# COUNCIL FOR LABELING UNIFORMITY

## FOR FOOD, DRUGS, COSMETICS, AND DEVICES

FOOD INDUSTRY
American Bakers Association
American Butter Institute
American Dairy Products Institute
American Frozen Food Institute
American Meat Institute
Association for Dressings and Sauces
Biscuit and Cracker Manufacturers Association
Calorie Control Council
Chocolate Manufacturers Association of the U.S.A.
Committee for Accurate Labeling and Marketing
Concord Grape Association
Enteral Nutrition Council
Enzyme Technical Association
Food Industry Safety Council
Food Marketing Institute
Infant Formula Council
Institute of Shortening and Edible Oils, Inc.
International Food Additives Council
International Hydrolyzed Protein Council
International Ice Cream Association
International Jelly & Preserves Association
Milk Industry Foundation
Millers' National Federation
National-American Wholesale Grocers' Association
National Association of Margarine Manufacturers
National Bakery Suppliers Association
National Cheese Institute
National Coffee Association of the U.S.A.
National Confectioners Association of the U.S.A.
National Food Processors Association
National Juice Products Association
National Kraut Packers Association
National Pecan Shellers Association
National Potato Council
National Restaurant Association
National Single Service Food Association
National Soft Drink Association
Pickle Packers International
Processed Apples Institute
Produce Marketing Association
Snack Food Association
The Tea Association of the U.S.A.
The Vinegar Institute
United Fresh Fruit & Vegetable Association
Western States Meat Association

PRESCRIPTION DRUG INDUSTRY
National Association of Pharmaceutical Manufacturers
National Pharmaceutical Alliance
Pharmaceutical Manufacturers Association
The Oral Contraceptive Council

OVER-THE-COUNTER DRUG INDUSTRY
The Proprietary Association

COSMETIC INDUSTRY
Cosmetic, Toiletry and Fragrance Association
Independent Cosmetic Manufacturers and Distributors

ANIMAL DRUG INDUSTRY
Animal Health Institute

PACKAGING INDUSTRY
American Paper Institute
Can Manufacturers Institute
Flexible Packaging Association
Society of the Plastics Industry
Glass Packaging Institute

DEVICE INDUSTRY
Health Industry Manufacturers Association

BIOTECHNOLOGY INDUSTRY
Association of Biotechnology Companies

TO: CLU Affiliates September 21, 1987

FROM: CLU Legal Committee

At the last meeting of CLU Affiliates, the Legal Committee was directed to prepare a memorandum on possible litigation strategies for challenging California Proposition 65. Attached for your review is a copy of the Legal Committee memorandum which will be discussed at the CLU Affiliates meeting scheduled for 10:00 a.m. on Friday, September 25, 1987 on the 2nd Floor in Conference Room B at the University Club, 1135 Sixteenth Street, N.W., Washington, D.C. 20036. Please note the change of the meeting location.

Richard D. Manthei

Enclosure

RDM/mh

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**TO:** CLU Affiliates **September 21, 1987**

**FM:** CLU Legal Committee

**SUBJECT:** Possible Litigation Strategies for Challenging California Proposition 65

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As February 27, 1988, the deadline for compliance with the first public warning requirements of Proposition 65, is approaching with no prospect of immediate relief for FDA-regulated industries, the CLU Legal Committee has been asked to review possible legal challenges to Proposition 65 and to present a series of options for consideration by CLU affiliates. This memorandum reviews those options and will also review the tactical and procedural issues involved in planning for and executing lawsuits challenging Proposition 65.

### I.
### RECOMMENDATIONS

After a number of meetings and much discussion, the CLU Legal Committee recommends that:

1. Preparation for litigation, seeking a declaratory judgment that Proposition 65 is unconstitutional and seeking an injunction against its enforcement, be commenced immediately.

2. The suit not be filed until the federal government has had further opportunity to preempt, provided that the suit must be filed in time to give the court an opportunity to act prior to February 27, 1988.

3. A subgroup of CLU affiliates, e.g., a Litigation Committee, be established (and presumably incorporated) to collect the necessary funds and to administer their use. Since one trade association represents the vast majority in each of the prescription and over-the-counter drug industries, cosmetic industry and device industry, and since those industries may wish to file their own lawsuits, the Litigation Committee may consist only of food industry trade associations and

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