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UNFAIR GOVERNMENT COMPETITION AGAINST SMALL BUSINESS

By Dennis Polhill

Executive Summary

Unfair Competition exists when a government or quasi-government entity takes advantage of its tax exemption and other privileges to supply private goods to the market in competition with private suppliers. Unfair Competition adversely effects all Americans. Small businesses are most vulnerable. When jobs are lost, the poor, the unemployed, and women are especially damaged. When private enterprises are replaced with less efficient government enterprises, national productivity and competitiveness are adversely impacted. When the tax base is diminished, all taxpayers are injured.

The Federal government has investigated Unfair Competition frequently since 1980. In 1980, the Small Business Administration did a study which yielded numerous grievous examples and extensive recommended actions. In 1986, a White House Conference on Small Business labeled Unfair Competition as the third most serious concern in the country for small business. In 1987, the General Accounting Office surveyed 27,000 businesses, nearly two-thirds of which were found to be suffering a degree of Unfair Competition.

In Colorado at least 34 industries are currently suffering damage as a result of Unfair Competition from government. Unfair Competition is also perpetrated by quasi-government agencies that enjoy either monopoly privilege, tax exemptions or regulation exemptions that are granted by government. Among the steps necessary to a solution are the following:

- * All regulations which do not apply to government business entities, but which do apply to private industry should be either abandoned or enforced uniformly.
- * Agencies of governments that supply private goods to the market should lose their tax exempt status and other privileges.
- * Governments should adopt accounting practices and management approaches that reveal more closely the true cost of service provided.

INTRODUCTION

Governments often use the benefit of their tax and regulation-exempt status to compete unfairly with small businesses. As businesses are bankrupted, the tax base is reduced. As the tax base diminishes, the tax rate increases. Thus, when governments enter into inappropriate functions all taxpayers suffer from heavier taxation.

"The legitimate powers of government," wrote Thomas Jefferson, "extend to such acts only as are injurious to others." He offered these words from the perspective of a fledgling nation unrestrained by outdated tradition. At the same time, he had observed the suffocating and stifling consequences of bloated bureaucracy and taxation in Britain. Jefferson and the other Founding Fathers gave us a new nation innocent of past sins; but they warned subsequent generations to beware of becoming like the rejected parent nation.

But alas, the battle to sustain our freedoms is more difficult than anticipated. To repel an invasion would be so much easier than to detect and repel the subtle, well-meaning, but subversive intrusion of liberty from within. In 1928, Supreme Court Justice Louis Brandeis warned: "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficial. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greater dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." The issue of Unfair Competition is real. Its roots sprout from the well intended efforts. If it is not corrected, one of the principles upon which the United States was founded --the right to security of property -- will be eroded away, contributing to the gradual decline of our way of life.

Definitions

(1) **Unfair Competition** - a government agency or quasi government agency enters into the business of offering private goods to the market.

(2) **Private Goods** - acquired by an individual consumer for his individual "private" consumption. Examples of private goods are shoes, radios, oranges, and automobiles. Private goods have three basic characteristics:

- a) They are divisible. Private goods can be produced in units sufficiently small for individual households to purchase them out of their personal incomes.
- b) The satisfactions, benefits, and revenues are limited almost exclusively to the individual purchaser.

c) Those who are not willing or able to pay the market price for private goods are excluded from the benefits or enjoyment such goods confer. Economists refer to this as the exclusion principle.

(3) **Public Goods** (Sometimes called Social Goods or Collective Goods) - products and services that provide benefit to the general public as a whole such as police protection, fire protection, transportation systems, flood control, various regulations and national defense. Public goods are goods that might not exist in the market without the benefit of government subsidy and sponsorship. The three basic characteristics of public goods are:

a) They are indivisible. They come in such large units that they cannot be readily purchased by individual households.

b) Public goods yield large and widespread benefits to the community as a whole.

c) Public goods are not subject to the exclusion principle and therefore cannot be provided on the basis of buyer initiative.

Reasoning Used In Public Policy Service Delivery Decision Making

Economists James T. Bennett and Thomas J. DiLorenzo, in their book *Unfair Competition -- The Profits of Non-Profits* discuss the various rationales for government entities entering into Unfair Competition. The rationales for government providing private goods or services are:

(1) **Thin Market** - The demand for a particular product is so small that a private firm cannot make a profit.

(2) **Public Goods** - The government entity can provide public goods that commercial firms will not produce.

(3) **Market Failure** - Whenever consumers find it difficult to judge a product's quality before purchasing it, or when a monopoly exists, consumers are said to be at the mercy of suppliers. In such cases, profit-seeking firms will supposedly take advantage of consumer ignorance and increase their profits by offering lower quality and higher-priced goods and services. Thus, governments are held to be a more appropriate vehicle for the provision of certain types of services.

(4) **Promoting Equity** - Subsidies and other special privileges enjoyed by governments are defended on the grounds that governments help ensure a more equitable distribution of income and of services. They serve the most vulnerable population groups such as children and seniors, whose needs may not be profitable of private business to serve.

Governments in this view are largely charitable institutions that fill in gaps in service delivery.

(5) **Accountability** - Because governments appoint community members to their boards and because some government officials are elected, government is said to be more accountable to the public than are private businesses.

Economic and Empirical Evaluation

Bennett and DiLorenzo evaluate each of the public policy decision making rationales for Unfair Competition on the basis of economic theory and empirical data that illustrate actual practice.

(1) **Thin Markets** - If the thin market rationale were valid, profit-seeking firms would never have entered the industry in the first place. Moreover, governments generally enter commercial areas where markets are very large and potentially profitable, such as health care, fitness clubs, audio-visual, and computer software businesses.

(2) **Public Goods** - It is true that governments do provide public goods and that tax exemptions and subsidies help provide goods that benefit society. But public goods rationale does not apply when there is Unfair Competition. When private suppliers are offering the same goods, they are, by definition, private goods, not public goods.

(3) **Market Failure** - Proponents claim that because governments cannot directly claim profits, they are inclined to reinvest to provide even better services at lower prices. This is totally contrary to reality. If competitive pressure forces firms to offer better products at lower prices, how can the absence of competitive pressure motivate the same result? Without the benefit of competitive pressure, quality becomes lower and price becomes higher. The fatal flaw in the market failure rationale is that governments cannot profit directly. They *do* profit indirectly in many ways: by growing in size and influence, by promoting the personal careers of both politicians and bureaucrats, by generating surplus revenue (not "profits") to subsidize other operations.

(4) **Promoting Equity** - This is a statement of an ideal more than it is a statement of reality. The vast majority of governmental commercial enterprises do not serve the poor. The reason that middle and upper income classes benefit the most is that they are more involved politically. The federal government engages in literally thousands of commercial activities, few of which benefit the poor. Should the open space money that belongs to everyone in Jefferson County be spent to buy a racquet club for the people who live at Ken Caryl, an affluent suburban area? Who is really subsidizing whom? We are taxing everyone (the poor included) to benefit the more affluent while crowding out private businesses.

(5) **Accountability** - Because businesses are in communication with their clients constantly and are subject to competitive pressures, economic theory would predict that governments are prone to be less accountable than businesses. With regard to accountability, utilities and non-profit quasi-government corporations are even less likely to be accountable than governments per se, because they are not even subject to periodic election.

In summary, none of these five rationales is persuasive, and the idea that governments and managers do not benefit from Unfair Competition is a myth. To quote President Eisenhower: "Government has no right to compete in a private enterprise economy."

All arguments about cost efficiency in government are suspect: First, because the government pays no taxes; secondly, government bookkeeping procedures are different, making cost comparisons difficult and misleading.

The frequency with which governments compete unfairly with private businesses is on the rise. Ironically, it will increase as taxpayers are increasingly unwilling to dedicate a greater and greater portion of their paychecks to taxes. Recently, the Colorado Legislature has directed state departments to "cash fund" a portion of their budget. This is an appropriate directive if the department offers "public goods" only. But if the agency offers "private goods" to the market, Unfair Competition exists. Both the market and private businesses are damaged, sometimes destroyed. A "cash funded" budget is good rhetoric. But when these words are interpreted by the bureaucracy as a directive to go into direct competition with taxpaying businesses, it is a problem.

Who Is Effected by Unfair Competition

Small Businesses - Small businesses, which are responsible for most of the new jobs in the U.S. economy, are most adversely affected by unfair competition. A Massachusetts Institute of Technology study has reported that 80% of new jobs were created by firms with fewer than 100 employees. Small businesses have a capacity to start up quickly and expand dramatically. However, because of their size, they are least able to absorb the impact of unfair competition. The cost of dealing with regulations and administrative burdens of all sorts is exceedingly high to small business. The entrepreneurial core of the firm must remove itself from the value-creating aspect of their business to deal with the demands of government.

Unemployed and Poor - Lower income people lose the most when small businesses are crowded out. The principal source of new jobs in the economy diminishes. Unskilled workers and teen-agers lose valuable experience missing the opportunity to work and grow in small businesses. Unfair competition places a disproportionately heavy burden on new entrants into the work force.

Women - Women are also heavily represented among the unemployed and thus adversely impacted by unfair government competition. Further, women are increasingly

likely to own small businesses, which are most vulnerable to Unfair Competition. By the year 2000, over half of all businesses will be owned by women.

National Hearings for Victims of Unfair Competition

Congress has held hearings on Unfair Competition periodically since 1980, motivated by the need to fix loopholes in the UBIT (Unrelated Business Income Tax) Laws.

Senate Small Business Committee hearings in 1981 generated over 600 pages of testimony. Here are a few examples:

National Hearing Aid Society (NHAS) - Mr. Floyd Loupot, President. NHAS represents 4,000 Hearing Aid Specialists. "One of the most glaring examples we in the Hearing Aid field have witnessed has been the entry of the Federal Government into the Hearing and Delivery System. Under the umbrella of the Veteran's Administration, the Federal Government has created a method of hearing aid delivery which is a costly, ineffective and inefficient ... All the while directly competing with the pre-existing free enterprise system ... Under this system, I am supporting and subsidizing the very organizations that are going to put me out of business." In 1970, a Seattle non-profit corporation, Northwest Clinic, employed one part time person and serviced 270 individuals with gross annual revenues of \$60,000. An aggressive marketing and promotional program allowed the clinic to grow to 9,000 clients, 42 employees and over \$1,000,000 in revenues. "In short, the Northwest Clinic has been transformed into a major Hearing Aid Retail Center, engaged in sales on a scale substantially larger than necessary for the performance of its exempt functions and, in fact, dwarfing the original purposes for which it was ostensibly organized."

National Federation Of Independent Businesses (NFIB) - Mr. James D. McKeivitt, Director. "Our members from California in the tire retreading business lost his contract with the National Guard as a result of their opening their own retreading plant ... A member in Kansas writes of the U.S.D.A. undercutting retailers by selling seeds, chemicals, etc.... A member in Colorado complains about HMOs setting up their own pharmacies, optical centers, etc.... A member in Indiana trying to compete with the Department of Energy in selling insulation... Members in North Carolina and Arizona tell of the PX competing with small retailers, selling stereos, washing machines, etc.... A member in Ohio competing with HUD in tool rentals... A member in Indiana complains about a university operating its own grocery store...."

1987 General Accounting Office (GAO) Report to Congress - The survey was responded to by nearly 27,000 businesses. The following table is in response to the question of whether their business was having to compete with government or tax exempt entities.

Industry	No Government Competitor	One or More Government Competitors
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Audio-Visual	36%	64%
Racquet Sports	10%	90%
Research & Testing	16%	84%
Tour	57%	43%
Travel Agents	55%	45%
Veterinarian	39%	61%
Average	35.5%	64.5%

Thus, of 27,000 businesses surveyed by the GAO in 1987, nearly two-thirds (64.5%) were experiencing some degree of government competition.

Government Competition: A Threat To Small Business - March 1980 By Small Business Administration (140 pages):

U.S. Postal Service - "In attempting to counter the rising threat of competition, the U.S. Postal Service has resorted to penalizing small firms which are generally not in a position to challenge such actions. In 1978, the U.S. Postal Service filed with the Postal Rate Commission a request to establish a local, same day small package delivery service... While admitting that the market for this service is highly developed and competitive, the Postal Service indicated that the proposed service is designed to fulfill a need that is not being met."

Others - Some of the other examples of unfair competition documented in the SBA Task Force Report are: day care, laboratories, janitorial services, campgrounds, audio-visual, employment agencies, warehousing, printing, retail centers, solar technology, sleeping bag manufacturing.

Conclusions & Recommendations of SBA Report - The 46 conclusions and recommendations of the SBA Task Force to Congress are too numerous to include here. However, some of the more relevant ones follow:

1. Congress should express a national policy directing that the federal government rely, to the maximum extent possible, on the private sector, particularly qualified small businesses in acquiring needed goods and services.
2. Wherever possible, governmental agencies that continue to perform commercial or industrial activities should not regulate the private concerns with which they compete.
3. The exemption from federal price discrimination laws for the government should be limited to situations where the government purchases for its "use" only.
4. The "excess capacity" exemption which provides for the use of excess capacity of a federal agency by other agencies should be deleted.

5. Full cost recovery systems should be adopted agency-wide to save money and increase the opportunities for small business. In addition, agencies should include a credit to cost of contracting out for state and local taxes foregone on work performed in-house when making cost comparisons.
6. Small Business Administration (SBA) Office of Advocacy should assist in establishing a dialogue between university representatives and small businesses to develop **are** protocols to limit Unfair Competition.
7. Health & Human Services as a matter of policy should attach primary emphasis on utilizing the private sector for the delivery of day-care services.
8. No law or regulation should be enforced against the private sector entrepreneur unless it is also enforced with at least equal ardor and vigor against government and government-subsidized entities when they compete in the same marketplace.
9. Federal agencies should give primary emphasis to the private sector for analytical and applied research and development services.

Who Is Affected - Colorado

With regard to Colorado specifically, examples of both direct and indirect unfair competition are ample:

(1) Transportation Services - In 1982 Lea Holtof had just started her own business, a bus service called Dash About Shuttle. Her goal was to provide inter-city and intra-city transportation to a six-county region in northeast Colorado. About the same time, however, the Northeast Colorado Transportation Authority set up shop. NECTA started as a government agency and subsequently became a non-profit group. As such it didn't have to pay taxes and had several unfair advantages over Lea such as lower insurance premiums (NECTA pays less than half the insurance as Dash About).

NECTA rapidly expanded. By 1990 they had 30 vehicles, and annual budget of \$285,000, and was on the verge of forcing Lea out of business. Dash About soon had only three vehicles and no inter-city routes. Lea managed to hold on to her inter-city commuter routes. But she was worried. Her business was losing money. "As NECTA grew and grew, I could see the end of the line for my business," Lea said. She said her husband told her last year she could no longer call Dash About a viable business. Her hope was that she could persuade NECTA to contract out some routes to her, but they turned her down because she couldn't come up with exorbitant bond money (120% of a given contract).

Recently NECTA has been encroaching on Lea's intra-city routes -- the only real profitable routes Leas still has. She says she's tired and she wonders if she will ever get through this. She's frustrated that government thought it necessary to compete with her. "I could have operated those routes far more efficiently than NECTA, paid my taxes and put

people to work," Lea said. "But I can't fight them because I have to devote my time to my business."

(2) Miniature Golf - In 1989 Brent Stoker's life savings was invested in a modest miniature golf course in Adams County. He wasn't making millions of dollars, but he was happy to operate a small business successfully. Then the unthinkable happened: Highland Hills Parks and Recreation District decided to build a \$600,000 mega-miniature golf course that would compete directly with his business. The grandiose Highland Hills project featured multiple levels, waterfalls, and was financed partly by Brent's own taxpayer dollars. Observers predicted it would be only a matter of time before Brent went out of business. Why? Because Brent was at a competitive disadvantage with the district that was anything but miniature.

The district could obtain low-cost money through tax-free bonds. The land was free. The district had to pay no property taxes, no tourism taxes and did not have to maintain expensive liability insurance. Whereas Brent could afford \$5,000 in annual advertising costs, Highland Hills spend \$50,000 promoting its project the first year. Brent was understandably dismayed. "What chance do I have? How can a small business like mine survive against a giant that is subsidized by taxpayer money?"

Highland Hills Recreation District Executive Director Greg Mastriona said his new "adventure golf" course wouldn't affect Brent's business. "It's a different type of facility," he said. "They both have a club and a ball. That's the only thing they have in common. We're not competing." That wasn't true then, but it is now - because Brent's miniature golf course was forced to close its doors not long after Highland Hills ambitious "adventure Golf" course opened. And Brent Stoker is now out of business. He lost not only his miniature golf course but his life savings as well.

(3) Country Clubs - More than \$130,000 of annual revenue for Douglas County went down the drain in 1992 when the South Suburban Recreation District decided that the future of local government was in the country club business. Local business and residents were understandably teed off when the district purchased the Arnold Palmer-designed Lone Tree Golf course and Country club for \$4.6 million and announced plans to convert it to public use (Lone Tree's previous owners had filed for bankruptcy). They were angry because their tax rate would increase to account for shrinking revenues resulting from the reduction in tax base.

Residents like Daryl Osborn, who had invested \$300,000 in the dream of living next to a golf course, now stood by helplessly as his property values decreased. Homeowner Ron Page was disappointed because he knew there were private investors, including the Denver Athletic Club, lined up to buy the golf course and country club,

But South Suburban acquired redemption rights from a third-party holder to acquire the property just hours before the foreclosure sale. Douglas County Commissioner Suzy McDanal said the district was out of order. "Frankly, I think the district has been irresponsible," she said. "All of the credit for open space in this development was allowed

for this private golf course." That didn't deter South Suburban, however, which had apparently decided golf course and country club management was a vital function of local government. Now that the Lone Tree Country Club is safely within the domain of South Suburban Park and Recreation District, it is actively involved in competition in numerous private services: Golf course, motel rooms, restaurant, banquet rooms, and catering.

The decision to purchase Lone Tree came in the 90's version of a smoke-filled room: a board of directors "retreat" in Vail. Court documents reveal that the Sunshine Law was winked at while the deal was being cut; but the board did go through the motions of compliance when it came home and held a public meeting to tell the people what the deal was.

At least three law suits came out of the action, revolving primarily around two issues: the deal did not comply with the Sunshine Law and the District did not go through re-zoning to change the club from private to public. One suit was brought by a developer who owned many lots around the course and controlled several of the rights of way connecting the fairways. Not only did his case have merit but he also had the ability to choke the course off. The district settled with him by offering him title to valuable land that the District controlled. Neither the District nor the developer would reveal the value of the settlement, but it was substantial; the taxpayers were handed the bill.

The other major plaintiff was Douglas County, which contended that the conversion was made from a private to public course in violation of existing zoning. The district claimed that it wasn't governed by the same laws that the rest of us have to comply with so it could do whatever it pleased, and it did. The judge ruled that while the District does have to comply with zoning ordinances "a golf course is a golf course" whether its public or private and, therefore, the District did not violate any laws. Douglas County chose not to appeal the judge's decision.

(4) Athletic Clubs - In most states recreation centers and YMCAs provide services to youths and seniors. But in Colorado, there is a competitive rivalry among government to see who can build the most luxurious facility. It is a distortion to call these facilities recreation centers. In truth, they are public athletic clubs. The result is a desperate struggle for the survival of an industry statewide. Recreation centers have forced private businesses to close in Durango, Sterling, Louisville, Lafayette, Broomfield, Breckenridge, Idaho Springs and many more. Public athletic clubs are currently being planned within the market areas of private businesses in Brighton, Thornton, Boulder, Longmont, Denver, Golden, Aurora, Grand Junction and Aspen. If the trend continues and the industry is completely snuffed out in Colorado, the state will lose over 100 businesses, about 4,000 jobs and about \$8,000,000 per year in tax revenues.

Lafayette - Events a few years ago in the small Boulder County community of Lafayette illustrate how unfair government competition harms small businesses. In 1987, there were three athletic clubs operating in Lafayette; Body By Effort, Sportech and Ironworks. The following year Lafayette announced plans to build a \$3.8 million recreation center

funded by a 1% sales tax. At that time Boulder County, like the rest of Colorado, was in the midst of a serious recession.

Body By Effort owner Betty Sells objected strenuously to the proposed recreation center. She cited the tax advantages the new recreation center would have and the fact that she would, in effect, be subsidizing her competition with her own taxes. "To survive we will have to compete with city hall for scarce dollars in the recreation business," she said. Sells and Sportech owner Tony Chirikos told Lafayette City Council they feared for their businesses. Lafayette went ahead with its plans anyway. In 1990 the new recreation center, by now a \$5 million, 43,000 square foot facility, opened its doors. Business began drifting away from the private clubs. By 1991, Sportech and Ironworks had closed their doors and Body By Effort was losing customers to the new recreation center.

At this point it is unclear how much taxable revenue has been lost as a result of the two clubs going out of business. But the human dimension is painfully obvious. "I feel genuinely sorry for Tony," said Betty. "I know how it feels to face losing your dream."

Idaho Springs - K.T. Falco's athletic club in the historic mining town of Idaho Springs once prospered, but Idaho Springs Mountain Fitness Club may soon be a relic of the past. The problem started when the City of Idaho Springs decided to construct a recreation center. K.T. pleaded with the recreation center planning board not to duplicate her services. She asked them specifically not to add weight training equipment and aerobics classes. Idaho Springs responded that they were not going to add enough weight training equipment to hurt her, and they went ahead with the aerobics classes. K.T. then asked the board to hire her to run one of their programs. She said she told them there wasn't enough business in town for the two of them. They declined. Her third approach was to offer to sell the club to the city. This offer was declined as well.

Now the Idaho Springs Mountain Fitness Club is losing money. K.T. had to get a full time job at the Henderson Mine to support herself. She's trying to sell her club but it's unlikely any buyers will step forward. She said she has received a lot of flack in the community for opposing the recreation center's weight and aerobics rooms. She now just stays quiet and keeps her distance.

Un-Named City - An athletic club in Colorado was recently forced to close by the opening of a first class city recreation center. The owner has declined to be named because he is dependent upon cooperation from the city to get re-zoning and permits to convert his building to another use. Not only did the city go into direct competition with his business, they hired away his general manager and undercut his rents, causing him to lose several business tenants who have relocated to the city recreation center.

Golden - On May 21, 1991, the citizens of the City of Golden enacted an additional 1% sales tax to be used for capital improvements. The tax generated about \$1,500,000 per year. After the completion of downtown improvements of \$1,500,000, it was decided that a \$6,000,000 recreation center was the greatest need of the community. The City's intent to compete with private businesses was veiled until July of 1992. Two large athletic clubs

and several day care businesses tried to air their concerns, but Golden had its mind set and refused to have any discussions to limit the damage they might do to these businesses. By September of 1992, it was evident that Amendment 1 might pass in the November election and require the City Council to seek voter approval to sell bonds for the facility. So a fast track bond sale was initiated. Citizens filed suit claiming that the use of bonded debt was not an authorized use of the sales tax revenue. The court declined to issue a restraining order, indicating that other remedies were available to the citizens of Golden.

The citizens of Golden then drafted and circulated petitions to stop the frivolous outlay of tax dollars. Six hundred and sixty signatures were required and 1,100 were submitted. The City of Golden disqualified 82% -- all but 197 signatures. When the City Council was asked to reconsider the arbitrary criteria used by City staff to disqualify the signatures, it refused. A second suit was filed by Golden citizens on the grounds that City Council and City staff had illegally conspired to deny the people their right to petition. One City Councilman, Mr. Richard Cusack, stepped forward and swore under oath that there had been a conspiracy. The court ruled that although the Sunshine Law had been violated, private discussions of the City Council were protected under the attorney-client privilege. Thus, other Councilpersons could not be called to confirm or deny the statements of Cusack and his own statements could not be entered into evidence.

As this paper is being written, the citizens of Golden have filed suit in federal court against the City Council for violation of their civil rights on the grounds that their right to petition had been arbitrarily denied.

Members of the Golden City Council have stated in public meetings that they will "build this center no matter what." Conceivably, 200 jobs could be lost by the damage to existing enterprises. Some claim that the \$6,000,000 facility will cost as much as \$10,000,000 when the cost of land, cost of capital, lost park land, work done by City forces, and other extraneous expenses not included in the construction contract are accounted for. Golden is a community of 14,000. Considering that, nationally, less than 10% of the population uses an athletic club, the cost per use and the cost per taxpayer takes extravagance in spending taxpayer dollars to a new level. Perhaps there is still a chance that the people can prevail against their government, but money is being spent as fast as possible in an effort to make the debate moot.

(5) Day Care Centers - Sandy Albrecht lives in Westcliff, a small town nestled in the picturesque Wet Mountain Valley south of Salida. She loves children, which is why she opened a day care center not long after she received her masters degree in special education. The center was appropriately named Wee Care Day Care and Preschool and was the only day care center of its kind in Custer County. Sandy was able to put her special education degree to work because she had several children with disabilities in her care. She employed a full time assistant and contracted the services of physical therapists and other specialists when necessary. Her business thrived for five years. But a \$26,000 grant for the Custer County School District sounded the death knell for Wee Care. Instead of using the grant money to enhance Sandy's existing program, the superintendent

of Custer County schools used the grant money to provide a service Sandy was already providing: day care for children with disabilities. Custer County, in effect, duplicated Sandy's service inside the school. "They were very arrogant," Sandy said. "I was already providing the kind of day care service they set up. Instead of contracting with me they duplicated my service. I said, 'Why put out all this money if the need is already being served?'"

But nobody was listening, and Sandy's business soon began to fail. Less than a year after the school district received the grant, Sandy was out of business. "At first they took my four and five-year-olds. Then I lost my three-year-olds. Then I lost everything," Sandy said. "They lied to me, cheated me out of a right to make a living. I'm very bitter." Someone should have taken a serious look at the situation in Custer County before the grant money was used. There was no mechanism in place for review, no check or balance to protect Sandy. She had no right of appeal. Now Sandy is out of business and the families of Custer County have lost a valuable resource.

(6) Dental Services - Tim Anderson thinks universities should be in the business of providing an education, not low-cost dental care. Dr. Anderson, a Fort Collins dentist, says Colorado State University's low-cost dental program is Unfair Competition. "I don't believe their costs of the operation," said Tim. "And their appointment book is a joke. There is only one dentist to serve 20,000 students. Students wait forever to receive treatment." Anderson said students must pay a mandatory fee for the dental clinic whether or not they choose to use the clinic. He said if that fee were eliminated students would have more money for private dentists, and the quality of their dental care would improve significantly.

(7) Underground Storage Tank Testing - Dave Sladek is an engineer who's fed up with government competition. He recently worked on a project to assess some underground petroleum storage tanks suspected to be leaking. He drilled some holes and found out some petroleum had indeed leaked. At that point Sladek decided more investigation was necessary. "The law required further assessment and tank testing," said Dave. "We asked our client to give us an estimate so we could put in a bid. He said he'd get back to us. The next day our client informed us that he had hired the Colorado Geological Survey to do the job. Why? They could do it cheaper than we can because they don't have to pay taxes," Dave said.

(8) Landscaping - Mike Catalon has operated a landscape business for a number of years and has struggled to make it grow. What has increasingly choked his company is not healthy competition from other landscapers, but from the city, the county, special districts and schools. "Government has been getting more and more involved in the landscaping business," said Mike. "The landscape business is very fragile. It's very difficult for us to compete with these [entities]." Mike said one reason is because governments do not add up all their costs like a private business owners and they do not pay taxes like he does. "The city competes with us for plant material, labor, and equipment as well as installation contracts within the private sector," Mike said. "Some projects that were funded by the city's bond issue were intended to help lift the sagging economy of the metro area.

Instead, it seems we are financing the city to encroach into the private sector. It just doesn't make sense."

Mike would like to build a park or two and his firm is well qualified for the job, but his recent struggles with park districts has been no game. "They've got their own nurseries, their design firms and their own asphalt paving operations," he said. Mike estimates his business is off by 20 percent or more as a result of unfair competition. "Look," he said, "the government shouldn't be in the landscape business to begin with. We know plants. We should be handling the materials. There are plenty of people in this business set up to do this and they need work," Mike said.

(9) Cement Manufacturing - The state of South Dakota is putting Coloradans out of work. That's because South Dakota owns the South Dakota Cement Company, which has a distribution terminal in Denver. Of the approximately one million tons of cement sold in Colorado last year, the South Dakota Cement Company sold about 100,000 tons. At an average price of 55 dollars a ton, that means nearly five million dollars of cement production could have stayed in Colorado.

In addition to the lost business, millions of dollars of potential revenues for the state have been lost as a result of South Dakota's operation. One recent estimate is that \$750,000 of property tax revenue was lost in El Paso County alone last year. That translates into roughly 85 jobs lost for Coloradans. What makes it so frustrating for Colorado firms is that the South Dakota Cement Company's operation is subsidized by the state of South Dakota. In Colorado, they sell cement for \$55 per ton. In Rapid City, it goes for \$70 per ton. It adds up to Unfair Competition from South Dakota.

(10) Other Colorado Industries - In addition to the above, there is evidence that Colorado governments compete unfairly with private businesses in the following areas: janitorial supplies, ambulance services, asphalt production, fisheries, furniture manufacturing, hotel rooms, hearing aids, greenhouses, office leasing, laboratory testing, forest fire fighting equipment, veterinarians, pharmacies, geological consulting services, contaminated soil investigations, communication towers, worker compensation insurance, executive office suites, travel agencies and trucking.

(11) Furniture Manufacturing - In May 1992, the Associated Press released a story about the state of Colorado and New Mexico using cheap prison labor to build furniture and cabinets. The goods are being sold and distributed through New Mexico dealers. New Mexico has evolved as a trade center for furniture manufacturing by employing its concentration of undereducated but skilled Hispanic and Native American labor force. "Hundreds of jobs are at stake," said Robert Dooling, a Santa Fe manufacturer. Who will suffer most when minority jobs are displaced by \$.63 per hour prison labor?

(12) Unfair Utility Practices - Various utilities operate as franchised monopolies. The monopoly rationale is that the installation costs of competitive systems make it impractical to offer the consumer competitive options. These utilities function largely as a quasi-government agency and they often provide a "public goods." The Public Utilities

Commission (PUC) functions as an oversight agency to watch out for the interests of the tax paying/ rate paying consumer. The PUC sets various utility regulations, approves rate schedules, and listens to complaints. In Colorado, some utilities are expanding their sphere of operation into areas traditionally reserved for small independent contractors, such as appliance repair, sales, and individual service installations. When these new ventures do not function under the burden of realizing all of their true operating costs, competition with small private suppliers is unfair. In addition, the source of the subsidy dollars is from the utilities' other revenue source: ratepayer dollars. Thus, the monopoly privilege of the utility is being used as a revenue source to facilitate Unfair Competition. A dozen Colorado utility contractor trade associations have banded together under the name Colorado Alliance Against Unfair Utility Practices to bring the problem to the attention of the state Legislature and the PUC.

(13) Non-Profit Corporations - Non-profits are exempted from various taxes on the basis of two philosophical premises:

1. They provide a charitable function.
2. They relieve government of some of its burden.

But, when non-profits function in an area beyond either of these premises, the non-profit is probably overstepping its legal bounds and may be perpetrating Unfair Competition.

In a December 4, 1991 *Rocky Mountain News* article, a non-profit community center complained that it was forced to "lower the price of its early-childhood development programs because of competition from the private sector." The article goes on to expose the thought process of various non-profit executive directors. They consider launching various new commercial programs, not as means to fulfill their charitable charge, but as a means to supplement their budget. They do not consider the impact that their subsidized status will have on the businesses they compete with. They do not consider ultimately the impact on the tax base as private businesses are forced to close.

The Federal Government first exempted charitable organizations from tax in 1913. In 1950, in response to outrageous examples of Unfair Competition, Congress changed the tax law by creating the Unrelated Business Income Tax (UBIT). Under UBIT revenues whose source is unrelated to their tax exempt purpose are subject to taxation. State statutes, including Colorado's, that allow exemptions from sales and property tax follow the same reasoning.

YMCAs - In May 1985, the Multnomah County Tax Assessor stripped the tax exemption from a YMCA for competing with up-scale athletic club businesses. The ruling stated that the YMCA "is not engaged, as its primary purpose, in charitable activity and is not eligible for property tax exemption pursuant to Oregon law." The decision was upheld by the State Department of Revenue. In a 7-0 decision by the Oregon Supreme Court, the court reasoned, "For a facility to be exempt from taxes, there must be an element of giving. If no gift is involved, there is no charity." In 1989, a Pittsburgh court made a

similar ruling with regard to a \$7,500,000 athletic club that was being operated by the YMCA, "The evidence does not warrant or justify a finding that those members are legitimate subjects of charity."

Banking Industry - In the banking industry, Credit Unions operate under claims of service to exclusive and limited markets to realize various non-profit benefits. At the same time, they compete directly with banks and other private sector, taxpaying institutions that offer the same services. Banking services are clearly private goods. Credit Unions are another example of Unfair Competition.

STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP)

The arrogance of some government agencies is illustrated by the SLAPP: Strategic Lawsuits Against Public Participation. The example of South Suburban Park and Recreation District purchasing a country club from beneath the nose of a private investor group was so outrageous that several concerned citizens groups quickly emerged. The park and recreation district responded to public criticism by having their attorney threaten to file lawsuits. (A December 14, 1991 *Denver Post* article discusses the claims and counter-claims.) It is clear that the district was using the threat of a SLAPP as a means to limit public participation.

SLAPPS are brought against individuals and groups for having participated in the government process. SLAPPS have been brought for contracting government officials, circulating a petition, giving testimony, lobbying, reporting a violation of law, filing a public interest lawsuit, and communicating with voters. Although most SLAPPS are found to be unlawful, they are an effective means to harass, intimidate, and limit public involvement. Hundreds of SLAPPS are filed throughout the nation annually. University of Denver law professors George Pring and Penelope Canon have been researching SLAPPS and call the actions of South Suburban Park and Recreation District "outrageous".

The Quest For Government Efficiency

The quest for management efficiency and for economic efficiency sometimes draws public managers unwittingly into Unfair Competition. When a government is providing service for itself, the marginal cost to manufacture more product is small. By selling the product at market price or even below market, the government generates surplus revenue (profit) for itself

(1) Privatization - In reality, this reasoning is misdirected. Because full capacity is not used, fixed costs should be allocated to a smaller volume or product. There should be no doubt that the unit cost of government goods produced for its own use is higher than available in a competitive market. Therefore, the government has no rational basis for producing the product even for its own use! The function would be more cost effective if purchased from the outside. In other words, *contracted out*. This is the only linkage

between Unfair Competition and privatization. Because governments are insulated from competitive market pressures, some of the areas where the government is competing unfairly are the very same areas that should be privatized.

(2) Sources of Profit - Governments do not make "profits". Profits are called surplus revenue. Hyland Hills Park and Recreation District claims to make over \$1,000,000 per year profit from Water World. Although they don't pay out big bonuses like big corporations, this is a nice chunk of change for taking pressure off of the budgeting process. Where did the profits come from? Hyland Hills certainly didn't overcharge the users of Water World. By definition profits accrue only after all expenses are paid. But Hyland didn't pay any property tax, sales tax, income tax, etc. Because Water World is a commercial enterprise supplying private goods to individual consumers, taxes rightfully should have been included in the cost of goods. In fact, when fees charged to the consumer are at market, the fees can be considered to include appropriate taxes. The taxes, however, were not paid and Water World's exemption became the mechanism to deprive other government entities of revenue. Because the state, the federal government, the county, the city, the schools, etc. were deprived of rightful tax revenue, each of them feels extra budget pressure and each must raise its tax rate to compensate for the taxes not paid by Water World.

(3) Impact of Tax Exemption - Foothills Park and Recreation District claims that it generates 60% of its operating budget through golf surplus revenues. Judy Pettit, Jefferson County Tax Assessor estimates that each publicly-owned golf course removes an average of \$80,000 per year from property tax revenues forever. Thus, each publicly owned golf course deprives revenues from education, police protection, fire protection, flood control, street maintenance, RTD, etc. Individuals have their golf subsidized at the expense of vital public services. The split in market share between public courses and private courses shifts ever more to the public, eventually creating a "market failure" when all private suppliers abandon the golf industry. Considering the thirst that local governments have to enter the golf industry, no intelligent developer would risk the application of private capital for the development of a golf course. Perhaps this market has already failed.

When one government creates profits for itself by depriving other governments of tax revenue, the individual taxpayer is ultimately hurt by the need to increase other tax rates. The complex intermingling of governments, services and tax sources make it impossible to determine what the true cost of any government service really is.

When a government agency uses its tax exemption privilege to generate profits by depriving other governments of revenues, taxpayers are forced to pay more.

Cost Of Government Goods

Government managers in the U.S. are far more efficient than their counterparts in the former Soviet Union. Soviet bureaucrats operated in a system in which did not have a budget. Lack of a budget deprived them of the ability to make rational trade-off

decisions. Tools, equipment, etc. arrived via a requisition process. Soviet managers were deprived of the ability to capture efficiencies by applying capital where it could do the most good: are 100 pens better than 200 pencils? Can I get by with 100 pencils, so that there is money left over for a box of paper? Knowing your costs is a vital element to managing. Businesses that don't know their costs cannot compete and quickly die. If governments knew more about their true costs of operation, they would be more efficient.

(1) Cost Accounting - One of the obstacles to determining the true cost of government goods is the accounting system employed. The government accounting system has grown up wrought with subsidies and inconsistencies. This is really a symptom of a more fundamental problem. Government accounting's goal is not related to isolating or accounting for costs. The General Accounting Standards Board has been working for several years in search of a solution. The proper allocation of government costs to a particular service is difficult. Government costs are not real costs (that is, equivalent market costs). It is virtually impossible to adjust out the many and diverse special privileges and subsidies that governments enjoy. Example: how much benefit should be allocated to a government enterprise for exemption from the sign code ordinance?

(2) Possessory Interest - This is a term used by property tax assessors. It applies when a tax-exempt entity owns real property and leases it to a private individual to use for commercial purposes. Although the property is owned by government and thus exempt from property tax, by possessory interest property tax is due. It would seem consistent in the application of tax policy that possessory interest should apply also to governments that provide commercial goods (private goods). Currently it does not.

(3) Protection of the Public - Regulations have their root in the policy power of the state to protect the health, safety, and welfare of the public. As soon as governments exempt themselves of these same regulations they compromise the health, safety, and welfare of the public. If the regulation is not worth applying to the government, the regulation is not very important and therefore should not exist. For the purpose of protecting the public, all governments must be subject to all regulations.

(4) Tax Exemption - The tax exemption creates many economic distortions, both between various governments and especially when governments compete unfairly with businesses. When governments provide a private good, tax exemptions should be eliminated.

Conversions

In hypothetical discussions of "public goods" and "private goods", definitions can be created that are relatively black and white. Tests for appropriate roles of government are easily created, applied and unmistakably interpreted. However, in a real world, both the public sector and the private sector are working diligently to serve their respective markets, who happen to be the same consumers. With time, the market changes. Consumers age, their spending patterns shift, technologies evolve, populations grow, etc. There may be instances where public goods evolve to be private goods and, conversely,

there may be situations where private goods become public goods. What is the appropriate role of government in the shadow of such transitions?

Private Goods Become Public Goods - An example of this is worker compensation insurance. Historically worker compensation insurance was provided by the private sector. State government entered into the industry to provide service for a segment that was uninsurable. As years passed, the state insured a bigger and bigger share of the market. Finally, the situation has evolved to the point where private suppliers provide service to a very small segment of the market. Such a trend is appropriate where the industry is unable or unwilling to fill the market need. As defined earlier, this is market failure. In this example, the market failure was precipitated by pricing regulations imposed on the insurance industry.

Another example of private goods becoming public goods is the trends in the railroad industry. Railroads have lost a share of their market to trucking. As such, a market failure was in the making. However, it was decided as a matter of national public policy that the railroads were needed and should be subsidized by the government so they could survive.

While offering these as rough examples of shift that has objectively occurred with the passage of time, we should note that government domination of workers compensation and the government subsidy of railroads remain highly debatable in terms of their benefit to society.

Public Goods Become Private Goods - Urban water systems and sewer systems are public goods. Sewage is mostly water. The technology is already available for homes to have closed water systems. However, water is plentiful and cheap. Environmental concerns have not yet grown to overshadow the aesthetic thoughts most people would have to overcome to use closed systems. But they will gradually evolve. As individual homes install closed systems and disconnect from the mains in the street, water and sewer systems will become obsolete. The transition process will be difficult. Should the first home that installs a closed system continue to pay its share of the public good (access to the system) through municipal tax? If yes, the economic incentive to evolve new and sound environmental technology diminishes. If no, the system has fewer homes over which to distribute the operating loss of the system. In the end, as all homes convert to the closed system, a service that is indisputably a "public good" today will have evolved to be a "private good".

When a market or technology has evolved to a point where the market will support the goods as private goods, they should become private goods. The United Kingdom was very effective under Margaret Thatcher at converting large industries such as mines and manufacturing plants to ownership by the employees through ESOP (employee stock ownership plans), where employees are offered the first right of refusal to purchase stock in their place of employment. "From 1980 to 1988 more than 40 percent of Britain's state sector was transformed to private enterprise" reports John Naisbitt in *Megatrends 2000*.

Colorado Initiatives To Limit The Problem

Although there has been much talk about the problem of Unfair Competition all over the U.S., there has been little action. In 1986, at a White House Conference on Small Business, people from all over the country identified Unfair Competition as the third most pressing concern. Yet there was no action other than elevate awareness. Even with as little as has been achieved, Colorado is among the leading states. There is a strong Colorado value that places a high regard on the rights of the individual, including the right to our property, to operate a business, and to not suffer discrimination by government.

H.B. 1009 - In 1988 House Bill 1009 became law. The statute declares that state agencies, including institutions of higher education, "shall not engage in manufacturing, processing,...goods or services to the public which are also offered by private enterprise...." But the legislation becomes "hollow legislation" with its weak enforcement provision. Still weak as it is, 1009 is a step to recognize the problem and begin to address it.

S.B. 76 - Park and recreation districts were not governed by HB 1009. In essence, they were free to compete unfairly and they did. There were numerous incidents where they went into direct competition with roller rinks, bowling alleys, and miniature golf courses. The damaged businesses banded together in support of Senate Bill 76.

This bill was adopted by the Colorado Legislature in 1989. It attempted to clarify for all the legitimate scope of responsibility of park and recreation districts:

The general assembly hereby declares that park and recreation districts were established to provide recreational services and facilities which are not otherwise available to the residents of the districts. The general assembly further declares that such services and facilities should continue to be the priority of such districts, and that operation of facilities or activities which might otherwise be provided by private business persons and construction or operation of facilities or activities primarily to provide revenue for the district should not be within the scope of the authority of such districts.

The recent actions of park and recreation districts clearly demonstrate that they are still having some difficulty understanding their role. In 1991 alone, park and recreation districts went into the country club business, the golf course business, the restaurant business, the catering business and the motel business in blatant disregard of SB 76.

Governor's Statehouse Conference on Small Business and H.B. 1193 - In 1991, Governor Romer called for a Statehouse Conference on Small Business. It was to be the first since 1983. Each Legislator appointed two businesspeople as delegates and one as an alternate. The Governor appointed 50 and 25 respectively. Eleven regional meetings were scheduled throughout Colorado. The meetings were open to others and many more business people participated. Of the several hundred issues considered and prioritized by several hundred Colorado business leaders, Unfair Competition was determined to be the

second most important issue in Colorado. House Bill 1193 had its birth in the Governor's Statehouse Conference on Small Business. HB 1193 amended HB 1009 to prohibit all government agencies from competing with established businesses. HB 1193 did not apply to:

1. Government functions (which is most simply defined as the provision of "public goods").
2. Any pre-existing activities of government.
3. Commercial activities where there were no private suppliers.
4. Commercial activities that satisfied a set of parameters designated to evaluate need, adequacy of service, etc. It was required that the government give notice to the businesses with which it intended to go into competition.

If a business was damaged, it had a right to request restitution for damages only from the government entity that violated the law. No punitive damages were allowed. To avoid the cost of a new government policing agency or the cost to all parties of civil court proceeding, the recommended adjudication procedure had two steps:

- a. The perceived damaged business must be heard by the policy board of the perceived encroaching government.
- b. If the business and government cannot reconcile the problems, they may request arbitration. The additional benefit of arbitration is that a \$300 fee must be paid to the American Arbitration Association to initiate the process, so a degree of protection from frivolous complaints is offered to government agencies.

On February 4, 1992, the House Business Affairs Committee heard testimony from many business owners who had been damaged or destroyed, and H.B. 1193 passed committee by an 8-4 vote. On February 25, 1992, H.B. 1193 died on third reading on the House floor with a vote of 32-30.

HB 1215 - House Bill 1215 was sponsored by Rep. Pat Grant and introduced in 1992 also. It was a follow-up to SB 89-76 and was initiated by a group of athletic club owners who were concerned about continuing encroachments into their markets by park and recreation districts. It was killed in the House Committee on local government. Park and recreation districts lobbied hard to defeat HB 1215, suggesting that their agenda probably includes more aggressive intrusions against tax paying athletic clubs.

Colorado Coalition For Fair Competition (CCFC) - Through the Statehouse Conference Regional Meetings, six trade association groups and over a dozen delegates had banded together to resist Unfair Competition. At the Statewide Conference Meeting

on November 11, 1991, several more Trade Associations, Delegates and Issue Advocates joined with the effort. A poster was posted with a list of Colorado industries impacted by government competition.

After the Statehouse Conference, delegates concerned with Unfair Competition recruited CACI (Colorado Association of Commerce and Industry) to lead and assemble a lobbying coalition, named CCFC. The first meeting was December 20, 1991. By February 20, 1992, CCFC included 54 professional and trade associations representing an estimated 10,000 businesses. CCFC documented dozens of encroachments by all levels of government in all parts of Colorado and in many more industries than one would think possible.

Lakewood Initiative - In an effort to recognize the problem of Unfair Competition and to develop an approach in the most positive and constructive light possible, the City of Lakewood joined with the West Chamber and on August 8, 1992 convened a series of facilitated meetings between numerous business and government representatives throughout Jefferson County. After months of meetings, a consensus was reached on a voluntary notification procedure to be adopted by local governments. In essence, when a government planned to go into an area of commercial activity, the potentially effected businesses and trade organizations would be notified. The assumption, of course, is that governments are destroying businesses through ignorance rather than malice, with proper notice and a hearing, the problem would cease.

A subcommittee was appointed and charged with presenting the recommended procedure to the governments of Jefferson County and securing formal resolutions from each government adopting the procedure. Lakewood quickly adopted and implemented the procedure in February, 1993. The subcommittee is due to report back to the entire group in six months.

1993 Legislative Session - Two bills regarding Unfair Competition were introduced. They were essentially identical in scope: one dealing with special districts (HB 93-1294 by Rep. Pffifner), and the other dealing with other local and state governments (HB 93-1263 by Rep. Adkins). In a gesture of good faith to the many hundreds of hours invested in the Lakewood initiative, the CCFC committed to limit the scope of 1993 legislation to essentially the same process that had emerged from the Lakewood initiative: notification only, no penalties, no arbitration, no damages, no prohibitions, no liability limitation waivers were proposed. In short, HB 1263 and 1294 were very weak in dealing with the problem of Unfair Competition.

HB 1294 (Districts) failed in House Committee. The Special District Association has asked each of its member special districts to make a supplemental dues contribution (taxpayer dollars) to finance the employment of additional lobbyists to oppose Unfair Competition legislation.

HB 1263 passed the House, in part because as a result of amendments proposed by Rep. Adkins in the House Committee hearing, and Colorado Counties withdrew its opposition

to HB 1263. This left the Colorado Municipal League virtually without allies in opposing 1263. The CML was still able to kill the bill in a Senate Committee.

Colorado Municipal League (CML) - The opposition of CML and its unwillingness to consider even weak legislation on the Unfair Competition bill is interesting. Most people on all sides of the issue would agree that municipalities should not be burdened with unnecessary regulations. There seems, however, to be an unwillingness to acknowledge that there is a problem.

Concerns about CML's good faith elevated when memoranda such as that of March 18, 1993 are discovered. CML is evidently trying to read Amendment 1 as a directive for governments to go into commercial ventures to raise revenues to fund government growth. The new memo reads: "Amendment 1 provides that an enterprise can consist of any government owned business and does not purport to limit, by definition or otherwise, what a government owned business might be. *Amendment 1 could be read to favor liberal use of government owned businesses to provide services based on user fees rather than tax. Government owned business could be any legitimate activity which requires less than a 10% subsidy from taxes.*" (emphasis added)

By CML's interpretation of Amendment 1, governments have been directed to go into commercial ventures and to use their privileged standing to compete unfairly with private businesses.

The Future

Given the Colorado Municipal League's success in crushing even modest reform legislation, Colorado small and large business may find themselves increasingly disadvantaged by unfair government competition.

At this writing the same groups that have attempted to pass the legislation are studying the possibility of achieving their goals through the statewide initiative process. CACI and CCFC and several trade groups have met to discuss: (A) Whether it is feasible to pass a meaningful law via the initiative route, (B) How far that law should go (i.e., should it include mandatory privatization provisions), (C) Who will lead the effort, and, (D) How will it be paid for. The beauty of the initiative route is that the resulting law can be one with teeth because it will not be gutted by legislators bowing to the CML, CCI, or the special district Association. Governments can hire lobbyists but they can't (legally) contribute to political campaigns.

The legislative process seems more able to apply its mechanisms of trading off extremes to interpret and expand upon an effective mechanism of establishing or reinforcing a fundamental principal.

Unfair Competition has its roots in the right of the people to own property. It is very unlikely that the people are ready to abandon the principal of property rights.

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