PUBLIC ADVOCATES
MAKING RIGHTS REAL

September 24, 2012

Senator Ron Calderon, Chair
Senate Standing Committee on Insurance
Assembly Member Henry Perea, Chair
Assembly Committee on Insurance

Re: **Civil Rights Community Opposes Proposition 33**

Dear Chair Calderon and Chair Perea:

As organizations that advocate for the protection of civil rights in California's low-income communities of color, we write to express our strong opposition to Proposition 33. This initiative would turn back the clock on civil rights protections by reinstating redlining in auto insurance that some of our organizations have successfully fought for 25 years.

The Attorney General's official ballot title and summary explains that, by allowing "insurance companies to set prices based on whether [drivers] previously carried auto insurance with any insurance company," Proposition 33 would allow "increased cost for drivers without history of continuous coverage."

The high cost of auto insurance has historically excluded many California drivers from the insurance market. Proposition 33 would make it even harder for them to buy insurance in the future. The inevitable victims of these increased insurance costs will be good drivers in low-income communities of color.

It is estimated that some 3.5 to 4 million drivers do not have auto insurance in California. These are the "drivers without a history of continuous coverage" who will pay more under Proposition 33. According to the most recent survey from the California Department of Insurance, from 1999, 54 percent of uninsured drivers were Latino and African American (twice their representation at that time in California's population) and 51 percent had incomes under $20,000. Over a third were young people ages 18-24. Nearly two-thirds gave unaffordable cost as the reason they didn't have auto insurance.

About 2 million uninsured drivers – 40 to 50 percent of all uninsured drivers in California – live in just 2 percent of zip codes. These are

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communities characterized by low median income and high minority population (65 percent or greater).

California should be increasing drivers' access to auto insurance, not increasing the cost of auto insurance to make it more inaccessible for these most vulnerable drivers. Yet that is exactly what Proposition 33 would do, because insurance premiums are set in a zero-sum framework. That means every dollar given to one person as a discount shows up as a surcharge for other policyholders. The Department of Insurance explained this in a June letter to the Legislative Analyst about Prop 33:

> "If an insurer introduces a continuous coverage discount for some drivers it will require a counterbalancing rate increase for other drivers that do not qualify for the discount."[1]

The greater the number of policyholders that receive the discount, the greater the surcharge must be for the remaining policyholders. That means that by increasing the pool of drivers who would be eligible for the "prior insurance" discount, Proposition 33 will drive the cost of insurance up even more for drivers who are not eligible than Proposition 17 would have.

Some historical context is important to understand the seriousness of the problem. Twenty-four years ago, California voters adopted Proposition 103, which prohibited insurance companies from basing auto premiums on the absence of prior automobile insurance coverage.

Proposition 103 ended a pernicious insurance industry practice first brought to light in a 1987 California Supreme Court case brought by Public Advocates and others, *King v. Meese*. The plaintiffs argued that California's 1984 Financial Responsibility Law, which imposed harsh penalties on those who drove without insurance, was fundamentally unfair because insurance was not reasonably available to many drivers living in low-income and minority zip codes. As the Supreme Court noted at that time, many insurance companies "would only insure those who already had insurance." The result, according to the Court, was that, "When it comes to auto liability insurance, the poor pay more or do without." When the Court and the legislature did not end the practice, the voters enacted Proposition 103.

After Proposition 103 became law, insurance companies like Mercury Insurance Co. sought to evade its prohibition on making uninsured drivers pay more to get insurance. Mercury violated the law until its practice came to the attention of the Insurance Commissioner and the courts. Mercury then sponsored SB 841 (Perata 2003). The Court of Appeal struck it down, finding that:

> "By allowing insurers to grant a discount on the basis of whether an applicant was previously insured by any insurer, Sen. Bill 841 in effect *excludes only the previously uninsured from the benefit of the discount.* [It] would permit insurers to *surcharge previously uninsured drivers to fund discounts for drivers with prior or persistent insurance*." (emphasis added)

Next, Mercury went to the ballot box in 2010 with Proposition 17. Despite the $16 million spent by Mercury, the voters rejected that attempt.

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[1] Links to source documents are available at http://www.publicadvocates.org/2012-09-14/redlining-red-alert-prop-33-would-turn-back-the-clock-on-civil-rights-protections.

Now Mercury and its chairman, George Joseph, are back with Proposition 33. They argue that Proposition 33 is better than Proposition 17 because it says it will exempt certain people from the surcharges that will result. But the zero-sum nature of insurance pricing means that the narrow exemptions that Proposition 33's supporters like to point to as the reason it is better than Proposition 17 simply make the surcharge on uninsured drivers even worse.

Proposition 33 will impose higher insurance prices on those drivers least able to afford it, including:

- Low-wage workers who commute by bus but find they need a car in order to maintain a new job;
- Immigrant drivers who may soon finally be able to obtain a California driver's license, but will be forced to pay more;
- Drivers who have found it financially impossible to maintain uninterrupted insurance coverage, then turn to the auto insurance market in hopes of complying with the mandatory insurance law and face a financial penalty for being poor.

California drivers have been protected from this insurance redlining practice for nearly 25 years. Proposition 33 would massively concentrate the burdens of the policy Mercury proposes on an extremely disadvantaged minority population. Turning back the clock is never a good idea, least of all when California's most disadvantaged communities are more vulnerable than any time in recent memory. We hope we can count on your support.

Sincerely,

Richard A. Marcantonio, Managing Attorney

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