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California State Senate

SENATE SELECT COMMITTEE ON INTERNATIONAL TRADE POLICY AND STATE LEGISLATION

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SENATOR
LIZ FIGUEROA
CHAIR



May 28, 2004

Honorable Arnold Schwarzenegger
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Schwarzenegger:

We are writing to express our deep concern over the commitment you recently made to the Office of the United States Trade Representative (USTR), with no consultation with the state legislature, in which you volunteered California to be bound under the procurement chapters of the U.S. - Australia Free Trade Agreement. We also understand that in the coming weeks you will be making a decision on committing California to procurement chapters of additional trade agreements, including the Central American Free Trade Agreement (CAFTA), the Free Trade Area of the Americas (FTAA), and the South African Customs Union (SACU).

We are concerned that your consent to international procurement agreements could jeopardize important California procurement laws promoting economic development, environmental protection, and human rights. We consider the failure to consult with the legislature on this vital matter extremely problematic. We are particularly dismayed in light of correspondence dated March 10, 2004 in which Senator Figueroa requested a meeting to discuss this important issue prior to committing California to any upcoming procurement chapters of trade agreements. As you know, determining procurement policies is a responsibility of state legislatures and city councils. Therefore, the USTR's decision to request consent solely from state governors, without consulting state legislatures, undermines this authority.

California's procurement laws allow us to use our market power to reflect the values of our constituents and ensure that tax dollars are spent in a reasonable manner. For example, California uses procurement laws to strengthen our economy, reduce environmental damage, and promote fair labor standards. International trade agreements generally prohibit governments from basing purchasing decisions on the method of production, and only allow governments to set standards for the performance or quality of the purchased materials. Although recent agreements offer some exceptions to these principles, many of our priorities are not protected, including important existing and proposed California purchasing preferences, including but not limited to:

- California's laws prohibiting purchasing from companies that use sweatshop labor.

Procurement chapters of trade agreements generally restrict states from using purchasing criteria beyond those standards "that are essential to ensure that the supplier has the legal, technical and financial abilities to fulfill the requirements and technical specifications of the

procurement.” Therefore, “sweat-free” procurement rules that ban the purchase of goods from companies using sweatshop or child labor are forbidden, as is the exclusion of companies based on their international human rights and environmental records.

- California’s recycled content procurement requirements for paper and other products, and California’s standards for renewable energy purchasing.

Procurement chapters of trade agreements generally require that “procuring entities not prepare, adopt or apply any technical specification describing a good or service with the purpose of the effect of creating unnecessary obstacles to trade... and that technical specifications are limited to performance requirements rather than design or descriptive characteristics.” Therefore, California would be prohibited from making purchasing decisions based on how a good is made or how a service is provided. This would place laws requiring the state to purchase paper with recycled content and laws requiring partial energy procurement from renewable sources in violation of trade agreements.

- Preferences for California companies in contract bidding and potential legislation to address outsourcing of public sector jobs.

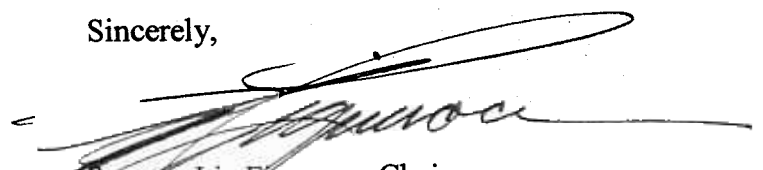
Procurement chapters of trade agreements generally require “national treatment” for all goods and services that a government purchases. Therefore, laws giving preference to local firms or firms employing local workers, or laws prohibiting state tax dollars from being spent on companies that outsource work overseas would be in violation of trade rules. California’s commitment to procurement chapters of trade agreements could place our established “Buy California” or “California Grown” policies in violation of trade agreements, as well as current outsourcing legislation.

We support trade and fully acknowledge the economic and social benefits trade brings to the economy of California. In addition, we feel equally strongly that California must act to ensure that our laws are protected. It is critical for California to maintain our ability to protect current procurement laws and enact future laws that reflect our values.

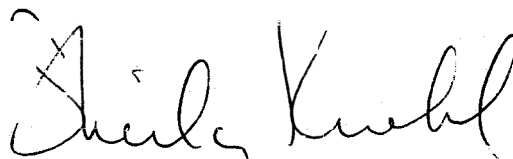
For these reasons, we request that you write to the Office of the U.S. Trade Representative and withdraw California from the list of states volunteering to be bound by the procurement rules in upcoming trade agreements. Furthermore, we ask for the opportunity to meet with you and discuss these important issues before you commit California to be bound by future procurement chapters of trade agreement.

Thank you for your consideration of these important concerns, and we look forward to working with you.

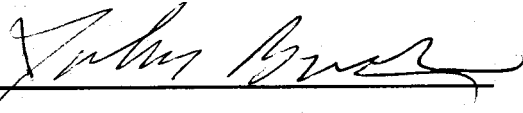
Sincerely,



Senator Liz Figueroa, Chair
Senate Select Committee on
International Trade Policy and State Legislation



Senator Sheila Kuehl, Vice-Chair
Senate Select Committee on
International Trade Policy and State Legislation



Senate President Pro Tem John Burton



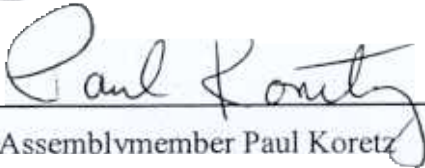
Assembly Speaker Fabian Núñez



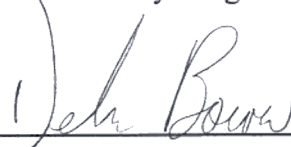
Assemblymember Jackie Goldberg



Assemblymember Patty Berg



Assemblymember Paul Koretz



Senator Debra Bowen



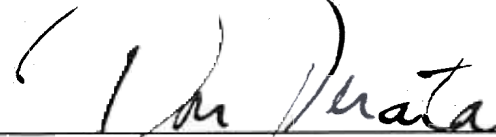
Assemblymember Loni Hancock



Assemblymember Carol Liu



Senator Gloria Romero



Senator Don Perata



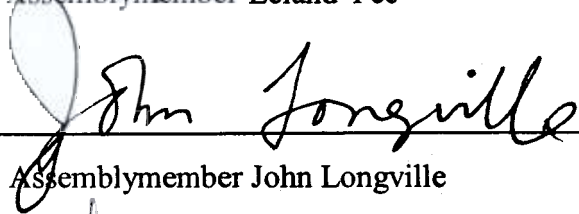
Assemblymember Pat Wiggins



Assemblymember Leland Yee



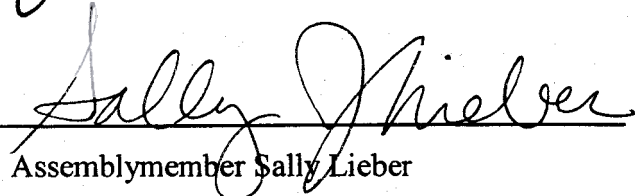
Assemblymember Lloyd Levine



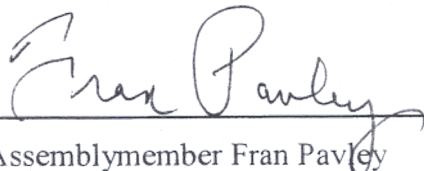
Assemblymember John Longville



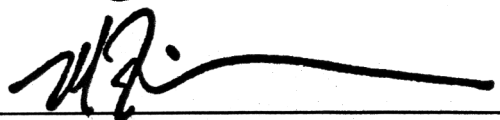
Senator Gilbert Cedillo



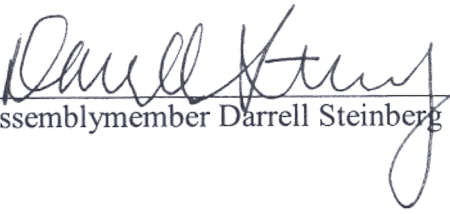
Assemblymember Sally Lieber



Assemblymember Fran Pavley



Assemblymember Marco Firebaugh


Assemblymember Darrell Steinberg