

## HOD Resolution in opposition to pending ballot initiatives

*Whereas*, Oregon Revised Statutes 9.080(1) charges the Board of Governors to “direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice,” and

*Whereas*, the mission of the Oregon State Bar includes promoting the application of the knowledge and experience of the profession to the public good; and

*Whereas*, three initiative petitions have been filed for the November 2008 elections which, if approved by the voters, would adversely affect the administration of justice; and

*Whereas*, Initiative Petition #2 would prohibit an appointed judge from being considered an incumbent or designated as such in the first election following the judge’s appointment, depriving voters of truthful and objective information about those candidates; and

*Whereas*, although lawyers are already prohibited from charging clearly excessive fees, Initiative Petition #51 would limit access to the courts and the justice system for persons having meritorious cases as a result of the imposition of an arbitrary cap on the fees recoverable in all cases having a contingent fee agreement; and

*Whereas*, although courts already have the authority to sanction litigants for filing frivolous claims and motions, Initiative Petition #53 would mandate court- imposed sanctions against attorneys for filing frivolous litigation; and

*Whereas*, all three initiatives petitions are unnecessary, one-sided and will adversely effect the administration of justice in Oregon; now, therefore be it

Resolved, That:

1. The Oregon State Bar opposes Initiative Petitions #2, 51, and 53;
2. All members of the Oregon State Bar are urged to communicate to their clients and others the harmful effect that these initiatives would have on informed choices in judicial elections, the public’s access to justice, the operation of the free market to regulate contracts, and the orderly administration of justice; and
3. The Board of Governors should take reasonable and necessary action to oppose such initiatives.

### *Proponent's Statement*

The Board of Governors believes that three initiative petitions filed for the November 2008 election would, if passed, have a deleterious effect on the legal system and the administration of justice.

Initiative petition #2 would prohibit appointed judges from being designated as incumbents on the ballot in the first election after appointment. Information that a judicial candidate already holds office is especially important to the public, since information about judicial candidates in general is scarce. If passed this initiative would deny the public basic, useful information about judicial candidates. It is unnecessary and a waste of taxpayer dollars. The Bar has previously opposed, and the public has previously rejected, similar initiatives.

Initiative petition #51 would regulate contingent fee contracts by capping the amount of contingent fees that lawyers and clients may otherwise chose to negotiate. It would limit fees to 25 percent of the first \$25,000 recovered, and 10 percent of recoveries over \$25,000. This initiative is unnecessary and one sided. This initiative would affect every type of case and circumstance, including business litigation, contract disputes, collection claims, real estate, personal injury and products liability cases, property and environmental claims, construction defect cases, employment disputes, wage claims, anti-trust and investment disputes, consumer protection cases, and many other cases in which contingent fees are used and allowed. Access to justice, especially for middle and low income individuals, working families, and small businesses would be severely restricted. This initiative also is unbalanced because it does not restrict the fees that may be collected in defense of cases where an opponent has extensive financial resources. This initiative would result in the growth of the use of hourly fees charged to clients, hurting all businesses in Oregon who would lose flexibility, and ultimately may pay more in attorney fees to resolve legitimate claims. This initiative is also unnecessary because Oregon already has rules in place to limit excessive attorney fees, and has a competitive market for legal services that permits clients to freely negotiate the most economical terms for legal representation. Finally, Measure 51, proposed and financed by interests outside the state, does not reflect the values of Oregonians.

Initiative petition #53 requires the court to sanction attorneys for filing frivolous pleadings or motions. This initiative is unnecessary because existing state and federal rules of civil procedure, already allow the court to impose sanctions against attorneys. If the intent is to discourage frivolous litigation, existing rules are better tools, since they allow the court to impose sanctions against litigants as well as attorneys.

The proponents of these initiatives have until July 3, 2008 to submit the requisite signatures for the initiatives to be on the November 2008 ballot. All three initiatives are statutory changes; none amend the constitution. News accounts report that such measures are likely to qualify for the Ballot prior to the next meeting of the House of Delegates.

Approval of this resolution will put the Oregon State Bar on record as opposed to these initiative petitions based on their adverse effects on judicial elections, the public's access to justice, and the orderly administration of justice.