

**Oregon State Bar Testimony in Opposition to HB 2520
House Judiciary Committee – March 14, 2013**

The Oregon State Bar would like to express its concerns regarding House Bill 2520.

Oregon has a long history of making our court system open and accessible to unrepresented parties. As lawyers, we have all had occasions to deal with unrepresented parties who are unfamiliar with the legal process. In many cases, these parties may slow down the legal process by filing inappropriate claims or motions. In rare cases, we see individuals who appear willing to file seemingly frivolous motions which, as lawyers, we know have no chance of succeeding.

Despite the difficulties caused by these pro se litigants, we are uncomfortable with designating a group of Oregonians as unsuitable to appear in court without an attorney. Access to the court system is an important right in our system of government, and restrictions placed on that access are extremely concerning.

The definition of “vexatious litigant” proposed by Section 1 the bill could easily ensnare well-intentioned citizens who genuinely believe they have meritorious claims. Moreover, the definition applies only to litigants who have filed claims without representation, and who are thus least able to defend themselves from arguments that their legal filings were frivolous.

We are concerned that this bill acts as a machete when a scalpel is necessary. For example, this bill would permit anyone who believes that a claim might be filed against them to file a motion to designate a would-be plaintiff as vexatious, potentially making it more difficult and expensive for the would-be plaintiff to ultimately file his or her claim. This example would appear to be true even in cases where the party moving to designate a person as a vexatious litigant has never had a claim filed against it by the potential plaintiff before.

The requirement to post a surety bond in Section 2 is likewise troublesome, because it would include even cases where the plaintiff actually is represented by counsel. In these cases, the lawyer who took the case is already under an ethical obligation not to file frivolous claims or motions. Nonetheless, the law would still require the plaintiff to defend himself against claims that his filings are vexatious, potentially raising the cost of litigating the claim even further. The increased cost would not be small but rather significant, thereby compromising one's access to justice.

It is critically important that all Oregonians have access to Oregon's court system. The Oregon State Bar is extremely concerned about creating any but the most minimally intrusive barriers to court access, even if those barriers are well intentioned. We believe that any restrictions in this area should be very narrowly tailored and that we should proceed cautiously.