Testimony
Of
Dennis C. DeCota
Executive Director
Of the
California Service Station and Automotive Repair Association
"CSSARA"
Before
Joint Economic Committee
Chairman: Charles Schumer
Wednesday, May 23, 2007
Regarding
"Is market concentration in the U.S. petroleum industry harming Consumers?"

Chairman Schumer and honorable members it is a privilege to be here to give testimony before you today. I and the thousands of other petroleum retailers across our nation thank you for your attention to this very serious issue: “Is market concentration in the U.S. petroleum industry harming consumers?” As a petroleum retailer, I assure you that it has.

My name is Dennis DeCota. I am the Executive Director of the California Service Station and Automotive Repair Association (CSSARA).

CSSARA is a 34 year old trade association representing both branded and unbranded service station dealers throughout the state of California. I have been the Executive Director for the past 16 years and in that position I have had the privilege of consulting with dealers of all major brands on issues related to petroleum retailing.

I am currently a ConocoPhillips dealer and have been in my station the past 28 plus years and have operated seven other branded locations. I have also served two terms as vice president of Service Station Dealers of America, our national trade association during the mid 1980’s. I have been designated as an expert witness in several different petroleum related litigation suits.

My testimony will focus on the following topics: industry consolidation, retail competition, gas price manipulation, lack of consumer choice and, last but not least, today’s collective price gouging.

Industry Consolidation

Mostly throughout the nineties the major oil companies merged and consolidated to a point where they no longer compete against one another for volume or market share. In other words, through these mergers and acquisitions they eliminated their competition while at the same time they grew their own proprietary gasoline volume sales through key locations that became company operated stations. In the case of Shell, this was done through multiple site operators, known as MSO franchise dealers, which are nothing more than commissioned agents for Shell. MSO operators operate under a non-petroleum marketing practices act (PMPA) franchise. PMPA is federal statute that deals with issues relating to a franchisee and franchisor’s relationship. The PMPA’s main purpose is to address protection for dealers as it relates to termination or non-renewal of their franchise agreement. Shell controls the retail price at the MSO stations. This would not be the case if these MSO dealers were governed by a PMPA lease agreement. As the oil companies consolidated they closed or sold off most of their less desirable locations, reducing competition amongst branded and unbranded stations, gaining a stronger grip over the retail market place. Collectively, they also implemented zone pricing throughout the nation. This one tactic allowed the majors to control the retail street price of gasoline more then any other strategy. It stymied true competition and allowed the majors to gain market power. This along with their increase of proprietary gallons and the simple fact they stopped franchising newly constructed stations in the mid-nineties, has all but wiped out competition at the retail level.

Retail Competition

Independent refiners due to mergers and acquisitions plus environmental compliance requirements have all but been wiped out in California. The competition between branded stations and independent stations is all but gone. They stopped franchising newly constructed stations. One of the most glaring examples is the recent acquisition of the Exxon Mobil refinery in California by Valero, and Valero's later acquisition of United Diamond Shamrock. The combination of these acquisition and merger destroyed the independent market in California. Now we experience a situation where branded product is frequently cheaper than unbranded product at wholesale rack pricing.

Valero, once one of the largest independent refiners is now a major oil company pricing like a major. My recent letter to the FTC opposing the sale of Shell's southern California refinery to Tesoro and Tesoro's planned acquisition of the state's last large independent USA Petroleum will only further reduce competition in our state. I believe that Tesoro will emulate what Valero has already done.

Gas Price Manipulation

Dealers must compete with proprietary company operated stations at margins that simply won't sustain there economic viability. As dealers are forced out of their stations they are replaced by company operations and or commissioned agents who simply raise the price to that community once the competition is gone so they can obtain their desired profit goals.

Lack of Consumer Choice

Due to the major oil companies' ability to drive out competition and control retail pricing, consumers are put at a tremendous disadvantage when it comes to their ability to find competitively priced fuel. The majors further reduce the free market by insisting that their franchise dealers who exercise their right under the PMPA to purchase their land and improvements are forced into entering long term supply agreements. This impedes station owners from seeking a more competitively priced supplier.

Today's Collective Price Gouging

In California the majors are in lock step with one another as it relates to wholesale pricing, with the exception of ARCO/BP. The industry is so controlled that any unplanned refinery glitch or supply issue impacts the entire state's retail pricing as all majors increase price to curtail volume demand. The pooling of refined product by the majors has created a noncompetitive market place and consumers are paying the price.

In conclusion, the only power that can stop the oil companies from harming the consumers of the United States is our government. Government must realize the control big oil has over the consuming public. To reinstate competition in the market place, government needs to stop zone pricing, curtail the ability of the majors to demand long term supply agreements and force them out of company operations.

Attachments are as follows:

1. Break down of cost and margins of 87grade regular at my station in San Anselmo, CA on May 18, 2007.

2. The second attachment is a hypothetical description of what a gallon of gas at my station would cost if I was to make a 30% gross profit.

3. Why Californians Pay More at the Pump.

California regular grade 87 ETH. 5.7% BRD.

Retail Price per gallon as of 5/18/2007

Cash Price
$3.399

- Cost per gallon……………………………………….$2.731600
- Dealers profit p/g……………………………………. **.070715**
- Fed oil spill fee……………………………………… .001130
- Fed excise tax……………………………………….. .184000
- Fed tax credit (ethanol)……………………………... (.029070)
- CA state fuel tax……………………………………. .180000
- CA environ. fee…………………………………… .000960
- CA oil fee reimbursement…………………………. .001190
- CA UST fee………………………………………… .014000
- CA state sales tax @ retail price…………………… .244475

$ **3.399**

Dealers gross profit per gallon

0.0258% not even 3% per gallon

The majors control retail margins through three forms of price controls, zone pricing, long term supply agreements, and propriety company operations!

California regular grade 87 ETH. 5.7% BRD.

Retail Price per gallon as of 5/18/2007

Cash Price
$4.589

If I was to make 30% gross profit, this would be how it would breakout.

- Cost per gallon……………………………………….$2.731600
- Dealers profit p/g…………………………………… **1.174588**
- Fed oil spill fee……………………………………… .001130
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- CA UST fee……………………………………….. .014000
- CA state sales tax @ retail price…………………… .330067

$ 4.589

Hypothetically Dealers gross profit per gallon

Today the major oil companies refining margins are at an all time high arguable they are realizing more then 30% gross profit return on just the refinery margins. This example exemplifies the major gouging that is currently taking place as the majors tighten their grip on their ability to exert market power.

California regular grade 87 ETH. 5.7% BRD.

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Cash Price

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ATTACHMENT 1

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ATTACHMENT 2

THE CALIFORNIA GASOLINE CRISIS:

Why Californians Pay More at the Pump And How True Reforms Will Help

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Novato, California 94945
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ATTACHMENT 3

TABLE OF CONTENTS

Executive Summary..1

I. HOW THE CALIFORNIA MARKET OPERATES TODAY 4

II. COST TO CONSUMERS AND BUSINESSES..13

III. OIL COMPANY PROFITS 19

IV. OTHER STATES ARE ACTING 24

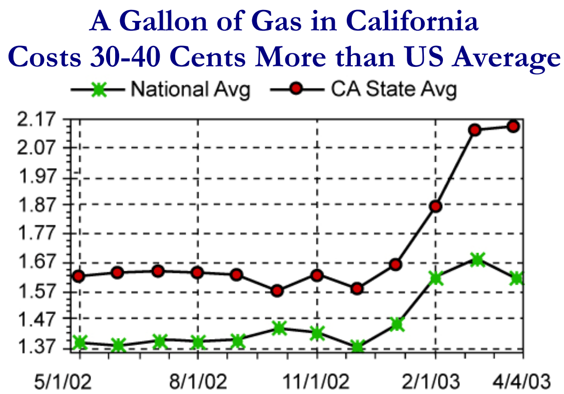
V. SOLUTIONS FOR CALIFORNIA 27

VI. OIL COMPANIES OPPOSE REFORM 28

Appendix A: You Can't Believe Any Claim Made by the Oil Companies........32

Appendix B: QUESTIONS AND ANSWERS 34

Executive Summary



Source: American Automobile Association, 4-4-03.

Oil companies would like Californians to believe gasoline price spikes are due exclusively to world events, prices will eventually fall to earth, and reforms are unwarranted.

The oil companies are wrong.

California consumers and businesses pay too much for gasoline compared to the rest of the United States – year in and year out, whether crude oil prices or rising or falling.

This has been the case for the past eight years.

- Until the mid-1990s, gasoline prices in California were within a few cents of the national average and in some years, were actually lower than the national average;
- Since 1995, Californians have paid more than the national average in 381 out of 433 weeks;
- In 2002, California drivers paid an average of 12 cents more per gallon for gasoline, adjusted for taxes, than drivers in other states, according to U.S. Department of Energy (Energy Information Administration);
- Since June 2000, California motorists have paid a combined $5.8 billion more for gasoline than other areas that use reformulated gasoline;
- Businesses, which consume approximately one-third of the gasoline in California each year according to the California Energy Commission, pay an annual premium of $638 million for gasoline each year compared to the rest of the country; and
- In 11 California cities in April 2003, gasoline was more expensive than in Honolulu.

California Market a Cash Cow for Oil Companies

What explains this persistent problem? Lack of competition.

California's gasoline market is less competitive than in most of the nation, according to a comprehensive analysis by California Attorney General Bill Lockyer.

Major refiners control 97 percent of the wholesale market for gasoline in California, compared with control of slightly more than half the market in Texas – where six out of the seven top refiners are headquartered.

In just the past eight years:

- Ten significant independent oil refiners have closed;
- The major oil companies' share of the California gasoline market have climbed from a dominant 80% in 1995 to an overwhelming 97% today;
- West Coast Oil company profits have surged – to become the highest in the nation, according to Bloomberg; and
- Refinery margins, always high, are now the highest in the U.S., according to the Energy Information Administration and the California Energy Commission.

Large oil refiners have effectively shut out independent gasoline marketers from the retail market in California's urban areas, the Attorney General found, reducing competition and keeping prices high. Independent marketers supply more than 50 percent of the gasoline to stations in Texas, compared to less than 10 percent in California.

In addition, 85 percent of the gasoline sold in California is sold through stations that are locked into contracts with oil companies and have no ability to shop for less expensive gasoline, according to the Attorney General's report on gasoline prices. The Attorney General concluded: "Freedom of California retailers and jobbers to seek the lowest priced gasoline is now hampered by a web of restrictive agreements imposed by refiners."

"The root causes of our problem relate to the vertical integration of major oil companies controlling California refining capacity and their collusive behavior in supply arrangements and instantaneous information sharing," concluded San Diego Supervisor Bill Horn.

"Evidence suggests that the wholesale gasoline pricing and distribution system is not purely a 'free market' in the San Francisco area," the independent Legislative Analyst for the City and County of San Francisco found. "It appears that there is no price competition within the wholesale market for branded gasoline."

What is to be done?

Changes are needed to make California's gasoline market more competitive, increase supply, and conserve fuel. Bipartisan consensus is emerging on the following four steps California can take:

- **Introduce wholesale and retail gasoline competition.** "Freedom of California retailers and jobbers to seek the lowest priced gasoline is now hampered by a web of restrictive agreements imposed by refiners," the Attorney General has concluded. He has proposed allowing dealers to purchase branded gasoline from any source.

- **Preserve checks and balances by introducing franchise contract reforms.** California's major oil companies are engaged in a systematic effort to undermine their own dealers, despite their assurances to the contrary. A strong dealer presence in the market is essential to provide a competitive check on the major oil companies.

- **Restrict market control by oil companies**. California should restrict the ability of major oil companies to set retail prices by virtue of various forms of market control, such as exclusive supply agreements.

- **Add instate refining capacity.** The Attorney General has said there may be opportunities to streamline state environmental impact and other permitting reviews, and has proposed a task force of stakeholders to investigate options.

Currently, five states have divorcement laws and eleven other states have fair petroleum marketing laws. But California's laws have remained essentially unchanged since July 1974, and are antiquated and ineffective. Action is long overdue, and needed now.

> *"California's businesses and consumers regularly pay among the highest gasoline prices in the nation. . . These high prices erode the competitiveness of California's industries and reduce the real income of our citizens. The confluence of factors that support high gasoline prices has been a long time in the making, and it is unrealistic to suggest there is a quick fix to our problem. Even so, it is important to begin taking the steps necessary to increase competitiveness in California gasoline markets, increase gasoline supplies, and further conserve fuel."*
>
> Attorney General Bill Lockyer,
> *Report on Gasoline Pricing in California*,
> May 2000, p. 39.

I. HOW THE CALIFORNIA MARKET OPERATES TODAY

Why do Californians pay more for gasoline than the rest of the U.S.? There are two characteristics that define the California gasoline market:

1. An increasingly concentrated, noncompetitive market for refining gasoline; and
2. A complex system for distributing gasoline to independent stations and branded dealers, governed by exclusive supply agreements, that keeps the price of gasoline high.

These two factors combine to keep California prices high compared to the rest of the nation, and make California operations a cash cow for the primarily Texas-headquartered oil companies.

Reduced Competition Due to Mergers

California Attorney General Bill Lockyer has produced the most comprehensive and objective assessment of the problems with California's retail gasoline market today. In a report released in May 2000, he concluded:

> *"After reviewing the facts and arguments put forth by the Task Force, the Attorney General believes that the structure of California's gasoline industry is less competitive than in most of the nation."*
>
> Attorney General Bill Lockyer,
> *Report on Gasoline Pricing in California*,
> May 2000, p. 59.

California lacks the significant independent refining[1] presence that would provide an important competitive influence in other markets. The Attorney General points to the closure of several independent refiners in California in 1997, followed closely by corporate mergers including:

03/04/97:	ARCO purchased Thrifty Oil and its 260 retail stations – at the time one of California's largest independent marketers of gasoline;
04/01/97:	Tosco bought Unocal's marketing and refining assets.
05/26/99:	Exxon and Mobil merge to form ExxonMobil;
04/13/00:	BP Amoco and Arco merged to form British Petroleum;
04/11/01:	Tosco acquired by Phillips Petroleum which became fully integrated;
10/09/01:	Chevron and Texaco merged to form ChevronTexaco;
12/31/01:	Valero merged with Ultramar Diamond Shamrock to become Valero Energy; and also became fully integrated; and
08/30/02:	Conoco and Phillips Petroleum merge to become ConocoPhillips (76 in California).

[1] Independent refiners are refining companies that do not own their own crude oil supply.

Table 1-1
California Independent Refinery Closures (1995 to Present)

Company	Refinery
Anchor Refining Company	McKittrick
Tricor Refining LLC	Bakersfield
Greka Energy Corp	Santa Maria
Paramount Petroleum Corp.	Paramount
Ten By Inc.	Oxnard
World Oil Company	South Gate
Golden Bear Oil Specialties	Oildale
Huntway Refining Company	Benicia/Wilmington
Pacific Refining Company	Hercules
Powerine Oil Company	Santa Fe Springs

Source: *Worldwide Refining Surveys 1994 to 2002,* Oil & Gas Journal.

These corporate moves comprised "a dramatic change in the competitive structure of the gasoline industry," the Attorney General found. In 2000, the Attorney General found just six refiners control more than 90 percent of refining capacity in California. Chevron and ConocoPhillips-76 control nearly half of California's refining capacity. (In contrast, the largest six refiners control less than 60 percent of the refining capacity in Texas.)

Since then, the problem has only gotten worse. The major oil companies have increased their market power in California and now control 97% of the state's CARB gasoline refining capacity:

Table 1-2
Refinery Market Share and Annual Revenue for Major Oil Companies in California

Company	Headquarters (U.S.)	Refinery Market Share	Annual Revenue
Chevron-Texaco	California	25%	$92,043,000,000
Shell USA	Texas	16%	$64,320,000,000
British Petroleum	Texas	14%	$178,720,000,000
ConocoPhillips (76)	Texas	13%	$57,220,000,000
Valero	Texas	12%	$26,976,300,000
Tesoro	Texas	9%	$7,120,000,000
Exxon-Mobil	Texas	8%	$182,466,000,000
TOTAL		**97%**	$608,865,300,000

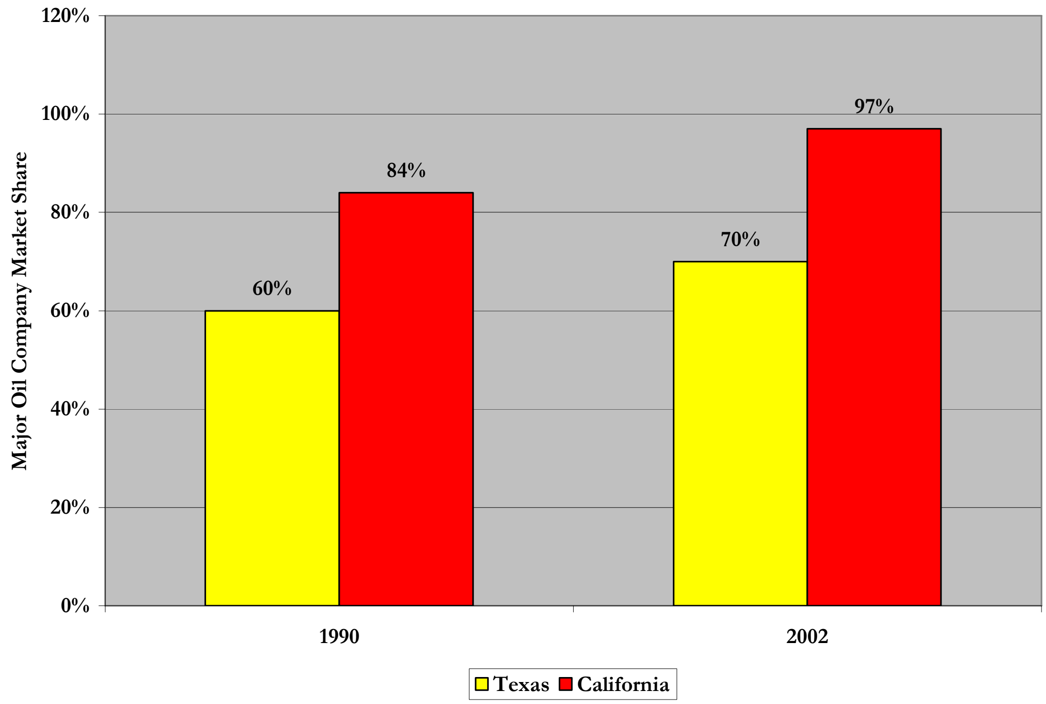
Source: California Energy Commission, Oil & Gas Journal, Company Annual Reports.

By 2002, major oil companies controlled 97% of refinery capacity in California up from 84% in 1990; Chevron Texaco controls 25% of the market. In Texas, major oil companies controlled 70% of refinery capacity in 2002, up from 60% in 1990; ExxonMobil controls 19% of the market (see Figure 1-1).

And as independent refiners became less of a factor in the California market, prices for gasoline increased significantly (see Figure 1-2).

Figure 1-1

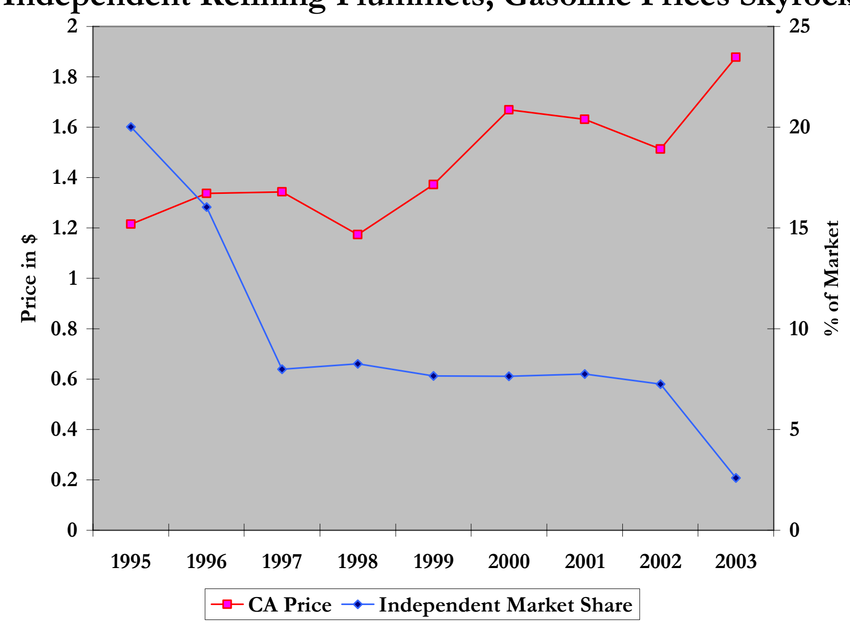
California Refiners Exercise More Market Control in California than in Texas (1990 & 2002)



Source: U.S. Energy Information Administration.

Figure 1-2

As Independent Refining Plummets, Gasoline Prices Skyrocket



Source: U.S. Energy Information Administration, California Energy Commission.

How Prices Are Set at the Retail Level

At the wholesale level, gasoline is offered for sale to dealers and jobbers at several different price levels, including:

Dealer Tank Wagon price (DTW): This is the price paid, pursuant to contract, by those dealers serviced directly by a major oil company for branded gasoline delivered to their outlets. DTW prices are less volatile and normally are higher than spot and rack prices (Permanent Subcommittee on Investigations, Government Affairs Committee, p. 300, Hearing: "Gas Prices: How Are They Really Set," May 2, 2002). According to the Attorney General's report on gasoline prices, 85 percent of the gasoline sold in California is sold through stations that are required to pay the DTW price (*Report on Gasoline Pricing in California*, California Attorney General Bill Lockyer, May 2000, p. 25).

Rack price: This refers to the price of gasoline charged by wholesalers at their refineries or company terminals to jobbers or independent dealers. The rack price is not available to dealers who are supplied directly by an oil company. There are two types of rack prices – branded and unbranded. The branded rack price is the price paid by jobbers or independent dealers for gasoline purchased using the trademark of a major oil company such as Shell or ExxonMobil. The unbranded rack price is the price paid for gasoline that does not carry a trademark name purchased from branded or independent refiners (Permanent Subcommittee on Investigations, Government Affairs Committee, p. 296, Hearing: "Gas Prices: How Are They Really Set," May 2, 2002).

Spot price: This is the price paid on the open market for gasoline. It is used by wholesalers to purchase gasoline not covered by contracts or exchange agreements. The spot market provides a readily available channel to sell and buy gasoline for immediate delivery in response to the prevailing demand and supply (Permanent Subcommittee on Investigations, Government Affairs Committee, p. 293, Hearing: "Gas Prices: How Are They Really Set," May 2, 2002).

Lack of Wholesale Competition

Industry changes have eliminated wholesale competition at the refinery level, and West Coast refiners have the highest margins in the United States. This results in higher pump prices for California motorists.

- California's gasoline market is the most concentrated and vertically integrated gasoline market of the key refining areas in the United States, according to the California Attorney General (*Report on Gasoline Pricing in California*, California Attorney General Bill Lockyer, May 2000, p. 23).
- R. Preston McAfee, an advisor to the Federal Trade Commission on mergers and a professor of economics at the University of Texas-Austin, has testified that West Coast gasoline refining and retailing is controlled by an "oligopoly" of seven firms: ChevronTexaco, Shell-Saudi Aramco, BP-Amoco-Arco, ConocoPhillips (formerly Tosco), Valero, Exxon-Mobil, and Tesoro.

- The lack of competition in gasoline refining and retailing (the high-level of market concentration) means that gasoline is more expensive in California than any region in the United States, according to the Department of Energy's Energy Information Agency.

- As further evidence that lack of competition harms consumers, while San Francisco area refiners actually export gasoline to Southern California, lack of competition in local markets allows refiners to charge higher prices to service station dealers, which results in higher prices to San Francisco consumers(*Report on Gasoline Pricing in California*, California Attorney General Bill Lockyer, May 2000, p. 27).

- Independent marketers operating in California are too small to import gasoline, and they are all but excluded from major metropolitan markets because of restrictions imposed by the large oil refiners. The Attorney General's task force reported independent marketers supply less than 10 percent of the gasoline consumed in California, compared with more than 50 percent in Texas (*Report on Gasoline Pricing in California*, California Attorney General Bill Lockyer, May 2000, p. 42).

- "Freedom of California retailers and jobbers to seek the lowest price gasoline is now hampered by a web of restrictive agreements imposed by refiners. These exclusive supply agreements make it impossible for market forces to eliminate regional disparities in gasoline prices" (*Report on Gasoline Pricing in California*, California Attorney General Bill Lockyer, May 2000, p. 40).

- The Attorney General's task force reported that in major metropolitan areas, the vast majority of lessee-dealers cannot receive supply from a branded jobber because they have an exclusive supply agreement with refiners. The task force reported that 85 percent of gasoline sold in California is governed by wholesale price agreements that prevent dealers from purchasing gasoline from any source other than the refiner from which they bought their franchise (*Report on Gasoline Pricing in California*, California Attorney General Bill Lockyer, May 2000, p. 25).

In less than a decade, the independent marketer[2] has all but disappeared, according to Attorney General Bill Lockyer's report on gasoline pricing:

> *"Independent marketers of gasoline account for less than an estimated 10 percent of gasoline sales in California. This is in sharp contrast with many other large states. For example, independent marketers account for more than 50 percent of retail gasoline outlets in Texas."*
>
> Attorney General Bill Lockyer,
> *Report on Gasoline Pricing in California*,
> May 2000, p. 42.

[2] Independent gasoline marketers are those individuals that own and operate gasoline stations that are not branded by any of the integrated oil companies. Examples include Rotten Robbie and USA Gas Stations.

The lack of independent marketers in California has resulted in higher gasoline prices.

> *"In some areas of the country such as California, the independent marketer has all but disappeared. This increase in vertical integration and consequent impacts on retail pricing cannot be overlooked. Considerable economic research over the years has demonstrated the competitive importance of maintaining a viable, strong independent, unbranded segment of the market, yet it is rapidly disappearing and may be one reason for increased price volatility and lack of price discipline in retail markets."*
>
> Peter K. Ashton (President, Innovation & Information Consultants, Inc, Concord, MA), Permanent Subcommittee on Investigations, Government Affairs Committee, *Gas Prices: How Are They Really Set*, 5-2-2002, p. 4.

According to Jon L. Ballesteros, the San Francisco Legislative Analyst, the market for gasoline in San Francisco is not competitive:

> *"Evidence suggests that the wholesale gasoline pricing and distribution system in not a purely "free market" in the San Francisco area. It appears that there is no price competition within the wholesale market for branded gasoline."*

And according to former San Francisco Supervisor Michael Yaki, gas prices in San Francisco are not higher than anywhere else in California simply because of an inefficient market. The told the Association of Bay Area Governments that:

> *"Gas prices are being manipulated; the oil companies do it because they know they can get away with it."*

Oil Company Supply Contracts Harm Consumers

The major oil companies are mistreating their own dealers in California, and the specifics are alarming.

> In a 1998 ruling, a Florida judge noted that *"Exxon secretly divided its dealers into "keepers' and "non-keepers' and internally recognized that its pricing practices were driving the "non-keepers' out of business."*
>
> *Paying the Price*, Houston Press, 10-26-00

"I worked with Shell for 35 years, the rent just kept going up and up and up - until I couldn't do it anymore."
Barry Simpson former Shell Dealer
Boston Herald, 3-6-00

In the last ten years, the major oil companies have created business conditions for their lessee dealers which have resulted in higher prices for consumers. Consider the conditions these dealers are forced to operate under:

- Over the past decade branded dealers have experienced tremendous rent increases. The average rent in 1990 was $3,000.00 per month. Today it is $11,000.00 per month, as most majors have implemented fair market value rent programs.

- All majors, with the exception of BP "Arco", have or intend to drop their incentive rent or price allowance programs, which were developed to help dealers compete with lower priced competition.

- Micro Zone pricing is prevalent by all major brands throughout the metropolitan areas of California. Zones are as small as a given corner. A dealer of the same brand, just three blocks away, can easily have an 8 cent per gallon price differential.

- Company operated stations have increased at alarming rates. Chevron, Shell, ConocoPhillips (76), BP "Arco", Valero and Mobil all have company operated stations selling at prices well below margins needed to run a successful dealer franchise in the same market areas.

- Dealers have been burdened with operating expenses by the majors over the past fifteen years. Every conceivable expense is passed directly to the franchise dealer as follows: Hazmat Plan annual fee, Pump calibration fee, Underground storage tank assessments, and credit card fees which average $5000 per month.

- Maintenance responsibilities have increased and expenses associated with maintaining nozzle, hoses, air conditioning, refrigeration, planter, water systems, and even bathroom fixtures are now the dealer's responsibility, just to mention a few.

- Dealers seldom see any company representatives as most majors have significantly reduced dealer support programs, including employee training, merchandising proprietary branded tires, batteries and accessories. Business counseling and true franchise support programs are all but gone.

- All majors have implemented electronic funds transfer ("EFT") on gasoline, rent, credit card fees and other fees such as royalty charges. Dealers who experience drafting errors must wait for their company's credit department to correct an improper draft, sometimes holding dealer's funds for days or weeks. A dealer who refuses a disputed draft will be placed on C.O.D. and is subject to extra charges for each fuel order.

In short, these actions undermine the free market for gasoline in California forcing consumers to pay higher prices.

Dealers are Forced into Signing Constrictive Contracts

- The typical California service station dealer who sells a major brand of gasoline operates his or her station under contract with a major oil company. The contracts, typically 75 pages in length, are virtually non-negotiable. The contracts guarantee large profits to oil companies and restrict the ability of dealers to pass along savings to drivers by finding and purchasing lower-cost fuel when available.
- Service station dealers who own their own stations, and who are located within metropolitan markets, pay the highest wholesale price for fuel. This is the Dealer Tank Wagon ("DTW") price and it is set by the oil companies in "zones."
- Dealers who lease a station from an oil company do so under contracts that typically require the following:
  - Rental: Both base rent plus facility rent: The oil company may raise rents every twelve months with a minimum of the CPI index or maximum 100 percent of the previous year.
  - Electronic Point of Sale: Dealers using the company's credit card system pay additional rent.
  - Services, Uses:
    - Minimum gallonage requirements of 80% of previous quarter, regardless of competitive pricing.
- The newest tactic being implemented to drive out dealers is to notify the dealer of record that his/her station is being put up for sale. This may occur while the dealer is in the middle of his/her lease. The oil company sets the price of land and improvements. If the dealer is not able to purchase the station or disagrees with the price, the oil company puts this station up for bid at the asking price offered to the lessee dealer. If another party bids on the station the dealer is given one more opportunity to match the bid price which contains no goodwill or "blue sky" for the dealer of record; effectively circumventing both the federal and state laws that allow good will or "blue sky". Both Chevron and ConocoPhillips (76) are currently using this method to remove dealers.
- Shell is currently implementing a different approach of reducing its dealers. Shell has been, and is, the highest priced major. It has raised its dealers' rents by 200 to 300 percent since 1998, while at the same time taking away any volume incentive programs and having the highest Dealer Tank Wagon prices. Dealers' costs of operation have soared, pushing dealers toward bankruptcy and forcing them to close or sell back their state and federal franchises to Shell which then offers them a thirty-day contract as a commission agent. Shell then sets the retail price of gasoline, often

five to ten cents below its own branded dealers a few blocks away. The commission dealer's income averages $2,500 per month. He has no rights to sell the station. There is no good will, no blue sky, and no ability to compete!

- Dealers who purchase their land and improvements in metropolitan markets must sign long-term supply agreements for ten to fifteen years and are forced to give the oil companies the first right of refusal if they choose to sell.

The constrictive nature of these contracts distorts the market for gasoline in California and as a result consumers are forced to pay higher prices.

CARB Pooling

Documents obtained by U.S. Senator Ron Wyden (D-OR), prove that not only does CARB not adversely affect gasoline prices, but that the integrated oil companies effectively fixed the price of CARB through sharing agreements.

> *"major oil and gas companies supplying CARB gas to the California market entered into 44 supply-sharing agreements. These agreements were generated to control the quantity of CARB gas on the market, reduce efforts to expand CARB refining capacity, limit imports of CARB gas and discourage excess CARB gas from being sold on the spot market to independent purchasers. Exxon, ARCO, Chevron, Shell, Texaco, Tosco and Unocal all entered into such supply-sharing agreements with at least one of their competitors."*
>
> *The Oil Industry,*
> *Gas Supply and Refinery Capacity:*
> *More Than Meets the Eye*,
> Senator Ron Wyden, D-OR, 6-14-01.

Wyden further concluded that these agreements undermined the competitive structure of the gasoline market in California, saying:

> *"Because such agreements benefited the major suppliers and excluded independent operations from the process, significant questions are raised about whether these agreements had the effect of forcing independent refiners to close down – further decreasing overall gasoline supply."*
>
> *The Oil Industry,*
> *Gas Supply and Refinery Capacity:*
> *More Than Meets the Eye*,
> Senator Ron Wyden, D-OR, 6-14-01.

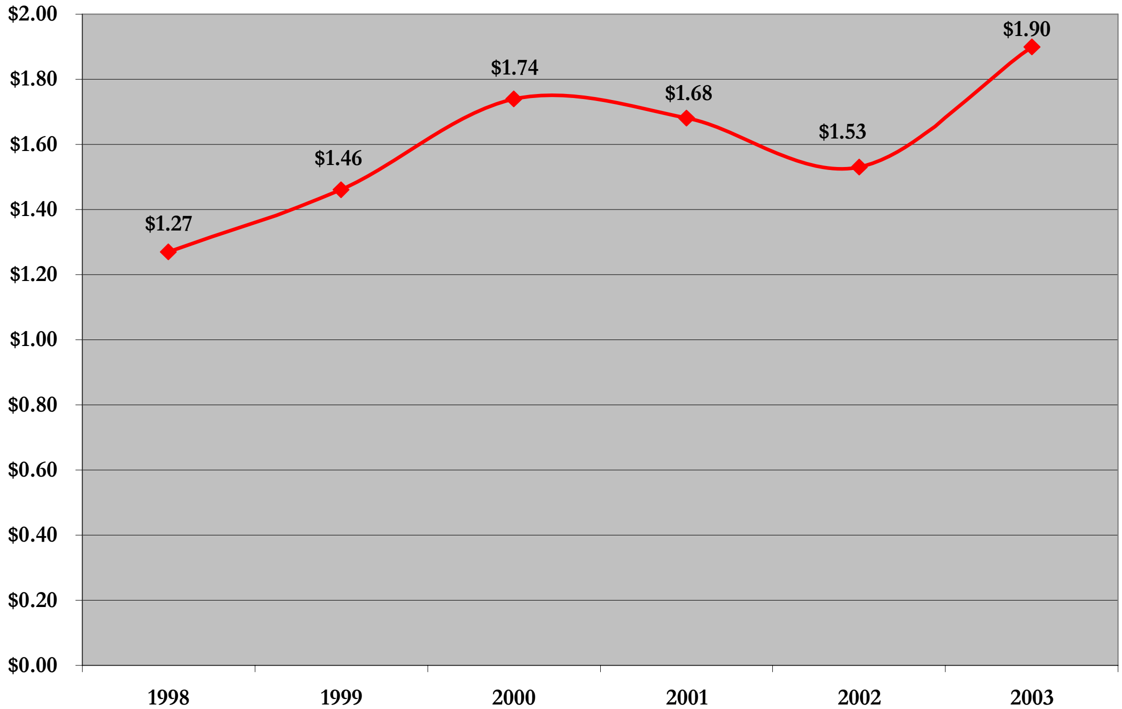
The bottom line is that these factors all combine to keep California prices – and oil company profits – high.

II. COST TO CONSUMERS AND BUSINESSES

Adjusted for inflation, gasoline prices in California have increased by 150% since 1998, according to the California Energy Commission (see Figure 2-1).

Figure 2-1

Adjusted for Inflation, the price of Gasoline in California is up 150% since 1998



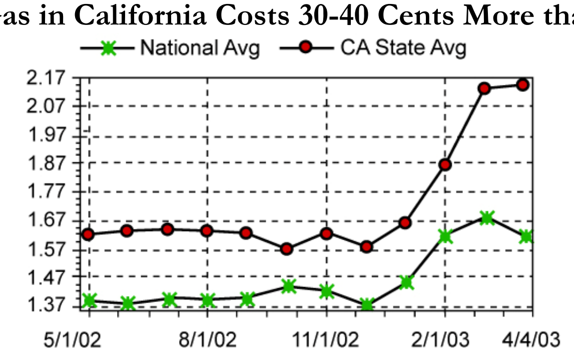
Source: California Energy Commission, 2003 dollars.

California v. National Average

By nearly any measure, Californians pay more for gasoline than other states. We pay 30-40 cents more than the national average (See Figure 2-2):

Figure 2-2

A Gallon of Gas in California Costs 30-40 Cents More than US Average



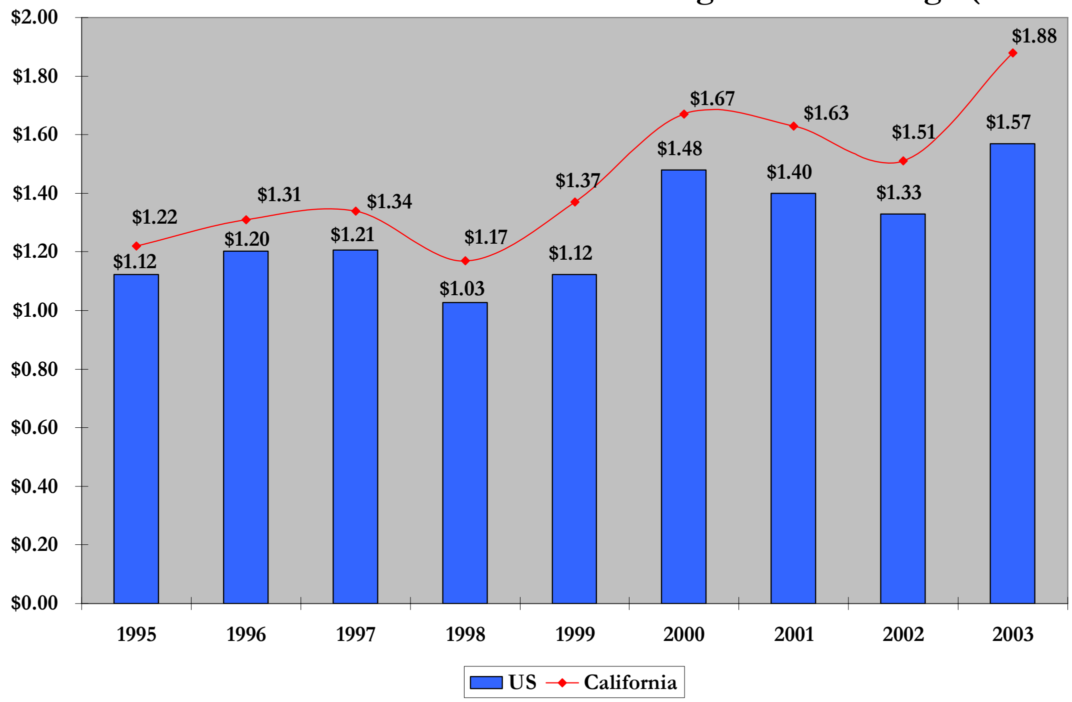
Source: American Automobile Association, 4-4-03.

California v. Other States (National Average Excluding CA)

California gasoline is more expensive than anywhere in the country, and averaged $0.20 higher than the national average (excluding California) between 2000 and 2002. In the first 14 weeks of 2003, the price of gasoline in California has averaged $0.31 higher than the national average (excluding California).

Figure 2-3

Gasoline Prices 1995 to Present – California Average vs. US Average (non-CA)



Source: U.S. Energy Information Administration.

Table 2-1

The Difference between Gas Prices in California and the National Average (including and excluding California)

Area	2000	2001	2002	2003 (to 4/7/03)
California	$1.67	$1.63	$1.51	$1.88
National Avg	$1.52	$1.46	$1.39	$1.64
Difference	**$0.15**	**$0.17**	**$0.12**	**$0.24**
National (non-CA)	$1.48	$1.40	$1.33	$1.57
Difference (non-CA)	**$0.19**	**$0.23**	**$0.18**	**$0.31**

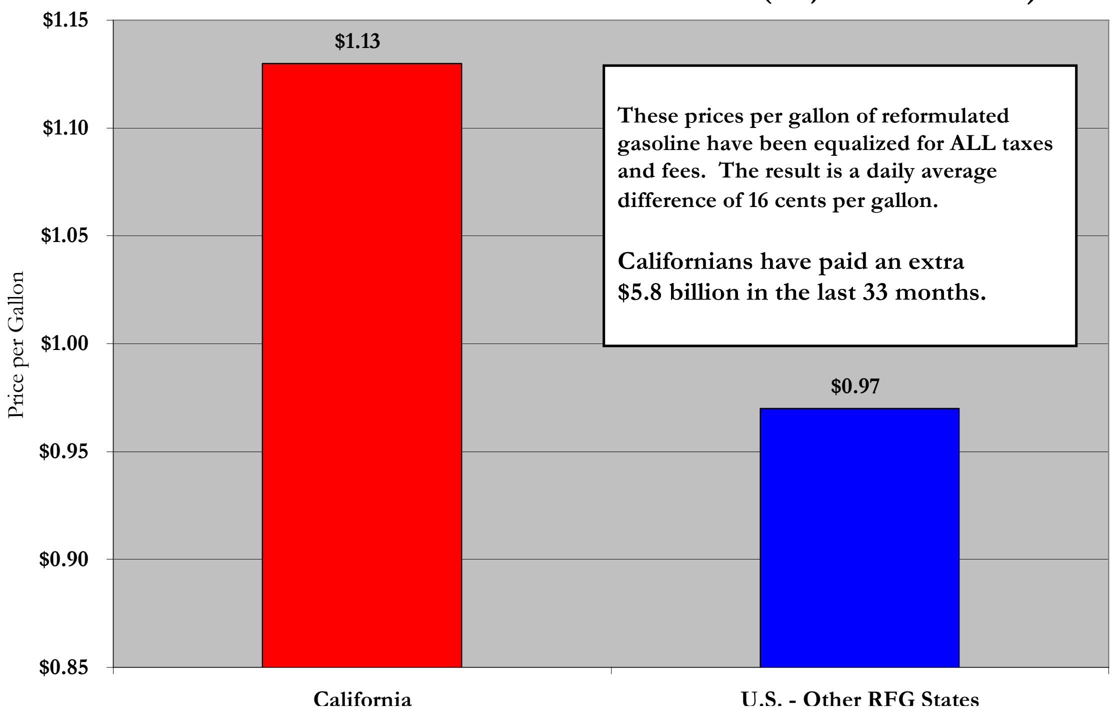
Source: U.S. Energy Information Administration.

California v. Other RFG States

The U.S. Environmental Protection Agency requires that areas that do not meet the standards of the Clean Air Act (primary and secondary air quality standards for pollutants, such as carbon monoxide and ozone) utilize reformulated gasoline (RFG). In addition to California, the states/areas that utilize RFG gasoline include Arizona, Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Texas, Virginia and Wisconsin. From June 2000 through March 2003, Californians paid an average of 16 cents more per gallon than other RFG states, adjusted for federal and state taxes paid on gasoline of $0.50 per gallon in California and $0.42 nationwide, according to the Energy Information Administration (see Figure 2-4).

Figure 2-4

Price of Gasoline in California v. Other RFG States (Adjusted for Taxes)

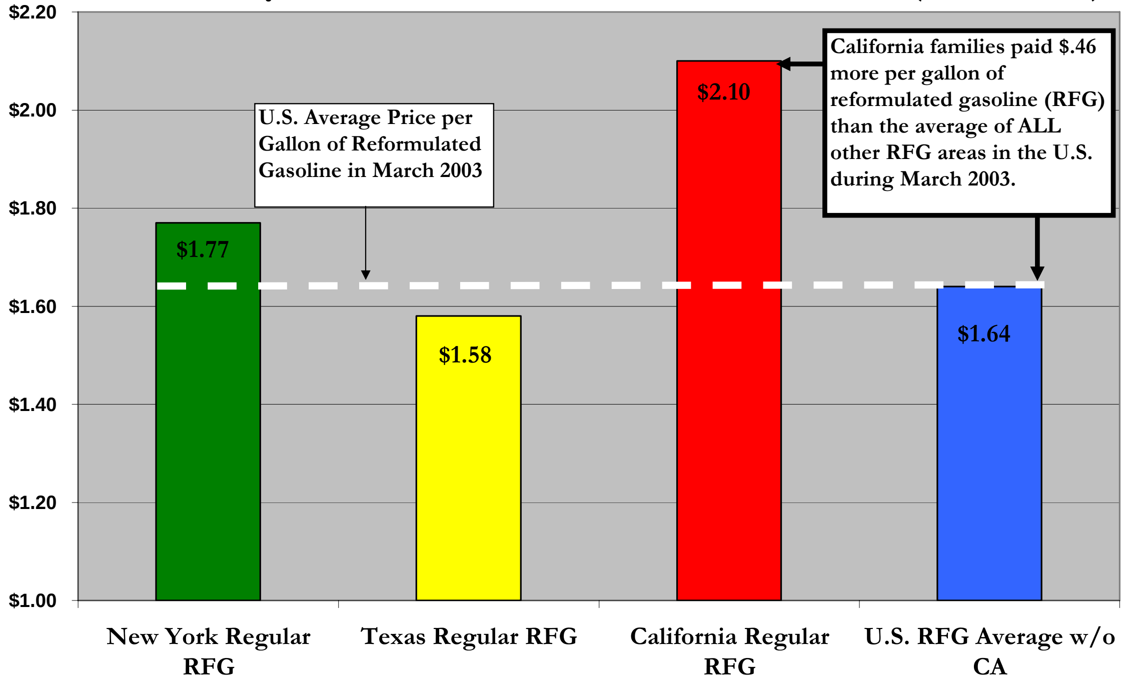


Source: U.S. Energy Information Administration.

In March 2003, Californians paid an average of $0.46 more per gallon than the average of all other RFG states, $0.52 more per gallon than Texas and $0.33 more than New York according to the Energy Information Administration (see Figure 2-5).

Figure 2-5

Californians Pay $506 Million More than Other RFG States (March 2003)



Source: U.S. Energy Information Administration.

Los Angeles v. Houston

From June 2000 to December 2001, gasoline prices in Los Angeles were on average five cents per gallon higher than gas prices in Houston, adjusted for taxes (see Table 2-2, U.S. Energy Information Administration). The price gap narrowed in 2002 to an average difference of 2 cents per gallon (see Table 2-2). However, from January 2003 to April 7, 2003 gas prices in Los Angeles have been on average 22 cents per gallon higher than gas prices in Houston, (see Table 2-2, U.S. Energy Information Administration).

Table 2-2

The Difference between Gas Prices in Houston, TX and Los Angeles, CA (Adjusted for Taxes)

City	2000 (06/00 to 12/00)	2001	2002	2003 (to 4/7/03)
Houston, TX	$1.07	$1.01	$0.95	$1.13
Los Angeles, CA	$1.12	$1.06	$0.97	$1.35
Difference	$0.05	$0.05	$0.02	$0.22

Source: U.S. Energy Information Administration.

California Cities v. Honolulu

The Attorney General's report also concluded that in some months during 1999 and 2000, San Franciscans paid more for gasoline than any other city in the nation, surpassing even Honolulu. In April 2003, gasoline prices in San Francisco exceeded those in Honolulu by 28 cents per gallon (see Figure 2-6; *Daily Fuel Gage Report*, AAA, 4-8-2003).

Table 2-3

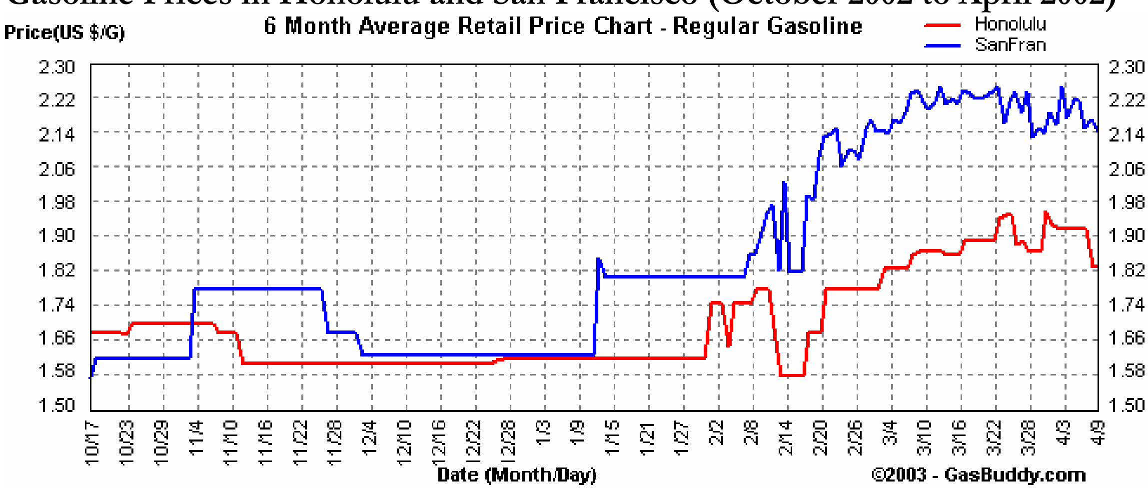
Gasoline Prices in California Compared to Honolulu and the National Average

Location	Price
San Francisco	**$2.25**
San Diego	$2.18
Orange County	$2.16
Oakland	$2.14
Los Angeles	**$2.14**
Sacramento	$2.13
Bakersfield	$2.13
Modesto	$2.11
Merced	$2.10
Fresno	$2.09
Chico	$2.05
Honolulu	**$1.97**
National Average	$1.62

Source: American Automobile Association, April 2003.

Figure 2-6

Gasoline Prices in Honolulu and San Francisco (October 2002 to April 2002)



And Californians can plan to continue to pay high prices for gasoline:

> *"In California, motorists will continue to pay about 50 cents more than the national average for a gallon of regular gasoline and will be especially vulnerable to new price hikes in the months ahead, according to the forecast by the Energy Information Administration.*"
>
> Los Angeles Times, 4-9-03

The Economic Burden of High Gasoline Prices in California

> *"Rising gas prices act like a tax, they reduce the income that residents and businesses have to spend on other goods"*
>
> Stephen Levy, Director,
> Center for Continuing Study of the
> California Economy,
> San Jose Mercury News, 2-27-03.

Since June 2000, California businesses and consumers have paid a combined $5.8 billion more for gasoline, $0.16 more per gallon, than other states that require reformulated gasoline (see Figure 2-4).

In March 2003 alone, this price disparity between the cost of gasoline in California and other states that require reformulated gasoline, $0.46 per gallon, cost California businesses and consumers $506 million.

High gas prices have also had an impact on small business. Consider the following examples:

- Like consumers, small businesses have seen an annualized increase of $480 in their fuel bill in the first two months of the 2003 (Los Angeles Daily News, 3-15-2003);
- C.M.I., a company that makes leather, vinyl and other soft interior trim for vehicles and boats, shelved expansion plans in California as it worried that high gas prices would prevent people from purchasing recreational vehicles (Miami Herald, 3-15-2003);
- Los Angeles area florists are referring clients to other florists to avoid deliveries and raising delivery fees (Los Angeles Daily News, 3-5-2003); and
- Some companies have been forced to idle vehicles because of high gas prices (Los Angeles Daily News, 3-15-2003).

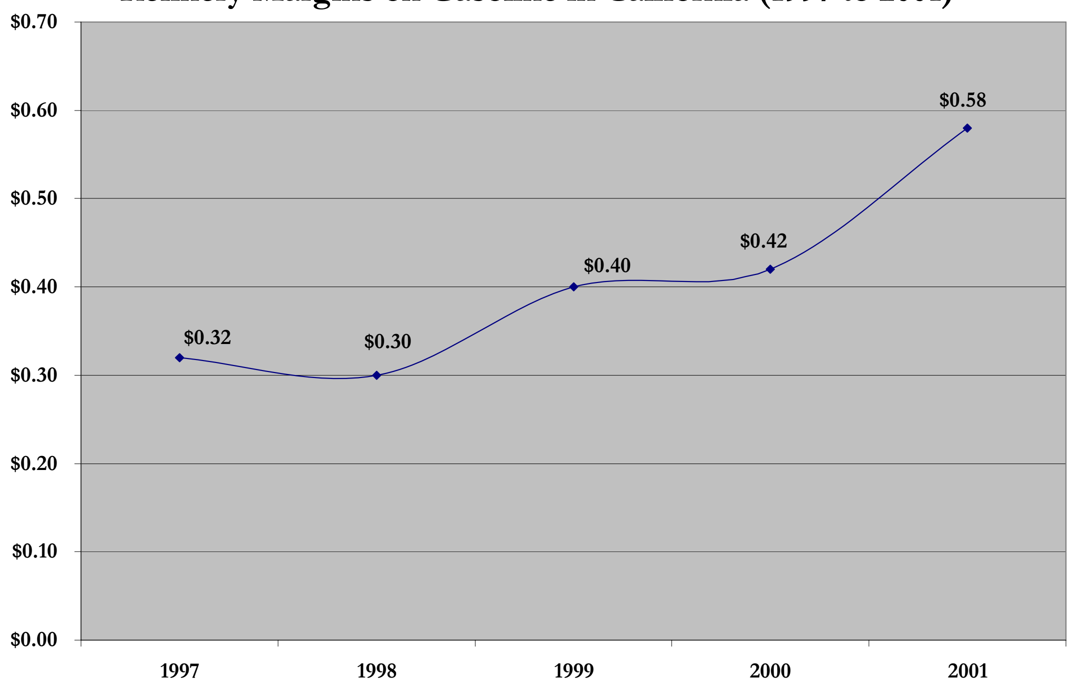
III. OIL COMPANY PROFITS

West Coast Refiners Enjoy Hefty Profit Margins

While the oil companies claim that gasoline prices are due to high crude oil prices and CARB requirements the data suggests just the opposite. While crude prices declined from $0.68 per gallon in 2000 to $0.60 per gallon in 2001 gasoline prices increased from $1.66 per gallon in 2000 to $1.71 per gallon in 2001 – at the same time refining margins increased from $0.42 per gallon in 2000 to $0.58 per gallon in 2001 for both branded and unbranded gasoline (see Figures 2-4).

Figure 2-4

Refinery Margins on Gasoline in California (1997 to 2001)

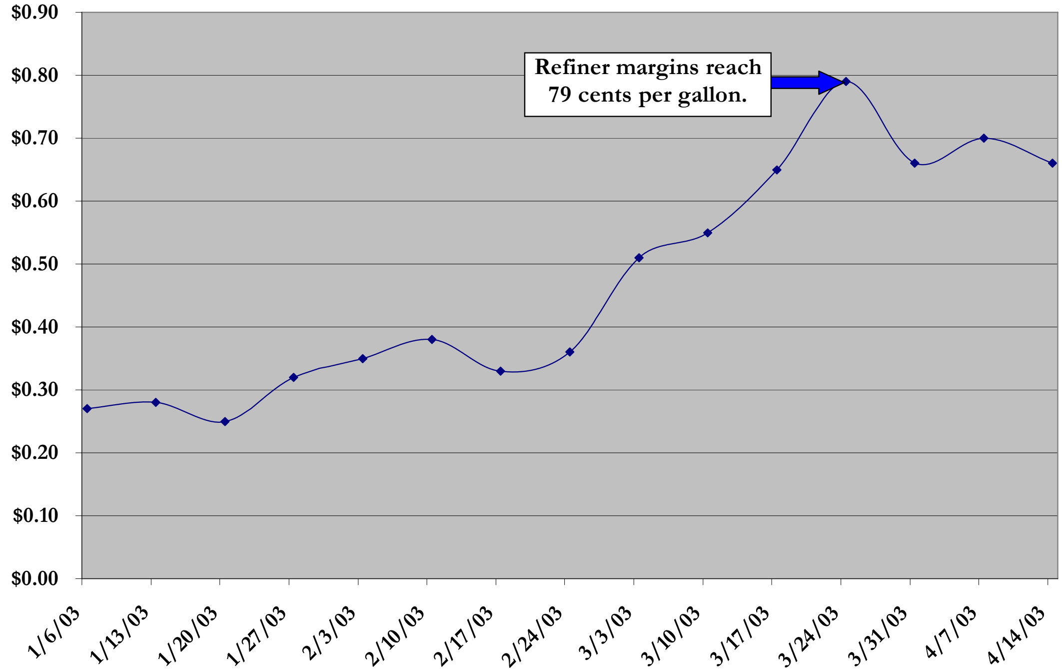


Source: California Energy Commission.

On March 24, 2003 refinery margins reached 79 cents per gallon and since January 2003 refinery margins have increased by 144%, from 27 cents per gallon on January 6 to 66 cents per gallon on April 14, according to the California Energy Commission (see Figure 2-5). Since March 3, 2003 refinery margins have been above 50 cents per gallon, and have averaged 65 cents per gallon, according to the California Energy Commission (see Figure 2-5).

Figure 2-5

Refinery Margins on Gasoline in California (January to April 2003)



Source: California Energy Commission.

According to the California Energy Commission, refinery margins are:

> *"calculated as the difference between the Oil Price Information Service (OPIS) average rack price of gasoline and crude oil cost."*
>
> *Notes on Estimated 2003 Gasoline Price Breakdown & Margins Details*, Note 3, California Energy Commission, 2003.

However, while the California Energy Commission uses the average rack price to compute refiner margins, it concedes:

> *"most branded franchisees purchase gasoline at the Dealer Tank Wagon price (DTW) that is typically higher than the branded rack price."*[3]
>
> *Notes on Estimated 2003 Gasoline Price Breakdown & Margins Details*, Note 4, California Energy Commission, 2003.

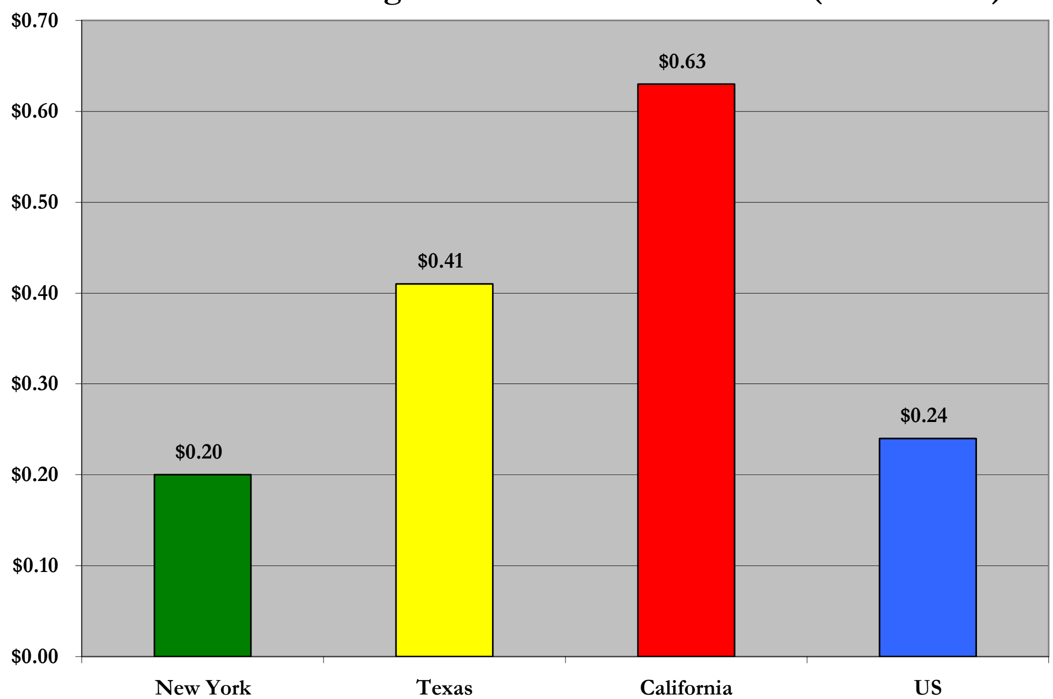
According to the Attorney General's report on gasoline prices, 85 percent of the gasoline sold in California is sold through stations that are required to pay the DTW price (*Report on Gasoline Pricing in California*, California Attorney General Bill Lockyer, May 2000, p. 25).

[3] In December 2002, the average DTW price in California was 6 cents per gallon higher than the average rack price, $0.92 and $0.86 respectively, according to the Department of Energy (*Petroleum Marketing Monthly*, Energy Information Administration, April 2003, Table 31, p. 64).

On March 14, 2003, the Los Angeles Times reported that, "refinery margins -- defined as non-crude oil expenses and profit -- are now significantly higher than their five-year average."

In March 2003, California refiners earned margins of $0.63 per gallon, while refiners in Texas earned $0.41 per gallon and refiners in New York earned $0.20 per gallon. The average refining margin in the United States in March 2003 was $0.24 per gallon (see Figure 2-5).

Figure 2-5
California Refiner Margins Well Above TX and NY (March 2003)



Source: California Energy Commission, Oil & Gas Journal data.

Oil company executives admit West Coast margins are integral to corporate performance.

> "[*The Benicia refinery*] *should contribute significantly to the company's third quarter and second half results due to the favorable outlook for West Coast margins and a full six months of operations."*
>
> Bill Greehey
> Chairman, Valero Energy
> Petroleum Finance Week, 8-28-00

Investment analysts agree California is a cash cow for oil companies operating here.

> *"California is the jewel in the crown. There's no question the West Coast gasoline margins are almost double the East Coast margins."*
>
> Fadel Gheit, Farnestock & Co. Report
> January 1998

"We estimate that [the] Golden Eagle [refinery] could generate more than $170 million and $210 million of operating profit in 2002 and 2003, respectively. However, given our optimistic view of California refining market's long-term outlook, we expect Golden Eagle could generate higher earnings and return than our current assumptions."

P.Y. Cheng, Lehman Brothers Report
February 11, 2002

"U.S. margins are definitely in the black, with California margins at a lofty $15.15/bbl."

Paul Ting,
Salomon Smith Barney Report
August 13, 1999

"Wholesale prices continue to fall across the U.S. except in California, where margins are still strong."

Jay Saunders,
Deutsche Banc Alex Brown,
Octane Week, September 10, 2001

"Company-wide refining margins beat our forecast by 10%. Good, however, the outperformance came from California"

Tyler Dann, Bank of America Report
August 2, 2002

"Sunoco Inc. officials, their company's shares down 34% this year, are wishing they were in California.

Philadelphia-based Sunoco, the third-largest independent U.S. oil refiner, saw earnings sink in each of the last three quarters. Profit margins on fuel sales in Sunoco's East Coast markets fell by as much as half from year-earlier levels.

By contrast, earnings rose for rivals such as Chevron Corp. and Tosco Corp., largely on the strength of fuel sales in California, where margins have been triple those of the rest of the U.S."

Bloomberg Market Report, 2000

"Pump prices in California have soared to more than $2 a gallon on average and have climbed more than in any other region in the country. One reason may be that California refining companies are currently reaping profit margins that are as much as 21% above the average for the past seven years, based on typical industry costs, according to the California Energy Commission."

Gas Prices Hit Record Highs,
Wall Street Journal, 3-7-2003.

Recent news reports support the contention that oil companies are earning high profits.

OIL FIRMS PROFITS GUSH WHEN PRICES RISE
"As oil prices go, so goes the oil industry. And with oil prices surging to their highest levels in at least two years, oil companies are poised to reap rich profits. 'When prices rise, it looks like they're coining money,' said Craig Pirrong, director of energy markets for the University of Houston's Global Energy Management Institute."
Miami Herald, February 25, 2003

ENERGY SECTOR PROFITS HEAT UP
"U.S. energy companies, led by Exxon Mobil and Anadarko Petroleum, had the biggest gains in fourth-quarter profit of any industry group in the Standard & Poor's 500 index, as oil and natural-gas prices surged."
The Seattle Times, February 11, 2003

OIL COMPANIES' PROFITS HUGE
"Oil giant Exxon Mobil Corp. reported the largest quarterly profit in U.S. history Wednesday, as higher prices for crude oil and natural gas fattened its bottom line. Exxon Mobil, the nation's largest oil company, wasn't alone, it led a parade of companies posting fourth-quarter profit increases in double and triple digits."
Cincinnati Enquirer, January 25, 2001

OIL FIRMS' PROFITS GUSH
"As the price of gasoline soars, nearing last summer's record levels, oil companies are raking in huge profits. Just this week, ExxonMobil, Chevron, Unocal and others delighted shareholders by handily beating profit expectations."
Chicago Tribune, April 27, 2001

PUMPING MONEY: MAJOR OIL COMPANIES STRUGGLE TO SPEND HUGE HOARDS OF CASH
"In May, reporting on the first quarter of what may ultimately be its most successful year ever, Royal Dutch/Shell Group said it was pumping out about $1.5 million in profit an hour and sitting on more than $11 billion in the bank."
Wall Street Journal, July 30, 2001

CALIFORNIA OIL COMPANIES POST RECORD PROFITS
East Bay Business Times, April 25, 2001

OIL FIRMS SPILL OVER WITH PROFITS
Economic Times, November 11, 2002

IV. OTHER STATES ARE ACTING

Sixteen states currently have laws on the books to promote or protect competition in their local markets. Five states have laws that limit market control by integrated oil companies, eleven other states have fair petroleum marketing laws, and still other states, like California, are experiencing similar problems and exploring available remedies.

Maryland

In 1974, Maryland passed the first law in the United States that limited market control by integrated oil companies. The major oil companies challenged the constitutionality of the law; however, in 1978 the Supreme Court ruled 8 to 0 (Justice Powell did not participate) that the law was constitutional (*Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 1978). Subsequent to the ruling by the Supreme Court Maryland began enforcement of the law in 1978.

While the major oil companies and their "hired gun" economists[4] have claimed since 1979 that gasoline prices in Maryland increased as a result of the market control limits placed on integrated oil companies, the law has remained on the books for more than 20 years and survived numerous attempts by the oil industry to get the legislature to overturn the law.

If as the oil companies claim, this law is so bad for consumers why hasn't it been changed?

The answer lies in the fact that the law actually benefits consumers. In fact, a 1987 study commissioned by the Maryland Comptroller's Office found that:

> *"over a seven-year period the total savings enjoyed by Maryland motorists relative to motorists in [non-market limit] cities was over $102 million."*

And while the oil companies now claim that the limits raise the price of gasoline, that hasn't always been their position:

> Market limits have "*had no impact on prices in Baltimore."*
>
> WJ Bittles, Jr
> Vice President of Retail Sales, Shell Oil Company
> Senate Judiciary Committee, 10-21-81

[4] The oil companies through the American Petroleum Institute concede that "the authors of these studies received financial or other support from the petroleum industry or its members." These reports include those which are most commonly relied upon to challenge Maryland's divorcement law and include, according to the National Petroleum News, the following reports: P. Sorenson, Florida State University, a statement to the U.S. Senate Committee of the Judiciary, October 1981; and J. Barron and J. Umbeck, Purdue University, "The Effects of Different Contractual Arrangements: The Case of Retail Gasoline Markets," October 1982, among others.

Nevada

In 1987, Nevada passed laws that limited market control by integrated oil companies in response to high gas prices. Since the law was passed, the oil companies have used the same tactics as they have in other states in an attempt to get the law repealed.

Despite significant efforts in 1995 and 1996 to repeal the law, it wasn't until the oil lobby was able to add a 500-page amendment to a bill on electricity deregulation in 1997 that they were successful in changing the law. The Las Vegas Review-Journal called the amendment "an egregious example" of the lack of deliberation on issues in the 1997 Nevada legislative session.

The amendment allows:

> Oil companies to *"move into the state under a phased-in plan by building or acquiring service stations. However they couldn't take over the shops of the lessee dealers and "lessee dealers" and the "contract dealers" will be protected from having their contracts cut by the major refiners."*
>
> Associated Press, 6-28-97

Under the "phase-in" portion of the law oil companies were allowed to establish up to 30 new stations by 2001.

According to Arco's lobbyist:

> *"We didn't get it repealed, but it's a balanced deal. To make a deal you have to give up some things."*
>
> Arco lobbyist George Ross,
> Associated Press, 6-28-97

This statement contradicts WSPA's claims that the law was repealed.

Connecticut

Connecticut Attorney General Richard Blumenthal has worked hard to address the state's high gasoline prices and in 2003, at his request, the Connecticut legislature is considering an expansion of its market control law and a law to prohibit zone pricing (The Rell Report, 2-6-03).

Currently, 16 states have significant gasoline marketing laws, and in 2002 all of these states had gasoline prices lower than those in California, adjusted for taxes (see Table 4-1).

Table 4-1
Significant Gasoline Marketing Laws in the United States

State	Effect of Petroleum Marketing Law	Average Gasoline Price Per Gallon in 2002 (adjusted for taxes)
CALIFORNIA	**NONE**	**$1.00**
Alabama	Forbids predatory pricing designed to drive out competition	**$0.88**
Connecticut	Limits market control by integrated oil companies.	**$0.93**
Delaware	Limits market control by integrated oil companies.	**$0.89**
Florida	Forbids predatory pricing designed to drive out competition	**$0.89**
Maryland	Limits market control by integrated oil companies.	**$0.90**
Massachusetts	Forbids predatory pricing designed to drive out competition	**$0.95**
Missouri	Forbids predatory pricing designed to drive out competition	**$0.91**
Nevada	Limits market control by integrated oil companies.	**$0.98**
New Jersey	Makes it illegal to sell at any price below net cost plus selling expenses and bans the use of lotteries or prizes in connection with sales of motor fuels.	**$0.93**
North Carolina	Forbids predatory pricing designed to drive out competition	**$0.86**
Rhode Island	Forbids predatory pricing designed to drive out competition	**$0.91**
South Carolina	Forbids predatory pricing designed to drive out competition	**$0.87**
Tennessee	Forbids predatory pricing designed to drive out competition	**$0.85**
Utah	Forbids predatory pricing designed to drive out competition	**$0.90**
West Virginia	Limits market control by integrated oil companies.	**$0.91**
Wisconsin	Sets a minimum 6 percent markup on the price of gasoline.	**$0.94**

Source: *Petroleum Marketing Monthly*, Energy Information Administration, January through December 2002; Pacific Business News, 5-31-02.

V. SOLUTIONS FOR CALIFORNIA

Changes are needed to make California's gasoline market more competitive, increase supply, and conserve fuel. Bipartisan consensus is emerging on the following four steps California can take:

- **Introduce wholesale and retail gasoline competition.** "Freedom of California retailers and jobbers to seek the lowest priced gasoline is now hampered by a web of restrictive agreements imposed by refiners," the Attorney General has concluded. He has proposed allowing dealers to purchase branded gasoline from any source.

- **Preserve checks and balances by introducing franchise reforms.** California's major oil companies are engaged in a systematic effort to undermine their own dealers, despite their assurances to the contrary. A strong dealer presence in the market is essential to provide a competitive check on the major oil companies.

- **Restrict market control by oil companies**. California should restrict the ability of major oil companies to set retail prices by virtue of various forms of market control, such as exclusive supply agreements.

- **Add instate refining capacity.** The Attorney General has said there may be opportunities to streamline state environmental impact and other permitting reviews, and has proposed a task force of stakeholders to investigate options.

The benefits to California consumers and businesses, according to Attorney General Lockyer, of steps to increase competitiveness in California gasoline markets, increase supply, and conserve fuel include:

- More competition in metropolitan areas that are currently the exclusive distribution territory of the major refiners, thereby reducing prices to consumers and businesses;

- Reduced ability of refiners to control prices within zones in cities and other urban areas of California, thereby reducing prices to consumers and businesses; and

- More buying power for jobbers, who could obtain lower prices from refiners and pass along these savings to dealers; thereby reducing prices to consumers and businesses.

VI. OIL COMPANIES OPPOSE REFORM

There are seven obstacles that must be overcome to fix California's broken gasoline market:

With the exception of ChevronTexaco, all of these companies are headquartered in Texas.

Table 6-1

Integrated Oil Companies Operating in California

Company	Headquarters (U.S)
ChevronTexaco	California
Shell USA	Texas
British Petroleum	Texas
ConocoPhillips (76)	Texas
Valero	Texas
Tesoro	Texas
ExxonMobil	Texas

Source: California Energy Commission.

- In 1999 and 2000, Western States Petroleum Association (WSPA) and Big Oil spent more than $1 million lobbying against legislation promoting branded open supply (Peace), divorcement (Speier) and price controls (Wesson) – Source WSPA 2000 Annual Report, California Secretary of State Lobbyist Reports 1999 to 2000.

- Since the 1998 election cycle, major oil companies have made more than $3 million in direct campaign contributions to statewide and state legislative candidates.

Oil Company Lobbying and Campaign Contributions

Through WSPA, major oil companies have worked to undermine every effort to reform the marketing of gasoline in California.

The organization's own publications laud its efforts to defeat legislation which would have been beneficial to consumers. The WSPA 2000 Annual Report claims success in the defeat of the following legislation:

- Branded Open Supply (Peace);
- Divorcement (Speier); and
- Price controls (Wesson).

From 1995 through 2002, oil companies and industry associations spent more than $50 million on lobbying in California, according to the California Secretary of State (see Table 6-2).

Table 6-2

Oil Industry Lobbying Expenses (1995 to 2002)

Entity	1995-1996	1997-1998	1999-2000	2001-2002	Total
WSPA	$3,883,845	$4,591,313	$3,862,287	$4,720,240	**$17,057,685**
Major Oil Companies	$8,080,698	$6,476,815	$6,935,437	$5,413,474	**$26,906,424**
Independent Oil Companies	$748,281	$320,644	$1,406,988	$1,129,380	**$3,605,303**
Other Industry Groups	$487,481	$930,198	$916,262	$424,077	**$2,758,018**
Total	$13,200,305	$12,318,970	$13,120,974	$11,687,171	**$50,327,430**

Source: California Secretary of State.

Since 1997, major oil companies have made more than $3 million in campaign contributions to statewide and state legislative candidates in California according to the California Secretary of State (see Table 6-3).

Table 6-3

Oil Company Aggregate Campaign Contributions by Election Cycle (1997 to 2002)

Company	1998	2000	2002	Total
ChevronTexaco	$623,359	$382,461	$299,726	**$1,305,546**
BP (Arco)	$594,367	$286,499	$334,711	**$1,215,577**
ConocoPhillips (76)	$153,696	$130,247	$90,999	**$374,942**
ExxonMobil	$87,875	$36,000	$15,000	**$138,875**
Valero Energy	N/A	N/A	$51,230	**$51,230**
Total	**$1,459,297**	**$835,207**	**$791,666**	**$3,086,170**

Source: California Secretary of State.

San Francisco

On September 22, 1997, then-Supervisor Michael Yaki proposed a law that would have limited market control by integrated oil companies in San Francisco by January 1, 2000. After an intense lobbying effort by the oil companies Yaki's proposal was effectively stymied when it was rerefered to committee on June 8, 1998.

The oil companies must have been worried that San Francisco's divorcement law would have hurt their bottom line as they spent more than $230,000 to oppose it, according to the San Francisco Ethics Commission:

- From 1997 through 2002, Chevron, later ChevronTexaco, spent $170,666.38 lobbying against the ordinance.
- From 1997 through 2002, Tosco, later ConocoPhillips (76), spent $39,036.98 lobbying against the ordinance.
- From 1997 through 2002, the Western States Petroleum Association spent $33,675.00 lobbying against the ordinance.

In addition to spending more than $170,000 lobbying against the ordinance, Chevron (later ChevronTexaco) made $226,523 in campaign contributions to measures and candidates in San Francisco from 1997 through 2002 according to the San Francisco Ethics Commission.

San Diego County

Despite the usual industry lobbying barrage, the San Diego County Board of Supervisors passed an ordinance in 1998 in response to perceived gas price gouging that limited the market control of integrated oil companies and allowed for open supply contracts.

The Western States Petroleum Association, an industry trade group, sued the board for $50 million, claiming the law violated equal-protection rights guaranteed by the U.S. Constitution. The lawsuit also questioned the authority of the county and cities to regulate activities outside their own jurisdiction. Due to the potential costs of defending against the lawsuit, the Board of Supervisors rescinded the ordinance prior to going to court (the San Diego supervisors initially approved the ordinance on January 13, 1998 by a vote of 5 to 0).

Despite the failure of the ordinance, Supervisor Ron Roberts continued his efforts to decrease gasoline prices.

> *"The fact of the matter is that the oil companies in the state of California are not competitive. There is no competition in the state of California. When the oil companies in California can have a different wholesale price for every gas station on every corner of the city, then something is seriously wrong. And the fact that they are the largest lobbying group in the state of California, the most effective lobbying group at the state level, should tell you why something can't happen on the state level. . . They are costing this community over $100 million per year."*
>
> Republican San Diego Supervisor Ron Roberts, San Diego Mayoral Debate, 4-11-00.

In a memo to his colleagues on the Board, Supervisor Bill Horn said:

> *"The root causes of our problem relate to the vertical integration of major oil companies controlling California refining capacity and their collusive behavior in supply arrangements and instantaneous information sharing. I am an advocate of free enterprise and the market place, and on a business level I have to admire the oil companies' commercial success. However, as an elected representative of San Diego County residents and consumers, I believe we have to seek correction in a market that no longer exhibits any true competition."*
>
> San Diego Supervisor Bill Horn Memo to San Diego Board of Supervisors, *Promoting Competition to Reduce Retail Gas Price Gouging in San Diego County*, 1-7-98.

Supervisor Horn's sentiments were reinforced by a report issued on gasoline prices in San Diego, which concluded:

> *"The activities of the refiners and wholesale distributors of gasoline that have resulted in high prices in San Diego County take place outside the boundaries of the County."*
>
> *Report on Gasoline Prices in San Diego County*, CAO Lawrence Prior III and Counsel John Sansone, 1-13-98.

Appendix A: You Can't Believe Any Claim Made by the Oil Companies

On competitiveness in the market	The Facts
California has a very competitive and efficient gasoline marketing process – one that has consistently delivered gasoline to the consumer reliably and at low prices (Source: Letter from John Geoghegan to Assemblyman Roderick Wright, June 30, 1999).	California's gasoline industry is less competitive than in most of the nation, and large oil refiners have effectively shut out independent marketers in California's urban areas, according to the California Attorney General.
On oil company prices for gasoline	The Facts
Company-operated service stations often offer the lowest retail prices. By eliminating company-operated outlets, divorcement laws would eliminate the lowest priced gasoline, thus harming consumers.	In her testimony before a U.S. Senate Subcommittee investigating gas prices Justine Hastings, a professor of economics at Dartmouth University, said that in cities with a high concentration of company-owned stations gas prices are on average $0.05 higher than cities with a large number of independent stations.

On impact of CARB gasoline	The Facts
California's unique, more stringent cleaner-burning gasoline requirements make it more expensive to produce (Source: Tough Questions and Straight Answers About Gasoline Prices, WSPA).	Oil companies chronically overstate these impacts. The Attorney General's Task Force on California Gasoline Prices concluded wholesale price for CARB gasoline has averaged only four cents per gallon more than conventional gasoline (Attorney General's Task Force Report, May 2000, p. 5.).

On gasoline taxes	The Facts
Why are California gasoline prices generally higher than in other states? *For one thing, gasoline taxes are higher here than in almost any other state.* (Source: Tough Questions and Straight Answers About Gasoline Prices, WSPA).	Adjusted for state sales and excise taxes, Californians last year paid 8 cents more per gallon than New Yorkers and 13 cents more per gallon than Texans. In March 2003, Californians paid 33 cents more per gallon than New Yorkers and 52 cents more per gallon than Texans.
On so-called Voluntary Contracts	The Facts
"Open supply" legislation, as it has been proposed in California, would eliminate voluntary exclusive purchasing agreements between refiners and dealers (Source: WSPA press release, April 3, 2003).	The proposed legislation offers dealers a choice, and California consumers and businesses a chance for lower gasoline prices.
On the views of economists and "others"	The Facts
But economists and others agree that open supply would not work, and in fact would be likely to cause supply disruptions and higher retail prices (Source: WSPA press release, April 3, 2003).	Actually, according to Attorney General Bill Lockyer's report on gasoline prices, branded open supply proposals would increase competition in metropolitan areas that currently are the exclusive distribution territory of major-brand refiners, and would reduce the price of gas paid by consumers.

On contracts and supply	The Facts
The existing system of voluntary contracts allows refiners to accurately project how much gas they will need at any given terminal on any given date, and assures dealers that they will have enough gas each day to serve their customers. By doing away with the contract system, it is likely that on any given day, the lowest priced terminals would run out of gas first, with many dealers disappointed when supplies are not adequate to meet their needs. (Source: Facts About Proposed Gasoline Marketing Regulations, WSPA, March 15, 2000).	In Texas, refiners control less than half of the wholesale market and dealers are free to purchase gasoline from multiple sources. And no shortages such as those described by WSPA have ever occurred in Texas.

On dealer greed	The Facts
Even if some dealers realized savings at the wholesale level, there is no guarantee any of these benefits would be passed on to consumers. Any profits from open supply legislation are likely to be enjoyed only by that handful of dealers who sporadically are able to locate and buy their supplies at a lower price now and then (Source: Facts About Proposed Gasoline Marketing Regulations, WSPA, March 15, 2000).	Right now those profits are being retained by the major oil companies. Profits from West Coast refining are the highest in the nation, according to Bloomberg.

On overall supply	The facts
Open supply laws would do nothing to increase the supply of gasoline in California – they would only create market uncertainty…. (Source: Facts About Proposed Gasoline Marketing Regulations, WSPA, March 15, 2000).	A long-term solution includes steps to increase supply – but without market reforms that bring additional competition; these new supplies will not lead to reduced prices for consumers.

On reserves	The Facts
Open supply laws would…cause terminals to increase reserves, effectively reducing available supplies. This would logically result in higher pump prices (Source: Facts About Proposed Gasoline Marketing Regulations, WSPA, March 15, 2000)	Increasing reserves might be a good thing. According to the Attorney General, refiners have cut inventories – which “exacerbate the supply problem created when a refinery experiences an outage.”

On Competition with Dealers	The Facts
“The notion that the oil companies would try to undercut their franchisers is hogwash. It doesn’t make sense to make war on our own dealers. If prices are higher at franchised stations, it’s a function of the profit demand of retailers.” (Source: Chevron Spokesman, *Running on Fumes*, SF Bay Guardian, 2-18-98)	In a 1998 ruling, a Florida judge noted that "Exxon secretly divided its dealers into "keepers' and "non-keepers' and internally recognized that its pricing practices were driving the "non-keepers' out of business." Also, Chevron, Shell, ConocoPhillips (76), BP “Arco”, Valero and Mobil have company operated stations selling at prices well below margins needed to run a successful dealer franchise in the same market areas.

Appendix B: QUESTIONS AND ANSWERS

This section seeks to anticipate and address common objections to the concerns of California's service station dealers and their proposed remedies, including divorcement and divestiture.

Q: Gasoline in California is a bargain today, especially adjusted for inflation. To borrow a phrase: If it ain't broke, why fix it?

A: *Gas prices in California are the highest in the nation, according to the American Automobile Association.*

Q: Aren't gasoline prices in California higher because of the cost of producing CARB gasoline and higher fuel taxes?

A: *No. Even accounting for the cost or producing CARB gasoline (4 to 6 cents) and higher fuel taxes (8 cents higher than the national average); in March 2003 California consumers and businesses paid 36 cents more per gallon than the national average for reformulated gasoline according to the Energy Information Administration.*

Q: Don't company-owned service stations offer the lowest retail prices?

A: *No. In her testimony before a U.S. Senate Subcommittee investigating gas prices Justine Hastings, a professor of economics at Dartmouth University, said that in cities with a high concentration of company-owned stations gas prices are on average $0.05 higher than cities with a large number of independent stations.*

Q: A branded open supply law will cause an increase in gas prices, won't it?

A: *No. Actually, according to Attorney General Bill Lockyer's report on gasoline prices, branded open supply proposals would increase competition in metropolitan areas that currently are the exclusive distribution territory of major-brand refiners, and would reduce the price of gas paid by consumers.*

Q: Isn't geography the main reason gasoline prices in California are higher than other states?

A: *No. The reason gasoline prices are higher in California is that oil refining capacity in the state has decreased by more than 49 million barrels of oil a year since 1993, according to the California Energy Commission.*

Q: And aren't our environmental laws and sales taxes the major contributors to higher gasoline prices in California, compared to other states?

A: *No. Again, we can place the majority of blame for California's high gas prices squarely at the feet of major oil companies in California. These companies control the amount of oil that is refined in the state and have worked hard to prevent competitors from expanding refining capacity or importing refined gasoline into the state, according to a report issued by the Senate Permanent Subcommittee on Investigations.*

Q: Doesn't the demand for gasoline in California exceed in-state production capabilities?

A: *No. Once again the oil companies have twisted the facts. According to the California Energy Commission, California refineries produce more than 16.5 billion gallons of gasoline annually while Californians consume 14.5 billion gallons of gasoline annually. Also, California exports more than 150,000 barrels of gasoline a day to Arizona, Nevada and Oregon.*

Q: Won't divestiture lead to higher gasoline prices?

A: *Divestiture will only lead to higher gasoline prices if you buy the twisted economic logic offered up by the oil companies. Under divestiture there will be more firms selling gasoline. Any way you look at it this means more competition, not less. Any student of economics will be able to tell you that as competition increases price decreases – that's exactly what will happen if California adopts divorcement.*

Q: The wholesale gasoline market in California is fiercely competitive, isn't it?

A: *According to California Attorney General Bill Lockyer, the wholesale gasoline market in California is one of the least competitive in the United States. Economists frequently refer to the California market, in which 97% of the market is controlled by seven companies, an oligopoly.*

Q: Nevada recently changed its state law to allow major oil companies once again to start operating their own stations. Isn't this evidence that divorcement doesn't work?

A: *No. The Nevada legislature rebuffed direct efforts by the major oil companies to repeal divorcement in 1995 and 1996. In 1997, the oil companies were able to add an 11th hour amendment to an electricity market restructuring measure that allowed them to increase the number of stations they could operate in the state by 30 service stations. This change to Nevada's divorcement law was not an indictment of divorcement, but rather further evidence of Big Oil's lobbying strength. The Las Vegas Review-Journal called the amendment that changed Nevada's divorcement law "an egregious example" of the lack of deliberation during the 1997 session, a situation that was "out of control" according to one observer.*

Q: Isn't it true that oil company divorcement measures will lead to widespread job loss?

A: No. According to a Senate Judiciary Committee investigation into Maryland's gasoline marketing laws, "former managers became the dealers with the same staffs, and by the fact that the average dealer station employs more people than a company-operated location" employment would actually increase.

Q: But aren't Costco and other new entrants into gasoline markets providing price competition? After all Costco plans to expand to 100 stations in California, won't that give major oil companies some competition?

A: *No. The Attorney General's task force noted that Costco has less than 1 percent market share in 1999, compared with 19.3 percent for Chevron. The task force also said these types of gasoline marketers are expected to align with major refiners, not compete with them.*