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10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO  
12 (UNLIMITED CIVIL ACTION)

13 JACK LEWIN, M.D. and VICKI BERMUDEZ, R.N., )  
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Petitioners,

vs.

KEVIN SHELLEY, in his official capacity as  
Secretary of State of the State of California,

Respondent.

GEOFF BRANDT, in his official capacity as  
State Printer, ALLAN ZAREMBERG,  
SANDRA CARSTEN, JAMES G. KNIGHT, M.D.,  
THOMAS LaGRELIUS, M.D.,  
GLORIA RIOS and JON COUPAL,

Real Parties in Interest.

No.: \_\_\_\_\_

Action Filed: July 28, 2004

**DECLARATION OF  
E. RICHARD BROWN, PH.D. IN  
SUPPORT OF PETITION FOR WRIT  
OF MANDATE AND EX PARTE  
APPLICATION FOR ORDER  
SHORTENING TIME FOR RESPONSE  
TO PETITIONERS' REQUEST FOR  
PRODUCTION OF DOCUMENTS**

**(Proposition 72)**

**IMMEDIATE ACTION REQUESTED**

Ex Parte Hearing:

Date:

Time:

Dept.:

(The Honorable \_\_\_\_\_)

Writ Hearing:

Date:

Time:

Dept.:

(The Honorable \_\_\_\_\_)



1 Exhibit B to this declaration. Allan Zaremborg, the President of the California Chamber of Commerce,  
2 is one of the signers of the Argument Against Proposition 72. Moreover, the LAEDC study is  
3 available on the No on 72 website ([www.stopthehealthcaretax.org](http://www.stopthehealthcaretax.org)) under the “Get the Facts” link.

4 4. I have reviewed the LAEDC study and conclude that the \$7 billion figure it  
5 arrives at is grossly incorrect. I agree with the conclusion of my colleague Dr. Gerald Kominski that a  
6 better estimate of the cost of extending coverage to currently uninsured employees under  
7 Proposition 72 would be no higher than \$2.7 billion, and likely far lower than that.

8 5. The LAEDC study was published in September 2003, prior to the final passage  
9 of SB 2. Attached as Exhibit C to this declaration is a true and correct copy of a news report that  
10 appeared in the Los Angeles Times on March 29, 2004. The article indicates that the authors of the  
11 LAEDC study had re-done their preliminary calculations and “LAEDC now estimates net new  
12 expenses, counting tax deductions the employers would receive, at much less – \$4.7 billion, of which  
13 the employers’ share would be \$2.2 billion, or less than half the original figure.” After that news  
14 report appeared I was told by Jack Kyser, the lead author of the LAEDC study, that there was indeed a  
15 new study, but that the new study had not been made available to the public. Indeed, the only public  
16 information about the study of which I am aware is a single chart on the website of the No on  
17 Proposition 72 campaign, which contains figures for health insurance premium costs that differ from  
18 those in the September 2003 LAEDC study. A true and correct copy of that chart, which is available  
19 on-line at <http://www.stopthehealthtax.org/pdf/worksheet.pdf>, is attached as Exhibit D to this  
20 declaration. The chart lists as its data source “Los Angeles County Economic Development  
21 Corporation, *The Economic Impact of Mandatory Health Insurance Coverage on California Business*,  
22 June 22, 2004.”

23 6. The \$7 billion figure in the original LAEDC study is based on a number of  
24 incorrect calculations and assumptions. One significant mistake is a gross overstatement of the  
25 number of currently uninsured Californians who would be eligible for employer-sponsored coverage  
26 under Proposition 72. The LAEDC study estimates that 3,490,808 employees in California are not  
27 receiving health care coverage. (Exh. B, p. 13.) Subtracting those who work for small (0-  
28 19 employees) firms that are not covered by Proposition 72 (*see id.* pp. 12-13) results in an LAEDC

1 estimate of 2,099,910 employees not currently receiving health care coverage at work and presumably  
2 eligible for Proposition 72 coverage. That estimate is almost *double* what it should be.

3 7. I looked at this same question in a Health Policy Fact Sheet I co-authored in  
4 September 2003, entitled "SB 2 Will Extend Coverage to 1 Million Uninsured Workers and  
5 Dependents." A true and correct copy of that fact sheet is attached as Exhibit E to this declaration. I  
6 and my colleagues at the UCLA Center for Health Policy Research determined that *1,070,000*  
7 *uninsured employees and dependents would be eligible for coverage under Proposition 72* if fully  
8 implemented to include employees in firms of 20-49 employees. I believe our figure is the one relied  
9 upon by the Legislative Analyst's Office in its Fiscal Impact Statement for Proposition 72, in which  
10 the LAO states: "Health care researchers have estimated that the provisions of SB 2 could eventually  
11 result in more than 1 million uninsured employees and dependents receiving health coverage."  
12 (Petition, Exh. D at p. 2.)

13 8. The discrepancy between our figure of 1,070,000 and the LAEDC figure of  
14 2,099,910 is caused by a number of factors. First, we used different data. The LAEDC figures rely on  
15 the Kaiser/HRET 2002 California Employer Health Benefits Survey to estimate the number of  
16 employers offering health benefits coverage, the number of employers not offering health benefits  
17 coverage, and the number of employees who decline such coverage when it is offered. A true and  
18 correct copy of the 2002 Kaiser/HRET survey, as updated in October 2003, is attached as Exhibit F to  
19 this declaration. The Kaiser/HRET survey, however, is based on 861 interviews with employee benefit  
20 managers in private firms. It does not include public employers, and it does not survey employees  
21 directly.

22 9. More importantly, LAEDC included in its figures of uninsured Californians  
23 eligible for Proposition 72 coverage an estimated number of employees who are offered insurance but  
24 do not accept it. According to LAEDC, "10 percent of employees offered insurance do not accept it  
25 (this included employees who are covered by a plan other than that offered by their employer)" and it  
26 added those 10% into the total number of employees not receiving health coverage and thus eligible for  
27 Proposition 72 coverage. (Exh. B, p. 13.) However, even the Kaiser/HRET survey states that most  
28 employees who decline coverage do so because they are covered by another source of medical

1 insurance (presumably through a spouse or parent). (Exh. F, Chart 6.) Indeed, as discussed further  
2 below, approximately 72% of employees who are offered health insurance coverage by their employer  
3 decline because they are covered by insurance elsewhere. Those individuals thus should have been  
4 *subtracted* from, rather than added to, the total eligible for Proposition 72 coverage.

5           10.     The data that we used to study the question of how many people would be  
6 covered by Proposition 72 was derived from the 2001 California Health Interview Survey (“CHIS  
7 survey”), as supplemented with analyses of the March 2001 and 2002 Current Population Survey  
8 (“CPS”). CHIS is a collaborative project of the UCLA Center for Health Policy Research, the  
9 California Department of Health Services, and the Public Health Institute. I am the Principal  
10 Investigator for CHIS. CHIS is a widely regarded, state-of-the-art telephone survey of adults,  
11 adolescents, and children from all parts of the state and among a wide variety of racial and ethnic  
12 groups, who are asked to provide information about health insurance coverage, the use of healthcare  
13 services, the prevalence of health conditions, employment information, and other health issues. The  
14 survey is conducted every two years. CHIS 2001 – the first survey – collected information from more  
15 than 55,000 California households. As one of the largest health surveys in the United States, CHIS is a  
16 scientifically reliable source of the most up-to-date information on key health topics affecting  
17 California’s diverse population. The Current Population Survey (CPS) is a monthly survey with a  
18 national sample of about 50,000 households, conducted by the Bureau of the Census for the Bureau of  
19 Labor Statistics. The survey has been conducted for more than 50 years. The CPS is the primary  
20 source of information on the labor force characteristics of the U.S. population.

21           11.     CHIS 2001 includes information on health insurance status, age, hours worked  
22 per week, duration of employment at the main job, and firm size. We used this information to develop  
23 direct estimates for the number of uninsured workers and dependents who would be affected by the  
24 passage of SB 2, based on the stipulations of the bill itself. The analysis included uninsured people  
25 who: are ages 18-64; work for an employer for wages; work at least 23 hours per week (roughly  
26 100 hours per month); and have been employed in the same position for at least 3 months. Persons  
27 with any insurance were not included. Using a logarithmic function, we established the firm sizes used  
28 in Proposition 72 (then-SB 2) and estimated the population in each firm-size category. The


1 March 2001 and 2002 CPS were used to estimate the number of dependents that would be affected by  
2 the offer of health insurance to uninsured spouses and children of all workers in firms with 200 or  
3 more employees. We averaged two years of data in order to create more stable estimates with the  
4 smaller California sample size available in the CPS. For our analysis, we created a “SB 2 family  
5 eligibility” variable that captured the eligibility status of the parents in a family and assigned any  
6 uninsured dependents (children and/or spouses) to the parent who worked in the largest firm. The ratio  
7 of the total number of non-working eligible dependents to the number of uninsured eligible-workers  
8 was used to compensate for the CPS’s overestimate of the number of uninsured. This ratio was then  
9 applied to the direct estimates of workers in the CHIS population, giving us a total number of  
10 dependents that would be affected by Proposition 72.

11 12. The CHIS study also gave us data on the number of employees who are covered  
12 by insurance through someone other than their own employer. Because of the method by which these  
13 data were collected – direct surveys of employees, rather than employers – and because of the large  
14 sample size, the CHIS data are more accurate than the LAEDC estimates of the reasons employees  
15 decline insurance coverage. The CHIS data demonstrate that 72% of eligible employees decline  
16 coverage because they already have insurance coverage elsewhere. I reported on this figure in a  
17 publication I coauthored, entitled *The State of Health Insurance in California: Findings from the 2001*  
18 *California Health Interview Survey* (UCLA Center for Health Policy Research, June 2002, pp. 40-41  
19 and Table 19). Relevant excerpts from that lengthy report are attached as Exhibit G to this declaration.  
20 The full report is available on-line at <http://www.healthpolicy.ucla.edu/pubs/files/shic062002.pdf>.  
21 These individuals, who have coverage elsewhere, were not included in our report of uninsured  
22 employees who will receive coverage under Proposition 72.

23 13. It is my opinion that the UCLA Center for Health Policy Research estimate of  
24 1,070,000 uninsured employees and dependents who will be eligible for health insurance coverage if  
25 Proposition 72 is fully implemented, relied on by the Legislative Analyst’s Office, is accurate and  
26 reliable; and that the substantially higher estimate of the LAEDC, relied on in the Argument Against  
27 Proposition 72, is inaccurate, unreliable and misleading. Moreover, if one excludes employees in firms  
28

1 of 20-49 employers, who may not be covered by Proposition 72 unless further legislative action  
 2 occurs, the correct number of eligible uninsured employees and dependents is 859,000.

3 I declare under penalty of perjury under the laws of the State of California that I have  
 4 personal knowledge of the foregoing except for those matters set forth on information and belief, and if  
 5 called upon to do so I could and would so testify. Executed this 27th day of July, 2004, at  
 6 Los Angeles, California.

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 8 F. Richard Brown, Ph.D.  
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