*, PA-2022-00007 (Cal. Ins. Comm'r 2023), resulting in annual savings of $121 million in homeowners multiple peril insurance premiums; and
- *In the Matter of the Rate Application of Med. Ins. Exch. of Cal.*, PA-2021-00003 (Cal. Ins. Comm'r 2023), resulting in annual savings of $1.41 million in medical professional liability insurance premiums.

In all fifteen of these rate proceedings, Consumer Watchdog's advocacy was instrumental in reaching settlements with the Department staff and the insurance company applicants pursuant to which the Commissioner approved lower overall rates than originally requested by the companies, and in most instances, lower than CDI's proposed rates—without the need to proceed to a formal hearing.[4] Moreover, Consumer Watchdog has consistently advocated for companies to make insurance more available, with some companies agreeing to provisions advocated by Consumer Watchdog to lift restrictions on new business such as by reactivating online quote systems and making payment plan options consistent between new and renewal business (e.g., State Farm Mutual in *In the Matter of the Rate Application of State Farm*

[4] See 2023–2024 Settlement Stipulations in 15 CDI rate proceedings, https://consumerwatchdog.org/wp-content/uploads/2024/07/2024_2023-Settlement-Stipulations.pdf.

Mut. Auto. Co., PA-2023-00012 and Allstate in *In the Matter of the Rate Application of Allstate Northbrook Ind. Co.*, PA-2023-00014).[5]

Consumer Watchdog's interventions have also resulted in increased public transparency into insurance industry rating practices—a key goal of Proposition 103—including companies agreeing to publicly disclose underwriting guidelines that they previously sought to keep secret, and to cease using unfairly discriminatory, subjective standards, such as "pride of ownership," to discriminate against homeowners coverage in neighborhoods they deem "undesirable."[6]



[5] See fn. 4 *supra* (Settlement Stipulations in PA-2023-00012 [regarding State Farm Mutual's auto rate application] and 2023-00014 [regarding Allstate's auto rate application]).

[6] Consumer Watchdog, *Public Scrutiny Has Saved Californians Over $5.5 Billion on Home and Auto Insurance Since 2002* (Feb. 1, 2024), https://consumerwatchdog.org/insurance/study-public-scrutiny-has-saved-californians-over-5-5-billion-on-home-auto-insurance-since-2002 at pp. 23–25.

From 2002 to 2024, Consumer Watchdog's participation in rate proceedings resulted in over $6 billion in consumer savings—including $4.2 billion in reduced automobile insurance premiums and $2.3 billion in lowered homeowner, renter, and condominium rates—while total reimbursed costs to the organization were approximately $15.7 million.[7] That equates to less than 25 cents in reimbursement for every $100 in policyholder savings—a return of 400 to 1.

No other California oversight or auditing program, including those for public utilities or environmental regulation, demonstrates a comparable benefit-to-cost ratio. Indeed, the intervenor process created by Proposition 103 is among the most cost-effective consumer-protection mechanisms in American regulatory law.

Department data confirm that public participation not only lowers rates but does so without delaying regulatory approval (contrary to insurance industry propaganda). Between 2022 and 2025, the average review time for insurance rate filings was virtually identical with or without Consumer Watchdog's involvement—about eight to nine months per case.[8]

Yet the difference in outcomes was dramatic.

When no independent consumer advocate participates in a rate case, the Department approves nearly every insurer's request—between 89 and 95 percent of insurers' proposed rate increases.[9] When Consumer Watchdog intervenes, those metrics drop sharply—to between 65 and 70 percent of the rates proposed.[10] That difference is not happenstance; it is evidence. It shows that professional consumer participation exposes errors, challenges assumptions, and forces the Department and insurers alike to justify their

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[7] See https://consumerwatchdog.org/prop-103/.

[8] See https://consumerwatchdog.org/insurance/updated-ca-insurance-department-data-shows-time-to-rate-approvals-same-with-or-without-intervenors-public-citizen-chimes-in-against-revenge-regulations/.

[9] *Ibid.*

[10] *Ibid.*

analyses with rigor. In purely economic terms, the presence of an intervenor shifts billions of dollars back into the pockets of California families each year. In institutional terms, it restores accountability to a process that would otherwise operate as an echo chamber for the industry it regulates. The data demonstrate an inescapable truth: when the public is represented by effective consumer advocates, the public wins; when it is not, the industry does.

The Department's ability to protect consumers is not merely a function of staffing, budgets and resources. As the voters recognized, the agency staff is encumbered to the agency leadership, starting with the Commissioner and his appointees, including those who are political appointees, not career civil servants. Many commissioners consider their job to be *balancing* the interests of the insurance industry as well as consumers. Department staff are typically expected to execute the commissioner's position, whatever it may be.

That is why the voters went to great length to specify the right of consumers to monitor and independently participate in the Commissioner's enforcement of Proposition 103. Under the law, public participants owe no allegiance to the commissioner. They are not constrained by political considerations in their advocacy on behalf of consumers.

State Insurance Commissioner Ricardo Lara before an Assembly Committee on Insurance hearing on Tuesday, Sept. 17, 2024 at Los Angeles City Hall. (Photo by Sarah Reingewirtz, Los Angeles Daily News/SCNG)

III. THE PROPOSED REGULATIONS CONFLICT WITH THE STATUTORY LANGUAGE AND PURPOSE OF PROPOSITION 103

The Commissioner's proposed amendments to the rate proceeding and intervenor compensation regulations directly undermine the statutory framework that California voters established. As discussed in section I above, the initiative's language is unambiguous: it guarantees the right of public participation and the right to compensation for those consumer representatives who make a substantial contribution to regulatory decisions. (Ins. Code § 1861.10(a)–(b).)

The Commissioner's proposal moves in the opposite direction. It ensures that only one voice will remain—the Commissioner's.

A. Redefining "Substantial Contribution" To Require Adoption of an Intervenor's Positions Would Violate Proposition 103's Mandatory Compensation Standard

Without acknowledging it, the Commissioner's proposed amendment to section 2661.1(k) alters the definition of "substantial contribution," the key criterion for determining whether a consumer representative will receive compensation for the work they have performed. The proposed amendment would add the following requirement: that the intervenor's participation "makes a significant, distinct contribution to the Commissioner's adoption of a decision, order, or regulation." This conflicts with the statutory language and case law interpreting it by purporting to transform the law into a "prevailing party" standard, a position which the insurance industry has unsuccessfully advanced for decades. Under this standard, the Commissioner could deny compensation by simply asserting that any regulation, decision or order he adopted relied *only* on the work of the Department, a subjective statement that is impossible to refute—at least absent a ruling in a hearing before an Administrative Law Judge.

Proposition 103's intervenor-compensation scheme is not the conventional "prevailing party" fee-shifting model found elsewhere in California law. The latter is concerned with ensuring injustices can be corrected by compensating lawyers who *win* such cases. The voters enacted

Insurance Code section 1861.10 to serve a broader purpose: to ensure that consumers have the ability to express and advocate their position as a counterweight in proceedings normally dominated by insurance companies.

Thus, under subdivision (b), the Commissioner "*shall* award reasonable advocacy and witness fees and expenses to any person" who (1) represents consumer interests and (2) "has made a substantial contribution to the adoption of any order, regulation, or decision." (Emphasis added.) This command is unequivocally mandatory. Once the statutory criteria are met, the Commissioner has no discretion to withhold compensation based on political alignment or policy views.

The Department's current regulations codify that basic principle. Current Section 2661.1(k) defines a "substantial contribution" as participation that presents "relevant issues, evidence, or arguments"—distinct from those "*emphasized*" by other parties—"such that the intervenor's participation resulted in more relevant, credible, and non-frivolous information being *available* for the Commissioner to make his or her decision." As the words "emphasized" and "available" convey, the focus is not on "winning" but on participation. The definition expressly states that a substantial contribution may be shown "without regard to whether a petition for hearing is granted or denied." (10 CCR § 2661.1(k).)

California courts have consistently affirmed this construction of the law. In *SFG*, *supra*, 71 Cal.App.5th at 197, the Court of Appeal rejected the insurer's arguments that an intervenor's contribution needs to be "used or even adopted by the court" (*id.* at 214) or that fees could be reduced or denied for time spent on work that didn't have a direct impact on the outcome, stating that "view could discourage interveners by generating uncertainty over compensation, and make representation more challenging" by "possibly deterring them from offering all potentially meritorious arguments." (*Id.* at 219.) It explained that the analysis looks to the intervenor's *"substantial contribution as a whole*," not to success on discrete issues, and that once a substantial contribution is established the intervenor "should recover compensation for all the hours reasonably spent" in the proceeding. (*Id.* at 218–219, 224.) "Interpreting section 1861.10(b) to permit recovery of all reasonable fees supports these purposes, by encouraging intervention in the

first place and ensuring interveners can vigorously represent consumers once involved." (*Id*. at 219.)

As the Court of Appeal held:

> [T]o the extent SFG suggests the contribution needs to be used or even adopted by the court—as when [State Farm] states the contribution "must … affect[ ] the court's order" or be "consequential"—*the statute does not support that interpretation*. …
>
> We need go no further, as the language is clear ([citation]), but this interpretation is also consistent with the broader statutory and regulatory scheme and the purposes of Proposition 103.
>
> Section 1861.10 is titled "Consumer Participation," and it supports broad participation. Subdivision (a) permits intervention by "[a]ny person," and subdivision (b) requires only that one make a substantial contribution and "represent[s] the interests of consumers." As noted, Proposition 103 also provides for public notice, hearing, and inspection. (§§ 1861.05, subds. (c)–(d), 1861.055, 1861.06, 1861.07, 1861.08.) Meanwhile, the regulations for Commissioner fee awards, which the parties agree are instructive, *do not require any particular level of impact on the decision or order at issue, and permit, but do not require, reductions for duplicative work*—again consistent with encouraging wide participation. (Regs., § 2661.1, subd. (k); *id.*, § 2662.5, subd. (b).)
>
> These provisions reflect "Proposition 103's goal of fostering consumer participation in the rate-setting process."
>
> (*SFG*, *supra*, 71 Cal.App.5th at 214–215.)

These holdings implement the voters' intent to encourage participation that enriches the record and strengthens agency reasoning, regardless of outcome.

To the extent the Commissioner's proposed amendments to the definition of section 2661.1(k) could be interpreted to require the commissioner's express adoption of an intervenor's positions or arguments in order to obtain compensation, that construction conflicts with the statute, its underlying purpose, and case law interpreting it. The Commissioner should

delete this amendment to eliminate the conflict with the statute and the case law interpreting it.

B. Injecting New Subjective "Vexatious," "Duplicative," "Cumulative," and "Excessive" Standards to Deny Fees Will Suppress Legitimate Advocacy

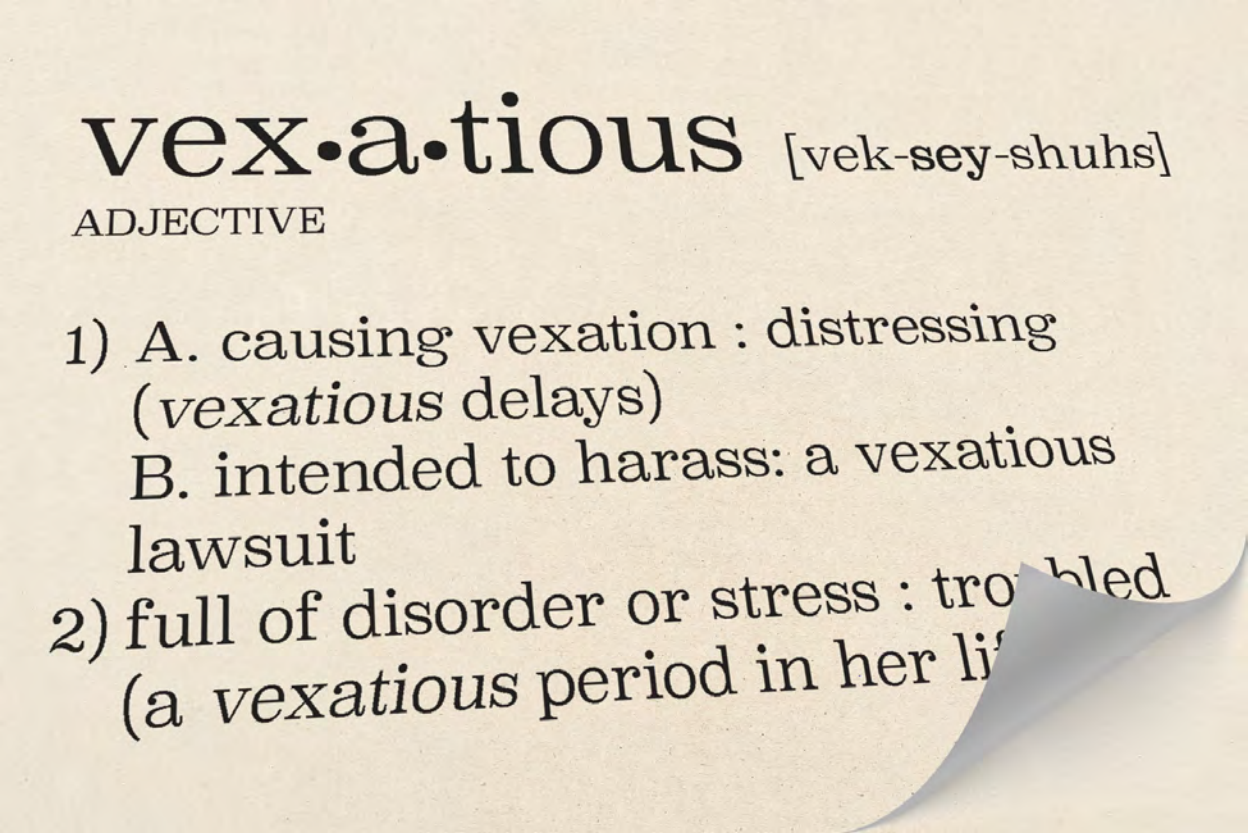
The Commissioner's proposed amendments to 10 CCR section 2662.5(b) authorize the Commissioner to deny or reduce compensation for work deemed "vexatious," "duplicative," "cumulative" or "excessive." None of these terms appear in Proposition 103 or in any existing regulation governing intervenor compensation. Each is undefined and elastic, granting unbounded discretion to label disfavored advocacy with a pejorative epithet and deny reimbursement.

1. The "Vexatious" Standard Would Turn the Substantial Contribution Standard into a Prevailing Party Standard

The proposed new "vexatious" standard is not only unauthorized by Proposition 103, but it would allow the Commissioner to arbitrarily cut fees for time spent on services that he subjectively determines "relate to oppositional efforts that do not lead to alternative fact-based recommendations or that do not provide meaningful critiques that could improve a regulatory outcome." (Proposed section 2662.5(b)(3).) This profoundly vague standard unequivocally treats consumer advocacy that the Commissioner disagrees with, dislikes, or simply chooses to ignore, as non-compensable.

Moreover, labeling an intervenor's presentation of issues, evidence and arguments as "vexatious" just because it is "oppositional," "lengthy," or seeks information beyond what the Commissioner or the Department may determine is necessary to their positions (proposed section 2662.5(b)(3)) is also a misuse of a term of art with serious constitutional implications. In California law, "vexatious litigant" status is a drastic remedy reserved for *serial abusers* of the judicial process who file meritless suits despite repeated warnings and judicial findings of bad faith. (See Code Civ. Proc. § 391(b) [defining "vexatious litigant" as one who, after adverse determinations,

"repeatedly files unmeritorious actions" or "engages in tactics that are frivolous or solely intended to cause delay"].) It is imposed only after notice, hearing, and findings by a court of record. Neither the Legislature nor the voters have ever authorized an administrative agency—let alone the regulator whose policies are being challenged—to wield that label to deny compensation for time spent on meritorious arguments that may be "oppositional" to the agency's positions.



Importing "vexatious" into the administrative-rate-review context violates fundamental petitioning rights. Participation in a rate proceeding under Proposition 103 is not gratuitous; it is a statutory right. Every comment, cross-examination, and motion filed by a consumer intervenor in an adjudicative proceeding occurs within a framework established by law and overseen by an Administrative Law Judge. An advocate's persistence in pressing discovery to seek information from an insurer beyond what the Department may choose to pursue, exposing inconsistencies in catastrophe-modeling assumptions, or challenging the Department's own actuarial interpretations, for example, cannot lawfully be equated with harassment or

frivolous conduct. The very purpose of a consumer representative is to probe and test the Department's and the insurers' positions and offer additional evidence and arguments until the record is complete.

Labeling such persistence "vexatious" would invite content- and viewpoint-based retaliation. The First Amendment's Petition Clause protects the right to seek redress from government agencies, not merely from courts. (See *BE & K Constr. Co. v. NLRB* (2002) 536 U.S. 516, 525 [holding that government may not penalize even unsuccessful petitioning unless "objectively baseless and intended to cause harm"]; *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510–11 (1972) [recognizing right of access to administrative agencies as part of right to petition].) The Department's proposed rule would allow the Commissioner and his chosen executive staff to deny compensation whenever advocacy is merely inconvenient, contentious, or sustained—well within the sphere of protected petitioning activity.

The danger here is not theoretical. In contested rate proceedings, consumer advocates often must file multiple data requests, motions to compel, and supplemental briefs as insurers revise or expand their filings. That iterative process is inherent to data-driven regulation. Each filing contributes to a more accurate record and forces transparency otherwise unavailable to the public. Yet under the proposed rule, those same filings could be retrospectively branded "vexatious" because they required Department resources or contradicted the Commissioner's preferred narrative. The deterrent effect would be immediate and severe: prudent nonprofit counsel would advise restraint or avoidance of the process entirely, not rigorously pressing on to seek hard answers to complex technical questions.

Moreover, the vagueness of the term guarantees arbitrary enforcement. What one commissioner deems "persistent but necessary" another might call "vexatious." Courts have long cautioned that vague standards enabling such discretionary suppression are incompatible with due process. (See *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–09.)

In short, the proposed "vexatious" provision weaponizes a term that, in its proper context, protects courts from abuse, not regulators from scrutiny.

Transplanted here, it would allow the Commissioner to penalize persistence, chill criticism, and deter the very form of rigorous participation that Proposition 103 authorizes, effectively swallowing the substantial contribution standard and undermining its very purpose.

2. "Duplicative" and "Cumulative" Evidence Is Both Inevitable and Beneficial in Complex Rate Proceedings

The proposed "duplicative" and "cumulative" limitations (sections 2662.5(b)(1)–(2)) betray a fundamental misunderstanding of how rate regulation works. Rate proceedings are not linear policy debates but multi-variable, data-intensive analyses in which minute differences in data and assumptions can translate into hundreds of millions of dollars in consumer costs. Two actuaries may agree on 95 percent of a model's inputs yet diverge on catastrophe-loss trend selection, reinsurance loadings, or territorial relativities—differences that, though subtle, materially affect the indicated rate. To label one expert's participation "duplicative" or "cumulative" because it covers the same subject matter as another expert is to discard the very process of cross-validation and error checking that ensures lawful outcomes.

Under Proposition 103, such analytical overlap is not a defect but a safeguard. The initiative's text provides that "*any person may intervene in any proceeding permitted or established pursuant to this article*," (Ins. Code § 1861.10(a)), reflecting the electorate's intent that multiple perspectives enrich the record. The statute does not authorize the Department to pick a single "designated" consumer representative per issue; it creates a marketplace of ideas and analyses. In practice, the most consequential corrections in recent rate cases—such as misspecification of wildfire models, misapplication of trend factors, and improper reinsurance accounting—may only emerge because intervenors independently examined the same data from different angles. What may look "duplicative" from outside a proceeding is, to those engaged in it, the essential redundancy that prevents systemic error.

Nor does overlapping participation diminish efficiency. In an evidentiary context, convergence among independent experts strengthens the credibility of correct positions. When several intervenors demonstrate that an

insurer's use of a particular rating factor or catastrophe-loss assumption violates regulatory standards, their alignment reinforces the weight to be accorded to that aligned testimony and evidence. Under the proposed rule, however, such alignment would itself become a ground for denial of compensation: the first intervenor to raise an argument might be compensated, while others refining or corroborating it would be punished for "duplication." The result would be an irrational incentive to prioritize novelty over accuracy.

In the few proceedings that involved multiple consumer representatives, consumer groups often divided technical responsibilities, coordinated discovery, and constructed complementary evidentiary foundations, and do so with the Department itself. This cooperation accelerates resolution and improves precision. Redefining it as "duplication" would destroy the cooperative structure that makes complex oversight efficient. Worse still, the new "cumulative" standard would purport to authorize the Commissioner to arbitrarily cut compensation for services that "relate to an *issue* that is repetitive within the same proceeding or across multiple proceedings." (Proposed section 2662.5(b)(2), emphasis added.)

This language ignores the fact that the same or similar legal issues may need to be briefed at different stages in the same proceeding, or that the same or similar violations often appear in multiple rate applications that still require additional work by the intervenor to analyze each unique fact pattern and tailor their arguments to each stage of a proceeding or to a different insurer. This does not mean an intervenor is double-billing time within or across proceedings. For example, if a consumer representative reuses a legal argument that took 10 hours to draft, then later billing entries in the same or subsequent proceedings would only reflect the additional reasonable and necessary time that it took to tailor that legal argument to a different stage of the proceeding or fact pattern of a different insurer's application. It also ignores the realities of rate hearings, wherein intervenors are required to respond to briefing and motions of other parties who may raise the same issues multiple times in the same proceeding or in different proceedings. If an intervenor is going to participate meaningfully, it cannot simply sit on the sidelines and avoid briefing issues as they arise. The new "duplicative" and

"cumulative" criteria add nothing except deep uncertainty and unfettered discretion to punish intervenors for work that is both reasonable and necessary to perform in any proceeding.

3. The "Excessive" Standard Invites Improper Second-Guessing of Judicially Controlled Evidence

The Department's proposed "excessive" standard adds nothing to the current regulatory scheme except uncertainty. Existing law already empowers the presiding Administrative Law Judge to control the scope, relevance, and admissibility of evidence, including whether proffered evidence is cumulative or excessive. In rate proceedings, the Administrative Law Judge functions as the trier of fact—directing discovery, resolving motions, and ensuring that testimony and expert analyses are not cumulative or unduly burdensome. The judge's procedural orders and rulings define the contours of a fair and efficient record.

When the record closes, those evidentiary judgments are final. Allowing the commissioner or departmental staff to revisit them post hoc under a vague "excessive" standard authorizes the commissioner to second-guess evidentiary determinations already made by the neutral adjudicator and to punish intervenors for following the procedural directives they were given.

When there is no ALJ, no formal hearing, and no official record, the consumer representative would be virtually defenseless against a punitive decision by the commissioner, who is not even present during the proceeding. Nothing in Insurance Code section 1861.10 permits such retroactive relitigation, and every principle of administrative due process forbids it. (See *Howitt v. Superior Court* (1992) 3 Cal.App.4th 1575, 1585.)

The existing regulation—10 CCR § 2662.3(d)—already requires intervenors to fully document their time and expenses, including by submitting detailed time records. That standard has proven fully adequate to prevent over-billing or cumulative submissions. Replacing it with a vague "excessive" criterion invites arbitrary reductions untethered from the evidentiary record. The result will be self-censorship, thinner records, and diminished scrutiny of insurer data.

In short, the "excessive" provision does not promote efficiency—it converts a neutral adjudicative system into a political audit of consumer advocacy. That outcome is incompatible with both the letter and the structure of Proposition 103.

In sum, these new standards, cloaked in the guise of "reasonableness," are inconsistent with section 1861.10(b). They convert Proposition 103's guaranteed reimbursement for *substantial contribution* into a revocable privilege conditioned on tone, persistence, or alignment. Far from promoting efficiency, they ensure "regulatory quiet": a hollow record devoid of adversarial testing, where silence masquerades as consensus. That outcome would dismantle one of the most successful consumer-oversight mechanisms in California law and return the Department to the pre-103 pattern of unexamined rate-setting by administrative fiat.

C. Staffing Caps Undermine Technical Parity and Render Professional Intervention Ineffective

The Commissioner's proposed amendments (proposed section 2662.5(b)(4)) would impose an arbitrary cap on the number of personnel a consumer participant may deploy in any Department proceeding for purposes of compensation, without regard to the number of attorneys, experts, and administrative support staff employed by the insurers, or the Department for that matter. This edict is both one-sided and dangerous.

Modern rate cases are among the most complex proceedings in state government. The proposed regulation restricts the analytical capacity necessary for meaningful and effective intervention by consumer groups to counter the industry's vast resources, suppressing the diversity of technical perspectives that makes the outcome reliable. Restricting consumer participants to these unsupported numerical caps with the threat that they will not be compensated will only serve to curb their ability to effectively counter the insurer's positions and to make a substantial contribution.

It also allows the very official whose actions the intervenor may be challenging to decide after the fact if deploying more staff was reasonable. Consumer advocates would no longer control their own investigative strategy;

they would be forced operate within parameters set by the target of their scrutiny.

The right to participate under Insurance Code section 1861.10(a) is a right to *do so meaningfully*. In effect, the proposal transforms Proposition 103's promise of independent oversight into a system of supervised compliance by allowing the Commissioner to shape or limit the very advocacy that might expose flaws or gaps in the insurer's and/or Department's analysis.

The existing regulations already balance efficiency and accountability. Intervenors must document their hours, tasks performed, and hourly rates for each individual in detail. (10 CCR § 2662.3(d).) As the Court of Appeal concluded, "section 1861.10(b) requires only that advocacy fees be 'reasonable,' within the usual meaning of the term in the fees context: fair and appropriate under the circumstances." (*SFG*, *supra*, 71 Cal.App.5th at 218.) The statute and the caselaw interpreting it do not allow the commissioner to override the ethical obligations and legal judgment of a consumer representative.

The inevitable effect of the Commissioner's proposals will be to eliminate professional parity and deter qualified experts from participating at all.[11] Limiting staffing decisions by intervenors does not create efficiency; it institutionalizes imbalance.

D. Elimination of the Rule Requiring Insurers to Disclose What They Pay Their Lawyers Will Provoke Unreviewable Fee Challenges

For decades, the Department's public participation regulations have contained a simple requirement to promote equity and fairness: if an insurer or other party wishes to challenge an intervenor's hourly rates, hours, or overall reasonableness of any amount in a request for compensation, it must

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[11] In the unlikely event a consumer representative would risk the resources and their professional ethical obligations by agreeing to such limits, compensation requests would likely *increase*, as intervenors limited to experts would choose one with the most experience even if some of the work could normally be completed by a less experienced person billing at a lower hourly rate.

disclose its own litigation, actuarial, and consulting fees, rates and costs expended in the same proceeding. The provision reads: "Any party questioning the market rate or reasonableness of any amount set forth in the request shall, at the time of questioning, provide a statement setting forth the fees, rates, and costs it expects to expend in the proceeding." (10 CCR § 2662.3(g).)

That parity requirement is not cosmetic. It was the *only* mechanism that made a "reasonableness" inquiry evidence-based rather than rhetorical. If an insurer spent $500,000 on outside consultants to defend a rate increase, it could not plausibly complain that $150,000 in consumer-intervenor work on the same filing was "excessive." Not surprisingly, insurance companies steadfastly disobeyed the regulation.

According to Commissioner, it was "difficult to enforce" and "triggered secondary disputes" of an unspecified nature, and that its deletion is "reasonably necessary to streamline enforcement and free the Commissioner from procedural gatekeeping." (ISOR, p. 38.) That the insurers disagreed with the rule is not a valid reason to junk it.

The proposed regulation flips the burden. Insurers will retain a full right to attack consumer intervenor fees while concealing that they themselves spent two or three times as much to defend the same filing—expenditures insurers can pass through to policyholders. But intervenors will lose their right to see what the challenger itself spent.

The result is a distorted record in which "reasonableness" becomes whatever the Commissioner's office decides it is, rather than what market conditions for specialized professional actuarial and regulatory work actually demonstrate.

E. New Barriers to Consumers' Eligibility to Seek Compensation in Department Proceedings Will Further Decrease the Number of Consumer Participants

Under the guise of "promoting transparency," the Commissioner's proposed amendments to section 2662.2 create additional hurdles and delays

for consumer groups requesting *eligibility* to seek compensation in Department proceedings.

This is the process under which an organization is "pre-cleared" every two years to qualify as a "consumer representative." The sole purpose of the request for finding of eligibility is to obtain a preliminary determination that a person or organization does in fact represent consumers for purposes of submitting a request for compensation at the conclusion of a Departmental proceeding; such a finding is valid in any proceeding commenced within two years of the finding. (10 CCR § 2662.2(d).) Commissioner Lara sought to weaponize the requirement in 2024 by inviting the insurance industry to oppose Consumer Watchdog's application for eligibility; that attempt to silence Consumer Watchdog failed when other prominent consumer protection advocacy organizations united in the view that the erection of the additional hurdles the CDI seeks to impose on the intervenor process "would discourage active participation on behalf of consumer protection," contrary to

the intent of Proposition 103 "to encourage intervenors to voice the concerns of consumers."[12]

Commissioner Lara's new proposal would force potential consumer representatives to run a gauntlet of ambiguous, irrelevant and invasive requirements found nowhere in the statute, any one of which would apparently serve as a basis for the commissioner to disqualify the consumer representative from participation. These include:

- The consumer representative must disclose "actual or potential conflicts of interest that may compromise the intervenor's or participant's ability to represent the interests of consumers," which the regulation says could potentially include receiving a foundation grant to participate in agency proceedings; representing other clients; lobbying; or contributing to a candidate for public office (proposed section 2662.2(a)(2)(H)).
- The consumer representative must describe "how the intervenor or participant identifies and advocates for consumer views or interests that diverge from the intervenor's or participant's own views or interests." (Proposed section 2662.2, subd. (a)(2)(I).) Apart from being impossible to meet, this requirement betrays the Commissioner's apparent intention to require a consumer representative to advocate

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[12] See Consumer Protection Policy Center ("CPPC") at the University of San Diego School of Law, *Testimony of the Consumer Protection Policy Center – Consumer Intervenor Process*, June 28, 2024, https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Written-Comment-by-Marcus-Friedman_Consumer-Protection-Policy-Center.pdf; Public Interest Organizations Submitted Comments Re: Requests for Finding of Eligibility to Seek Compensation Submitted by Consumer Watchdog and Consumer Federation of California Education Foundation, June 28, 2024, https://www.insurance.ca.gov/01-consumers/150-other-prog/01-intervenor/upload/Written-Comment-by-Public-Interest-Organizations.pdf (coalition of 15 of the nation's leading consumer protection organizations agrees that the only purpose of soliciting industry comments and holding an unauthorized hearing on their objections is "to provide the insurance industry a forum to further its specious, self-serving complaints to keep consumer organizations from objecting to their unjustified rate hikes or advocating for stronger consumer protection regulations").

views other than their own in order to be compensated, and fails to recognize that consumer groups may have a diversity of viewpoints.

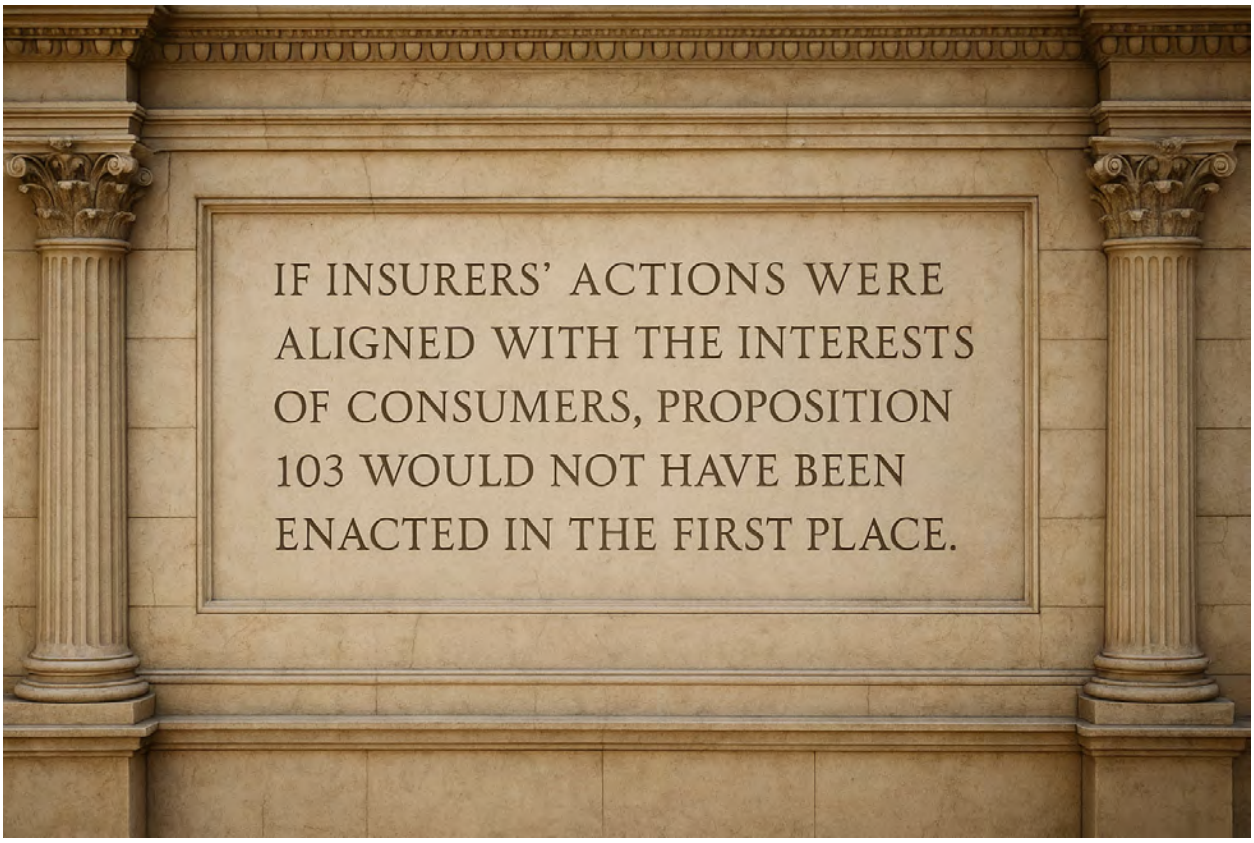
- Disclosure of the nonprofit's annual tax return (proposed section 2662.2(a)(2)(F)).

The Commissioner asserts that these new hurdles are required to "address concerns about undue influences or conflicts of interest" (ISOR, p. 14); "promote[] early detection of conflicts of interest or other issues that might otherwise remain hidden," (*id*. at p. 25); "assess[] the organization's independence, priorities," (*id*. at p. 32); and "ensure that compensated participation in Department proceedings is…free from outside obligations, loyalties, or inducements that may distort regulatory participation," (*id*. at p. 33).

These stated concerns are a fabrication. The Commissioner offers zero evidence to support them, and nothing in the history of the intervenor program over the last 37 years warrants them. They fail to meet the APA's requirements of consistency, necessity, and clarity, as explained below. Finally, the proposals plainly violate the First Amendment and other constitutional protections against government overreach.

The regulation also expands the timelines for issuing a decision on a Request for Compensation from 15 days to 50 days and establishes a process for insurance companies and their political trade associations to lobby against such requests by consumer organizations that routinely challenge their rates and rating practices. (Proposed section 2662.2, subds. (b), (c), and (d)) Putting aside the irony of allowing the insurance industry to weigh in on who can represent consumers and what is in the best interests of consumers, no statute authorizes the Commissioner to base eligibility decisions on comments from the insurance industry or other "interested parties."

Rather than maintaining a streamlined and uncomplicated process and ensuring the integrity of the consumer participation and compensation system, the proposed amendments turn a request for eligibility into a politicized process whereby insurance companies and their lobbying groups can orchestrate campaigns aimed at blocking their most vocal opponents from being found eligible to seek compensation, blocking their future advocacy in



Department proceedings. If insurers' actions were aligned with the interests of consumers, Proposition 103 would not have been enacted in the first place.

F. Eliminating Independent Review by Administrative Law Judges Overseeing Rate Proceedings Undermines Due Process and Violates the Statutory Framework

The Proposition 103 voters intended that public proceedings on rate applications be conducted by independent administrative law judges with procedural due process protections. (Ins. Code § 1861.08.) The Commissioner's amendments propose to strip ALJs of their current authority to conduct Proposition 103 hearings in two ways: (1) by eliminating ALJs' authority to review and approve settlements by the parties to a rate proceeding "unless and until the Commissioner commences a rate hearing by issuing a notice of hearing on the application or otherwise expressly delegates the matter to the Administrative Hearing Bureau," even in proceedings where a mandatory hearing is required by Insurance Code section 1861.05 (proposed amendment to section 2653.5), and (2) overriding the ALJ's

authority to "exercise all powers relating to the conduct of [an administrative] hearing" (Gov. Code § 11512) by giving an insurance company the right to appeal an ALJ ruling it dislikes to the commissioner in the middle of a proceeding. The proposal essentially transfers to the Commissioner the sole authority to control the course of Proposition 103 matters.

These proposals directly conflict with Insurance Code section 1861.08, and to the extent the Commissioner seeks to justify this change as "reasonably necessary to create [or ensure] transparency" (ISOR, pp. 3, 10), that justification fails. Permitting the Commissioner's staff representing the Department as a party in a rate proceeding to settle a case with an insurer over the objections of a consumer participant without independent ALJ review, simply because the Department delays or declines to issue a notice of hearing even when a hearing before an ALJ is required under Insurance Code sections 1861.05(c) and 1861.08, or otherwise to obtain the Commissioner's veto of an ALJ determination mid-proceeding, only serves to promote secrecy and unfairness. Proposition 103 does not authorize the Commissioner to collapse adjudicative and executive functions. Insurance Code section 1861.08 uses mandatory language—"Hearings shall be conducted pursuant to Chapter 5" of the APA and "shall be conducted by administrative law judges" (Ins. Code § 1861.08.) Regulations that purport to override these express statutory requirements and are wholly unnecessary to effectuate their purpose are thus plainly invalid. (Gov. Code § 11342.5.)

IV. CONSTITUTIONAL AND ADMINISTRATIVE DEFECTS

A. Unconstitutional Viewpoint Discrimination and Retaliation Against Protected Advocacy

The Commissioner's proposed amendments to the intervenor regulations transform a voter-created right of independent participation into a privilege conditioned on ideological compliance with the Commissioner's preferred policy. That approach violates the First Amendment and its California counterparts, which forbid the government from penalizing speech or advocacy based on a person's viewpoint or a public official's displeasure.

It is hornbook constitutional law that "[r]egulations which permit the Government to discriminate on the basis of the content of the message cannot be tolerated under the First Amendment." (*Regan v. Time, Inc.,* 468 U.S. 641, 648–649 (1984).) The proposed definitions of "substantial contribution," "vexatious," "excessive," and "duplicative" condition compensation on whether an intervenor agrees with positions of the commissioner. They are vague and wholly subjective, and will be deployed by the commissioner to punish critics.

No constitutional regime tolerates a funding scheme that punishes speakers for criticizing the very officials who control their compensation. (See *Legal Servs. Corp. v. Velazquez* (2001) 531 U.S. 533, 548 [Constitution does not permit the Government to confine the scope of legal arguments to those it deems acceptable]; *Rosenberger v. Rector & Visitors of the Univ. of Va.* (1995) 515 U.S. 819, 829 ["When the government targets not subject matter, but particular views … the violation of the First Amendment is all the more blatant."]; *Bd. of County Comm'rs v. Umbehr* (1996) 518 U.S. 668, 673 [prohibiting retaliation against independent contractors for protected speech]; *O'Hare Truck Serv., Inc. v. City of Northlake* (1996) 518 U.S. 712, 717 [same].)

These constitutional concerns are not speculative. In 2025, the Commissioner denied Requests for Compensation by Consumer Watchdog and the Consumer Federation of California not for lack of meeting the substantial contribution requirement by presenting relevant issues, evidence, and arguments or failing to sufficiently document their time entries, but for

their "adversarial"[13] and "sustained opposition"[14] to several of the Commissioner's proposed regulations that were part of what Commissioner Lara refers to as his "Sustainable Insurance Strategy." His rulings also claimed that the consumer representatives' "involvement did not meaningfully influence or improve the outcome of the rulemaking."[15] The Commissioner's stated reasons for non-payment—disagreement with Department policy—is classic viewpoint retaliation. When an agency punishes speech critical of its conduct, it unconstitutionally acts as censor of what may be said in the forum it created. (See *Velazquez*, *supra*, 531 U.S. at 548.)

"When an agency punishes speech critical of its conduct, it unconstitutionally acts as censor of what may be said in the forum it created."

California voters enacted Proposition 103 in 1988 to ensure that rate regulation would remain publicly accountable regardless of who occupied the Commissioner's office. (See *Garamendi*, *supra,* 32 Cal.4th at 1045.) The initiative's intervenor provisions were intended to *depersonalize* oversight—to create a structural check on capture and corruption. By tethering compensation to the Commissioner's personal approval, the Department's proposal inverts that design. It makes public participation contingent on official favor and thereby weaponizes the very discretion Proposition 103 was meant to restrain.

The predictable result of such viewpoint discrimination is self-censorship. Nonprofits whose budgets depend on reimbursement of their Proposition 103 advocacy fees and expenses cannot risk taking adversarial

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[13] Decision Denying Compensation, *In the Matter of Catastrophe Modeling and Ratemaking Rulemaking*, File No. IP-2024-00018, REG-2023-00010, June 13, 2025, p. 10.

[14] *Ibid.*

[15] Decision Denying Compensation, *In the Matter of Complete Property and Casualty Rate Applications Rulemaking*, File No. IP-2024-00012, REG-2019-00025, May 30, 2025, p. 2.

positions if payment turns on the Commissioner's personal agreement with their policy positions. At best, staff attorneys will temper arguments; experts will avoid candid criticism of Department models; cross-examination will wither. The Supreme Court has repeatedly held that such economic penalties on disfavored speech violate the First Amendment even when participation remains nominally "open." (See *Speiser v. Randall* (1958) 357 U.S. 513, 518 [denying tax benefit based on loyalty oath unconstitutional]; *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) ["Even though a person has no 'right' to a valuable governmental benefit … [he may not be denied it] on a basis that infringes his constitutionally protected interests."].) The California Supreme Court has acknowledged this risk directly and in no uncertain terms, recognizing that particularly "[i]n the context of financial regulation, it bears repeating…that the government's ability to impose content-based burdens on speech raises the specter that the government may effectively drive certain ideas or viewpoints from the marketplace." (*Keenan v. Superior Court of Los Angeles County* (2002) 27 Cal.4th 413, 424–425, citing *Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd.* (1991) 502 U.S. 104, 115–116.)

The California Supreme Court.

The proposed restrictions on particular viewpoints work in tandem with other regulatory changes to virtually eliminate intervenors' rights to advance positions the Commissioner disagrees with. For example, the requirement, discussed in section III above, that intervenors advocate for consumer views or interests that diverge from their own (proposed section 2662.2, subd. (a)(2)(I)) is blatantly unconstitutional forced speech. The Commissioner cannot require consumer advocacy groups to advocate for *any* specific viewpoint as a prerequisite to participation in a statutorily created public intervenor process, let alone viewpoints that expressly diverge from their own. (See *PG&E v. Public Utilities Comm'n* (1986) 475 U.S. 1 [striking down on First Amendment grounds a regulation requiring PG&E to include outside group's membership solicitation in utility bills].)

The chilling effect is particularly acute in Proposition 103 proceedings, with consumer intervenors serving in a role analogous to public prosecutors in rate matters. When the government conditions their compensation on approval of their advocacy, it disables the adversarial mechanism that ensures due process for all policyholders.

B. Administrative-Procedure Violations: Arbitrary, Capricious, and Contrary to Law

Even aside from its constitutional defects, the Commissioner's proposal serially violates the California Administrative Procedure Act. The APA requires that any regulation adopted by a state agency must be "consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute" (Gov. Code § 11342.2) and satisfy the criteria of necessity, authority, consistency, reference, and clarity (Gov. Code § 11349.1(a)). A regulation that fails to comply with the APA is void. (See *Tidewater Marine W., Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 576.)

1. Inconsistency with Statutory Authority

"With respect to the consistency requirement, …[t]he question is whether the regulation alters or amends the governing statute or case law, or enlarges or impairs its scope. In short, the question is whether the regulation is within the scope of the authority conferred; if it is not, it is void." (*ACIC*,

supra, 180 Cal.App.4th at 1045, internal quotations/citations omitted.) As discussed above in section III, the proposed regulations conflict directly with Insurance Code section 1861.10(b), which mandates that an intervenor "shall be compensated for all reasonable advocacy and witness fees, and expenses." The statute's use of "shall" imposes a nondiscretionary duty; it does not authorize the Commissioner to withhold or reduce compensation based on subjective approval or perceived attitude. Agencies may implement statutes, not rewrite them. Conditioning payment on whether the Department agrees with an intervenor's position contravenes both the letter and the purpose of Proposition 103.

2. Lack of Demonstrated Necessity

The Commissioner's ISOR identifies not one empirical fact or datum to support the necessity of the proposed amendments. It employs buzzwords like "accessibility," "accountability," "transparency," "efficiency," and "effectiveness," without providing any explanation of how the proposed regulations are necessary to effectuate the actual purpose of the statute—to promote consumer participation.

"'Necessity'" means the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion." (Gov. Code § 11349(a).) A regulation may be declared invalid if an agency's determination of reasonable necessity is not supported by substantial evidence. (Gov. Code § 11350(b)(1).) Administrative convenience cannot substitute for a statutory finding of necessity, nor can it supplant the purpose of the statute itself. "When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information." (Cal. Code Regs., tit. 1, § 10.) The ISOR is entirely devoid of any facts, studies, or expert opinion to show why the proposed regulations are necessary or how they will promote the consumer participation authorized by Proposition 103.

3. Failure to Consider Less Burdensome Alternatives

The ISOR is also devoid of any discussion of any less burdensome alternatives to achieve greater consumer participation and transparency, another requirement of California law. (Gov. Code § 11350(b)(1).) The Commissioner could have proposed many options. Instead, it chose the most restrictive option—curtailing participation itself, and stifling the voices of its most vocal critics. No analysis in the ISOR explains why narrower tools would not suffice.

4. Lack of Clarity and Enforceable Standards

The APA's clarity requirement (Gov. Code §§ 11349(c), 11349.1(a)(3)) exists to prevent precisely the kind of unbounded discretion these amendments would create. Terms such as "vexatious," "duplicative," and "excessive" are undefined and subjective; they give the Commissioner limitless post-hoc authority to deny payment after advocacy has occurred, second guessing staffing decisions that are often dictated by procedural requirements and scheduling orders that set the pace and scope of proceedings. To meet the clarity requirement, the meaning of regulations must "be easily understood by those persons directly affected by them." (Gov. Code § 11349(c).) Here, the Department offers no objective benchmarks by which intervenors—or courts—could assess compliance. That vagueness alone renders the proposal unenforceable.

"The proposed regulations fail every substantive criterion of the California Administrative Procedure Act."

The proposed regulations fail every substantive criterion of the California Administrative Procedure Act. They lack demonstrated necessity, conflict with the enabling statute, ignore less-burdensome alternatives, and provide no clear or enforceable standards. Because they are both unconstitutional and procedurally invalid, the Department must withdraw the proposed regulations.

V. THE PROPOSED REGULATIONS WILL *ELIMINATE* PUBLIC PARTICIPATION

A. The Regulations Assume That CDI Staff Are Consumer Representatives

The CDI staff may—or may not—support the consumer representative's position on any of the myriad of issues that are presented by an insurance company's request for a rate change. Indeed, agency staff serve at the direction of the Commissioner and his executive appointees, who often have a different view of their role—a scenario that has played out many times since the passage of Proposition 103, and led the voters to establish independent public participation.

The impact of that distinction is frequently profound. Consumer Watchdog's rate analyses often differ from the Department's. On a number of occasions, Consumer Watchdog has uncovered insurer malfeasance or errors that escaped the scrutiny of the Department. And when it comes to the regulatory policies the Commissioner orders his staff to pursue, Consumer Watchdog frequently challenges proposals that are not in the best interests of consumers.

For example:

- State Farm and CDI staff reached an agreement earlier this year for an unprecedented $1 billion increase in State Farm's residential insurance rates, which the company contended it needed to relieve it of its financial woes; the deal would have allowed State Farm to avoid complying with the public hearing required by Proposition 103. Consumer Watchdog strenuously opposed the attempt to bypass Proposition 103's requirements and its experts concluded that State Farm had failed to justify its need for the increase.[16] The Commissioner quickly approved an "interim" increase of $700 million, pending a full hearing, now underway, at which State Farm is required to

[16] See https://consumerwatchdog.org/in-the-courtroom/consumer-watchdog-urges-denial-of-state-farms-emergency-rate-hike-at-conclusion-of-department-of-insurance-hearing/

retroactively justify its application or pay refunds. Consumer Watchdog is the only consumer advocate that has been fighting for consumers in that proceeding from day one. Moreover, Consumer Watchdog has taken the position that the company's claims handling procedures, which have been criticized by survivors of the LA wildfires, are fundamentally relevant to whether State Farm is entitled to the rate increase.[17] The Commissioner disagrees, saying he cannot condition the company's rate increase on its claims handling procedures.[18]

- Consumer Watchdog analyzed and commented on multiple versions of regulations proposed by Commissioner Lara that would allow insurance companies to use secret computer models and algorithms to set home insurance premiums based on the projected risk of wildfire. Commissioner Lara tied this dispensation to a promise by each insurance company to resume the sale of home insurance coverage in areas threatened by wildfires by a specified amount. Consumer Watchdog's analyses concluded that the proposal contained loopholes that would allow insurance companies to use models to take major rate increases but avoid any meaningful increase in sales to homeowners.[19] CDI staff and Commissioner Lara rejected Consumer Watchdog's analysis, and the regulations went into effect in early 2025. A subsequent investigation by the New York Times, published earlier this month, confirmed Consumer Watchdog's analysis; the report concludes that the loopholes in the regulation "all but eliminated the guarantee" that insurance companies would expand coverage once they used

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[17] See https://consumerwatchdog.org/wp-content/uploads/2025/08/2025-08-01-CWD-Response-re-Bifurcation.pdf.

[18] San Francisco Chronicle, *Insurance Commissioner: State Farm Investigation "Not Off the Table" Following L.A. Wildfires*, May 10, 2025 (https://www.sfchronicle.com/california-wildfires/article/la-wildfires-state-farm-ricardo-lara-investigation-20321044.php).s

[19] See https://consumerwatchdog.org/insurance/consumer-watchdog-to-testify-that-five-loopholes-in-lara-rule-will-stand-in-the-way-of-new-coverage-in-fire-zones/; see also https://consumerwatchdog.org/insurance/lara-reinsurance-regulation-to-pump-up-homeowners-rates-by-40-without-guarantees-of-new-wildfire-coverage-no-opportunity-for-public-input/.

models to justify the commissioner's approval of substantial rate increases.[20]

B. The Risk of Arbitrary Denials Under the Proposed New Regulations Is 100%

Just as the "rule of law" is a prerequisite for a functioning market economy, confidence that the statutory framework and voters' intent will be honored is a prerequisite to public participation in Department proceedings under Proposition 103. For a potential consumer representative, whether or not to participate is a simple calculation: do the rules ensure compensation when an intervenor makes a "substantial contribution to the outcome"?

The answer here is, apparently by design, no.

Each of the Commissioner's proposed changes to the current regulations impose a distinct and categorical burden on public participation.

Collectively, these provisions together with the elimination of the independent, neutral Administrative Law Judges' review of Requests for Compensation transform compensation from a predictable system of compensation backed by a statutory guarantee into an entirely speculative privilege for the Commissioner's favored few.

No nonprofit law center or public interest organization can responsibly commit hundreds of thousands of dollars in actuarial, economic, and legal work when payment depends not on success in the proceeding, but on the regulator's subjective satisfaction with the tone or direction of the advocacy, supported by new regulations that themselves manifest express hostility to public participation. No responsible accountant, auditor, or board of directors could authorize the advancement of hundreds of thousands of dollars in staff time, expenses, and expert costs under these rules.

The immediate, inescapable result will be the disappearance of professional consumer advocates and the restoration of the unbalanced,

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[20] Jo Becker, Jeremy Singer-Vine, Katie Benner & Laurel Rosenhall, *California Promised Insurance Relief, But Delivered Loopholes*, N.Y. Times (Nov. 1, 2025), https://www.nytimes.com/2025/11/01/us/los-angeles-california-fire-insurance-regulations.html.

closed-door regulatory process that the voters rejected 37 years ago, one that has withstood the sustained opposition of the industry and its political allies and delivered literally billions of dollars in savings for California home and condo owners, renters, motorists, and businesses.

The dismantling of the professional infrastructure that has sustained consumer participation in these complex proceedings for decades will be followed by the higher prices and unfair practices that are the product of an unaccountable, deregulated insurance industry.

C. Commissioner Quackenbush's "Crack Down" on Intervenors Derailed Public Participation in the 1990s

This is not the first time a California Insurance Commissioner has proposed to cripple public participation and silence critics of his pro-insurance company policies. The last commissioner who promised to "protect" and "improve" the process by "cracking down" on consumer representatives, Chuck Quackenbush, did lasting damage to public participation (and himself). One of his first acts in office was to withhold compensation for work performed by consumer advocates in the cases to defend and implement Proposition 103, claiming the need to "crack down on frivolous legal bills."[21] At least five organizations sued Quackenbush for failure to pay intervenor compensation.[22] Quackenbush eventually agreed to pay.[23] But he did not stop there.

Like the current Commissioner, Quackenbush attacked Consumer Watchdog. Quackenbush "question[ed] whether certain consumer advocates have grown rich off Proposition 103," according to a press release. "While some consumer groups have legitimately and effectively represented

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[21] Los Angeles Times, *Quackenbush, Consumer Group Trade Jabs / Insurance/ Gloves Are Off as New Commissioner Engages in Battle Over Prop. 103 Issues*, February 9, 1995.

[22] Associated Press, Prop. 103 Backers Sue Quackenbush Over Fees, March 11, 1995; CDI, Notice of Proposed Adoption of Emergency Regulations, ER-29, July 28, 1995, pp. 3–4.

[23] Document on file with Consumer Watchdog.

consumers in insurance-related issues, others have gotten fat off the public trough."[24] A newspaper editorial noted that "astonishingly, the new commissioner says that the real problem is greed by consumer advocates . . . ." [25] As one news report put it at the time, "Insurance Commissioner Charles Quackenbush declared bureaucratic war this week on two consumer groups that have sharply criticized his record."[26]

Former Insurance Commissioner Chuck Quackenbush in a promotional video for CDI.

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[24] CDI Press Release, *Quackenbush Calls for Tighter Controls on Intervenor Program*, February 8, 1995.

[25] Editorial, San Francisco Examiner, *Quackenbush's Generous Backers*, February 13, 1995.

[26] McClatchy News Service, *Quackenbush Declares War*, February 17, 1995.

Barely a month after taking office, Quackenbush proposed to amend the regulations governing public participation under Proposition 103.[27] Quackenbush's proposed amendments (1) changed the statutory standard for compensation from "substantial contribution" to a "prevailing party" standard by requiring proof that the commissioner made "specific citations to the intervenor's" work in their order[28] or was "substantially influenced" by the consumer representative;[29] (2) eliminated the option for the consumer representative to seek and obtain "interim compensation" in lengthy proceedings;[30] (3) introduced tests of "necessity" and "economic interest" into the definition of "represents the interests of consumers";[31] and (4) required consumer representatives to disclose their funding sources—including the identity of supporters.[32] Under pressure from consumer organizations—and the threat of lawsuits—Quackenbush ultimately eliminated many of the egregious provisions. In 2000, Quackenbush was later forced to resign under threat of impeachment for accepting donations from insurers in exchange for leniency on their violations of California's claims handling laws.[33]

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[27] Consumer Watchdog Press Release, *Quackenbush Seeks to Block Consumer Watchdog Participation in Insurance Department Proceeding*, June 7, 1995; Los Angeles Times, *Groups Say Quackenbush Proposals Will Stifle Consumer*, June 8, 1995.

[28] CDI, Regulations Proposed for Readoption and Repeal, ER-29, May 29, 1996, pp. 22–23.

[29] Letter from Edward P. Howard, Counsel for Proposition 103 Enforcement Project (Consumer Watchdog) to CDI, May 17, 1995; CDI, Regulations Proposed for Readoption and Repeal, ER-29, May 29, 1996, p. 15.

[30] Letter from Edward P. Howard, Counsel for Proposition 103 Enforcement Project (Consumer Watchdog) to CDI, May 17, 1995; CDI, Regulations Proposed for Readoption and Repeal, ER-29, May 29, 1996, p. 17.

[31] CDI, Regulations Proposed for Readoption and Repeal, ER-29, May 29, 1996, p. 4.

[32] CDI, Regulations Proposed for Readoption and Repeal, ER-29, May 29, 1996, p. 15.

[33] Consumer Watchdog Press Release, *Quackenbush Resigns: "Independence Day" For California Consumers*, June 28, 2000; Los Angeles Times, *Quackenbush Resigns; Probe Will Continue*, June 29, 2000.

Unfortunately, Quackenbush's hostility profoundly impacted public participation just as Proposition 103's prior approval process took full effect in 1995. Numerous consumer organizations, such as San Diego University's Center for Public Interest Law, Consumers Union, Public Advocates, the Utility Consumer Action Network, the Economic Empowerment Foundation, and others had been active in Proposition 103 matters. Those organizations reduced or ceased their participation as a result of Quackenbush's attacks and changes to the rules.

An information campaign by Commissioner Dave Jones in 2012 to encourage other groups to participate—actively supported by Consumer Watchdog[34]—did not succeed. Operating under rules that encourage insurers to delay and filibuster challenges to their rates, and force them to wait months or years to receive compensation for their work,[35] only Consumer Watchdog and Consumer Federation of America, and its California affiliate, remain active participants in rate proceedings.

D. The Current Rules Do Not Encourage Intervention, and Recent Actions by Commissioner Lara Have Weaponized Their Failings

Under existing regulations, consumer representatives have been denied basic legal protections in cases involving proposed rate changes under 7%, including the right to obtain necessary data from insurance companies seeking to raise rates. Compensation for completed advocacy in rate cases typically lags twelve to eighteen months—far beyond the legal deadlines, sometimes longer when the Department delays issuance of final orders. Commissioner Lara has improperly denied compensation to both Consumer

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[34] CDI Intervenor Workshop PowerPoint, November 8, 2012.

[35] Petition for Writ of Mandate, *Consumer Watchdog and Consumer Federation of California Education Foundation v. Lara* (Los Angeles Superior Court, Case No. 25STCP02841, July 29, 2025, pp. 36–37.

Watchdog and Consumer Federation of California, which have sued the Commissioner.[36]

These denials did not occur in isolation. They coincided with the Commissioner's removal of Chief Administrative Law Judge Kristin Rosi—the Department's longest-serving presiding officer and the official who had overseen key Proposition 103 rate and enforcement matters for more than a decade. The Commissioner abruptly removed Judge Rosi from her post in January 2025 after she refused to comply with secret instructions from the Commissioner and his deputies concerning her rulings on pending Consumer Watchdog RFCs, which she disclosed to the parties. The Commissioner then directed that outstanding RFCs submitted by Consumer Watchdog and Consumer Federation of California be adjudicated by his chief Deputy Commissioner Lucy Wang.

The Commissioner's action violated state law protections against the commissioner's political interference with Administrative Law Judges.[37] It also reversed a policy decision made by the Department in 2020, requiring that RFCs should be adjudicated by ALJs.[38]

Having unlawfully denied compensation to the Department's most active public participants based on subjective execrations concerning the "adversarial" nature of their advocacy, the Commissioner now seeks to enshrine those same discretionary criteria in a regulation.

It is precisely this pattern of political, extralegal manipulation of the public participation process that underscores why the voters in 1988 chose to

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[36] See https://consumerwatchdog.org/in-the-courtroom/consumer-advocates-sue-insurance-commissioner-lara-for-punishing-public-participation-in-prop-103-rulemakings/.

[37] Insurance Code section 21.5, subdivision (b) states: "An administrative law judge appointed by the commissioner pursuant to civil service rules shall be employed within the administrative law bureau and shall not be supervised directly by the commissioner or supervised directly or indirectly by an employee in the legal branch of the department."

[38] Memorandum to Ken Schnoll, General Counsel CDI, from Edward Wu, Public Advisor CDI, October 8, 2020, obtained by Consumer Watchdog through a Public Records Act request (PRA-2024-00637).

California wildfire victims sift through the rubble of their home. (AP)

locate the right to participate and to be compensated not by the Commissioner's grace and favor, but in the law itself. Proposition 103's participatory safeguards were intended to function *despite* the risk of the commissioner's political or personal bias—not to depend on the regulator's disposition. Allowing the Commissioner to convert those safeguards into instruments of control would invert the statute's design and extinguish the independence the electorate sought to guarantee.

E. The Consequences of the Erosion of Public Participation Will Fall on Those Who Can Least Afford It

The consequences of the Department's proposal will not fall on consumer representatives like Consumer Watchdog—they will fall on the public. Proposition 103's intervenor process was enacted to make insurance, including transparency in the rate process, accessible to every Californian. When the protection of consumers becomes economically impossible, the people most affected by rising premiums and shrinking coverage—low-income, rural, and non-English-speaking homeowners—are left without a voice in the very proceedings that determine their financial survival.

The equity impact is especially severe in the wake of California's wildfire and climate-driven insurance crisis. Homeowners in some regions that insurers claim are high risk can be disproportionately lower-income and

linguistically diverse and already face surcharges through FAIR Plan assessments and escalating "risk" premiums. As FAIR Plan enrollment nearly doubled from 320,581 to 625,033 policies between September 2023 and 2025,[39] the need for transparent, independent oversight of insurer filings has never been greater. The proposed rules would silence public participants equipped and motivated to challenge discriminatory underwriting or unjustified rate differentials. The Department would be left to rely on the data and interpretations of the same industry actors who seek to exploit climate change to reap unjustified profits.

For low-income and non–English-speaking consumers, the loss of independent advocacy means exclusion from a system that already operates in technical language inaccessible to laypersons. These are precisely the Californians who Proposition 103 was designed to protect—the ones least able to hire their own private counsel or commission an independent actuarial review. The initiative's voters understood that economic fairness in insurance markets depends on informational fairness in the regulatory process. By eliminating the means through which ordinary Californians can be represented in complex technical proceedings, the Commissioner's proposal ensures that future rate hearings will proceed without the public they were meant to serve.

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[39] California FAIR Plan Key Statistics and Data (https://www.cfpnet.com/key-statistics-data/?utm_source=chatgpt.com)

VI. THE PROPOSAL DOES NOTHING TO FURTHER ITS STATED OBJECTIVE OF ENCOURAGING NEW INTERVENORS

In his press release announcing the draft regulations, the Commissioner claimed, "We want diverse voices to be heard from every corner of our state… [to] create a stronger and more equitable [public participation] system for all consumers across California, not just a select few who have mastered the current system."

As should be clear by now, the mechanisms chosen to purportedly achieve that goal cannot in any way be construed to further public participation. To the contrary, these amendments will predictably drive out the only entities, such as Consumer Watchdog and other established consumer groups, that have demonstrated over the decades that they are capable of sustained, professional engagement. This is the inevitable structural consequence of depriving participants of predictable, cost-recoverable funding in proceedings that routinely demand multidisciplinary teams of actuaries, economists, data scientists, and experienced regulatory counsel.

Finally, the new "crack down" contains not a single proposal to expand the number of intervenors—a matter which Consumer Watchdog addresses in section VII below. The conspicuous absence of proposals to encourage the number and diversity of intervenors is evidence that the purpose of the amendments is to assuage the insurance industry's and Commissioner Lara's longstanding hostility to public participation.

VII. CONSTRUCTIVE PATH FORWARD–REQUESTED REVISIONS AND RESTORATION

Consumer Watchdog recognizes that Proposition 103's intervenor process, like every regulatory framework, must evolve to promote the statute's policy goals. Efficiency, transparency, and public accessibility are legitimate goals. But modernization cannot come at the price of independence. A reform that purports to "broaden participation" while rendering participation economically impossible is not modernization—it is dismantlement. The path forward requires restoring the structural balance that voters created in 1988: meaningful public access to the process, coupled with predictable, neutral, and timely reimbursement for those who participate.

Several concrete revisions would help achieve that balance.

1. Reinstate neutral Administrative Law Judge review of compensation requests.

ALJ adjudication of Requests for Compensation produced fairer outcomes before a neutral decisionmaker and ensured that reimbursement determinations were made on an evidentiary record rather than political preference.

2. Restore and enforce comparative fee-disclosure requirements.

Under the existing regulations, an insurer that challenges an intervenor's fees must disclose its own costs for the same proceeding — a rule that ensures parity and deters frivolous objections. The proposed deletion of this provision would create a one-sided system in which insurers may attack consumer fees without accountability. Actual litigation costs are the best empirical test of reasonableness; they should remain part of the record.

3. Clarify that "substantial contribution" is an evidentiary, not ideological, standard.

Payment should depend on whether an intervenor's evidence and argument materially assisted the decision-maker by providing additional information, whether or not the evidence or argument is ultimately accepted or whether the Commissioner adopts the same conclusion. A rule that

conditions reimbursement on ideological alignment transforms oversight into patronage and violates both the letter and spirit of Proposition 103.

4. Commit to timely and transparent reimbursement.

Requests for Compensation should be resolved within fixed deadlines, with public reporting of pending balances and payment timelines. Nonprofit intervenors must often carry salaries and expert costs for twelve to eighteen months or longer while awaiting reimbursement. Predictable schedules are essential to sustaining participation.

5. Simplify eligibility determinations and provide Department-sponsored technical assistance for communities without in-house expertise.

Streamlining and simplifying the process for intervention and eligibility to seek compensation, not erecting further barriers, along with providing better notice and assistance to the public regarding opportunities and the procedures to participate in Department proceedings, will better address the goal of increasing the number and diversity of intervenors.

6. Restore Interim Compensation for Lengthy and Complex Proceedings

Obstruction and non-cooperation by insurance companies, and Departmental scheduling delays, can slow the resolution of rate challenges by weeks or months. The impact of delay on consumer representatives' resources is significant. Commissioner Quackenbush eliminated interim funding;[40] restoring it would enable new consumer representatives to enter the process.

7. Provide Stronger Procedural Protections in the Pre-Hearing Process

Nearly 100% of rate challenges are resolved without a formal hearing; the Commissioner has noticed only two such hearings since 2015. Department staff, not independent ALJs, oversee the pre-hearing process, and they make pre-hearing decisions on critical questions such as requests by consumer representatives for information from insurance companies. There is no official record at that stage in the process. Moreover, insurers, the agency staff, and the commissioner do not observe regulatory strictures against inappropriate sidebar conversations known as ex parte communications. This

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[40] *EEF, supra,* 57 Cal.App.4th 677.

is not the process the voters envisioned. More procedural protections during the informal process are needed.

Finally, the Department should embrace genuine modernization where it strengthens participation:

- Expand digital-filing access for intervenors and the public;
- Publish insurer rate-filing data in digital form; and
- Provide multilingual public-notice materials for major rate applications.

These reforms would advance the Department's stated goals without silencing its critics. Proposition 103's structure was never opposed to efficiency—it was opposed to capture. True modernization lies not in shrinking the public's role, but in equipping it to exercise that role more effectively.

CONCLUSION: REAFFIRMING PROPOSITION 103'S PROMISE

Proposition 103 was not a bureaucratic reform; it was a democratic revolution in insurance regulation—an assertion that the people themselves, not the industry or its regulators, would decide what was fair. Enacted in 1988 at the height of California's auto-insurance crisis, it transformed a collapsing market by replacing secret rate-setting and political bargaining with transparency, competition, and public accountability. That reform worked: "Good Drivers" were guaranteed auto coverage and within a decade, auto insurance rates fell in real terms, coverage expanded, and California

103 **Insurance Rates, Regulation, Commissioner. Initiative Statute**

Argument in Favor of Proposition 103

There are important differences between the five insurance initiatives on the November ballot which you should be aware of before voting.

Proposition 103—Voter Revolt to Cut Insurance Rates—is the only insurance initiative written and paid for exclusively by consumers. It alone reduces all of your automobile, home and business insurance premiums to November 1987 prices. Then, it alone cuts them another 20%.

Proposition 103 will also end the insurers' exemption from the antimonopoly laws, allow people to elect the Insurance Commissioner, require a special 20% discount for good drivers, and stop unfair price increases in the future. It specifies that a permanent, independent consumer watchdog system will champion the interests of insurance consumers.

Proposition 103 is written in plain language. There are no loopholes or fine print. Unlike the other propositions, nonlawyers can read it.

Because the polls showed that the insurance industry could not defeat Voter Revolt's 103 directly, the insurance companies came up with a plan to defeat it indirectly. They are pushing Proposition 104—the so-called "no-fault" proposition—and are spending tens of millions of dollars to advertise that it is better for consumers than Proposition 103.

Privately, insurance executives have admitted that their Proposition 104 would actually raise auto insurance premiums for many drivers. Worse, Proposition 104 rewrites the entire California Insurance Code to benefit insurance companies. The 24,000 words of obscure legalese in Proposition 104 turn the law into a "your fault" system. Their fine print cancels out every consumer reform in Voter Revolt's Proposition 103.

Some insurance companies disagree with "no fault," so they're financing Proposition 101, which claims to make the biggest cut in auto insurance. But the big cut they boast about affects only one portion of your auto insurance—they could raise premiums for the rest of your coverage as much as they want. In return, Proposition 101 allows insurance companies to avoid full payment for accidents. It, too, cancels many of the auto insurance reforms in Proposition 103.

Insurance companies are also financing Proposition 106, which restricts your right to quality legal counsel. The insurance companies claim Proposition 106 will cut their costs. In fact, it will limit your ability to make the insurance companies pay up.

Proposition 100, which is paid for by trial lawyers and bankers, simply does not go far enough to protect consumers' interests. Unlike Proposition 103, it does not automatically and immediately cut insurance rates. Nor does it enable consumers to permanently unite to fight against insurance abuse, as Voter Revolt's Proposition 103 does.

Proposition 103 is the only initiative written and paid for exclusively by consumers. It will save you the most money.

To guarantee that every reform in Voter Revolt's Proposition 103 becomes law, it must get more "Yes" votes than any other proposition. Every vote in favor of another insurance proposition cancels your vote for Proposition 103. That's why we advise you to vote "Yes" *only* on Proposition 103.

RALPH NADER
Consumer Advocate

HARVEY ROSENFIELD
Chair, Voter Revolt to Cut Insurance Rates/ Proposition 103

A 1988 Ballot Pamphlet for Proposition 103.

became the nation's most stable large insurance market. For more than three decades, that system has saved Californians billions of dollars while ensuring that insurers remain competitive (over the last 20 years, California home insurers' underwriting profits as a percentage of Earned Premium have exceeded the national average[41]) and publicly answerable. It has worked precisely because it empowered citizens to challenge power.

The same principles can guide the state through the current climate-driven crisis. The tools that solved the 1980s market collapse—open data, independent oversight, and accountability to the public—can again restore stability without sacrificing fairness.

Consumer Watchdog strongly supports reform that would *enhance* the intervention process: genuine modernization, faster adjudication, better data access, broader public disclosure and education, interim funding. Not surprisingly, insurance companies refuse to consider any reform of the process that might improve it. True improvements would strengthen, not extinguish, the independent advocacy that defines Proposition 103's legacy. Efficiency without accountability is not progress; it is surrender.

California's insurance markets are again at a crossroads. The choice is between public oversight and private control, between a system that listens to consumers and one that answers only to those it regulates. The Commissioner should withdraw these proposed regulations and reaffirm his commitment to the principles that have protected Californians for more than a generation—transparency, independence, and the rule that the public's voice in its own government is not a delay to be eliminated, but the very essence of regulation itself.

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[41] National Association of Insurance Commissioners: 2023 Property & Casualty Market Share Report & Report on Profitability by Line by State in 2023.