



OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

For Immediate Release:
August 11, 2004

Contact: Carla Corbin
Elections Division
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on August 10, 2004, for initiative petition #3, proposing a statutory amendment, for the General Election of November 7, 2006.

In addition, Secretary of State Bill Bradbury determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

LIMITS COMPENSATION OF ATTORNEY(S) FOR INDIVIDUAL PLAINTIFF IN ALL PERSONAL INJURY OR WRONGFUL DEATH CLAIMS

RESULT OF "YES" VOTE: "Yes" vote limits maximum compensation to attorney(s) for plaintiff in a personal injury or wrongful death claim (other than certified class action) to \$100,000.

RESULT OF "NO" VOTE: "No" vote retains current law, which imposes no set monetary limitations on plaintiff's attorney fees for claims arising out of personal injury or wrongful death.

SUMMARY: Current law places no limit on fee agreements between injured individuals, their spouses, or legal representatives and attorneys who agree to represent them, unless resulting fee is excessive or illegal. Measure limits attorneys' fees in all claims for personal injury or death to a maximum of \$100,000, regardless of the result achieved. Measure does not apply to certified class actions. Measure applies to arbitration, mediation, and settlement, as well as litigation. Limitation applies to each individual claim made, regardless of the number of attorneys representing the injured individual and regardless of the number of individuals or entities against whom claim is made. Limitation does not apply to attorney fees for attorneys for the individuals or entities that caused the injury or death. Other provisions.

Chief Petitioner(s): James L. Wilson, 2450 Reindeer Ave NW, Salem, OR 97304 and Monica C. Wehby, 6010 SW Orchid Dr, Portland, OR 97219.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$.50. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, Room 141 State Capitol, Salem, OR 97310-0722.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on August 24, 2004. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2006 general election ballot is 75,630. These signatures must be filed in this office not later than July 7, 2006.

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DEPARTMENT OF JUSTICE
APPELLATE DIVISION

RECEIVED
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August 10, 2004

BILL SWABURY
SECRETARY OF STATE

John Lindback
Director, Elections Division
Office of the Secretary of State
141 State Capitol
Salem, OR 97310

Re: Proposed Initiative Petition — Limits Attorney Fees Charged To Individual Plaintiff In
All Personal Injury, Wrongful Death Claims
DOJ File #BT-3-04; Elections Division #3

Dear Mr. Lindback:

Pursuant to ORS 250.067, we have reviewed the comments submitted by Steven C. Berman on behalf of Arwen Bird; Steven Novick; and Michael D. Crew. In response to those comments and our further review of the proposed measure, we have modified the draft caption, result statements, and summary.

This letter summarizes the comments we received and our response to those comments. We suggest that this letter be included in the record in the event that the Oregon Supreme Court is asked to review the enclosed certified ballot title.

Legal Standards

ORS 250.035(2)(a) requires, in the case of a ballot measure that amends the Oregon Constitution, a caption of not more than 17 words that reasonably identifies the subject matter of the measure. ORS 250.035(2)(b) and (c) require “a simple and understandable statement of not more than 25 words that describes the result if the state measure is approved” and “a simple and understandable statement of not more than 25 words that describes the result if the state measure is rejected.” Those statements “shall be written so that, to the extent practical, the language of the two statements is parallel.” ORS 250.035(3). The summary for a state measure must summarize the measure and its major effect in 125 words or fewer. ORS 250.035(2)(d).

The Caption

The draft caption prepared by this office was as follows:

**CAPS ATTORNEY FEES CHARGED TO PLAINTIFFS IN PERSONAL
INJURY, DEATH CASES (OTHER THAN CLASS ACTIONS)**

All three commentators object to the draft caption. Mr. Crew posits that the use of the word “caps” is inaccurate; Mr. Berman also asserts that the word is politically charged. Mr. Novick also suggests that the word “limits” be used instead. We believe that “limits” does better convey the subject matter of the proposed measure, and we have adopted that suggestion.

Mr. Crew correctly points out that the use of the plural “plaintiffs” and “cases” is inaccurate; Mr. Novick suggest that the word “individual” be used to convey that the measure does not apply to class actions. Both observations are correct, and we have adopted these suggestions.

Mr. Novick objects to the use of the term “charged” as politicizing and potentially misleading. Mr. Berman also objects to the phrasing of the draft caption; he posits that attorney fees are actually paid by the defendant and therefore are not chargeable to the plaintiff at all. Nonetheless, under fee agreements commonly in use, the fee is the responsibility of the plaintiff, although it may in most cases be paid from any recovery obtained from the defendant. We do not believe that it is accurate to state that the fees are the defendants’ responsibility. It is also inaccurate to suggest, as Mr. Berman does, that the measure restricts the right to hire an attorney. We have revised the caption to reflect that the subject matter is attorney compensation and have eliminated the reference to charging.

Mr. Berman correctly points out that the limitation applies to settlements as well as to cases filed in court, and we have changed the caption accordingly. We have also implemented his suggestion that the caption make clear that the measure applies to each plaintiff, regardless of the number of attorneys involved, and have changed the caption to reflect that the limitation applies to all personal injury and wrongful death claims. The caption continues to reflect that the measure limits only compensation to attorneys for plaintiffs.

Accordingly, we certify the following caption:

LIMITS COMPENSATION OF ATTORNEY(S) FOR INDIVIDUAL PLAINTIFF IN ALL PERSONAL INJURY OR WRONGFUL DEATH CLAIMS

The Result Statements

We submitted the following draft result statements:

RESULT OF “YES” VOTE: “Yes” vote limits to \$100,000 the attorney fees charged to plaintiffs in personal injury or wrongful death cases other than in certified class actions.

RESULT OF "NO" VOTE: "No" vote retains current law lacking monetary cap charged to plaintiffs in personal injury, wrongful death cases, allowing fees to be negotiated.

All three commentators continue their objections to the caption with reference to the result statements. In addition, Mr. Berman objects to the use of the term "lacking" in the "No" statement. On reflection, we agree that the word is at best inartful and potentially misleading, and we have eliminated it.

Mr. Novick argues that the result statements should emphasize that the limitation does not apply to fees of lawyers for defendants. We believe that the result statements already make this clear by referring only to plaintiffs.

We have modified that result statements as follows:

RESULT OF "YES" VOTE: "Yes" vote limits maximum compensation to attorney(s) for plaintiff in a personal injury or wrongful death claim (other than certified class action) to \$100,000.

RESULT OF "NO" VOTE: "No" vote retains current law, which imposes no set monetary limitations on plaintiff's attorney fees for claims arising out of personal injury or wrongful death.

As modified, we certify the result statements.

The Summary

We prepared the following draft summary:

Current law places certain requirements and restrictions on contingent fee agreements between attorneys and their clients, but current law does not regulate the amount of the fee that can be negotiated between an attorney and the client, provided that the resulting fee is neither excessive nor illegal. Measure limits to \$100,000 the amount of attorney fees that an attorney can charge plaintiffs in all civil actions for damages arising out of bodily injury or death, not including certified class actions. The limitation does not include actual expenses and costs reasonably incurred by the attorney(s). Limitation applies only to attorney(s) representing the injured party (plaintiff). Cap applies regardless of the number of attorneys involved or the amount of the settlement or award obtained. Other provisions.

Once again, all three commentators reiterate their previous comments. In addition, Mr. Berman correctly notes that the measure applies to both contingent and hourly fees. Mr. Berman also argues that the summary should make no reference to expenses, because attorneys are often forced to "eat" those expenses. While that may be true, expenses remain the responsibility of the

client. However, we do not believe that reference is essential to an accurate description of the proposed measure.

For consistency, we have adopted Mr. Berman's suggestion that the summary parallel those previously approved by the Supreme Court. Accordingly, we have modified the draft summary:

SUMMARY: Current law places no limit on fee agreements between injured individuals, their spouses, or legal representatives and attorneys who agree to represent them, unless resulting fee is excessive or illegal. Measure limits attorneys' fees in all claims for personal injury or death to a maximum of \$100,000, regardless of the result achieved. Measure does not apply to certified class actions. Measure applies to arbitration, mediation, and settlement, as well as litigation. Limitation applies to each individual claim made, regardless of the number of attorneys representing the injured individual and regardless of the number of individuals or entities against whom claim is made. Limitation does not apply to attorney fees for attorneys for the individuals or entities that caused the injury or death. Other provisions.

As modified, we certify the summary.

Very truly yours,

Denise G. Fjordbeck
Assistant Attorney General

DGF:mlk/APP70253

Enclosure

c: Peter Shepherd, Deputy Attorney General
Don Arnold, General Counsel Division
Lynn Rosik, General Counsel Division

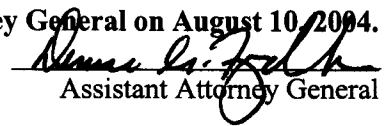
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Assistant Attorney General

BALLOT TITLE

**LIMITS COMPENSATION OF ATTORNEY(S) FOR INDIVIDUAL
PLAINTIFF IN ALL PERSONAL INJURY OR WRONGFUL DEATH
CLAIMS**

RESULT OF "YES" VOTE: "Yes" vote limits maximum compensation to attorney(s) for plaintiff in a personal injury or wrongful death claim (other than certified class action) to \$100,000.

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