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Dear Chair Prozanski, Vice-Chair Close, and members of the Committee:

I am a professor of civil procedure at Willamette University College of Law, and write to express my views regarding HB 4143, which would alter procedures for assessing damages in class actions in the courts of this state.

Let me first note that I fully support development of a mechanism that would provide financial support for legal aid programs in the state, and that the underlying intent of a bill like this one offers a good solution.

I am, however, concerned that the bill, as drafted, proposes significant changes in the process associated with allocating money damages in class actions without the involvement of the Council on Court Procedures (CCP), the statutory entity that is charged with developing and clarifying the Oregon Rules of Civil Procedure. Making procedural changes to a process as significant as this one is a task that can easily lead to unintended consequences. Given its statutory charge, as well as the makeup and expertise of its membership, the CCP is the entity that is in the best position to identify and avoid those consequences.

This bill effectively alters the basis for class action recovery in the state, instituting a “fluid class recovery” system similar to systems that were previously rejected by the Legislature in 1980, and then again in 1992 (as part of its internal processes) by the Council on Court Procedures. While it is certainly the Legislative Assembly’s right to alter how money damages are allocated in class actions in the state, it brings with it serious consequences for class members, class representatives, and defendants. These consequences are magnified by the emergency clause of this bill. While many of these concerns can be tempered by the appropriate procedures – a fluid class recovery system has been adopted in a number of states, and is often used in the federal system as well, so I believe that constitutional concerns can be addressed – I do not think those procedures are clearly required by the bill as drafted.

It would be unfortunate, indeed, if the legislature’s good intent – to fund legal aid going forward in as quick a manner as possible – inadvertently led to a prolonged period of uncertainty in Oregon class actions, or even risked the validity of existing class agreements. While some legislative action directing the CCP to develop appropriate procedures for a fluid class recovery system seems entirely appropriate, I do not think it wise to adopt that system prior to a reasonable period of time for CCP involvement in its implementation.

Thank you for considering my remarks. Although I was unable to attend the hearing in person this morning, I would be pleased to answer any questions you might have.

Sincerely,

Jeff Dobbins