



December 3, 2025

Re: Initiative 25-002A1, So Called “Protecting Automobile Accident Victims From Attorney Self-Dealing Act”

Honorable Rob Bonta
Attorney General of California
1300 “I” Street
Sacramento, CA 95814-2919

Attorney General Bonta,

Consumer Watchdog writes with grave concern about the impact of this measure on injured consumers’ ability to get attorneys to take their cases. As a leading consumer group in California for 41 years, Consumer Watchdog has seen many attorney contingency fee proposals over the last four decades and this is among the most Draconian.

A large body of research (summaries attached) shows that contingency fee limitations restrict injured consumers’ access to attorneys, particularly consumers of low or moderate income. This proposal, by establishing a hard 25% cap on all attorney cost recovery, including expert fees and costs, as well as a cap on medical costs recovery, disincentives attorneys from representing consumers in auto accident cases.

We respectfully urge your office to ensure the official title and summary clearly state that this initiative restricts consumers’ access to legal representation and the courts, particularly for low-income, elderly, and disabled Californians.

While this measure is framed as a cost-saving reform, it in fact imposes **severe new barriers** for injured individuals to obtain justice:

- By capping attorney contingency fees so that clients must retain 75% of the judgment *after costs are deducted*, the measure **makes it financially impossible** for attorneys to take on many cases—especially those with modest damages or complex liability.
- The initiative **limits medical compensation** not based on what treatment was needed, but based on narrow Medicare/Medi-Cal reimbursement formulas or the actual amount paid by insurers—even though the injured party may still owe more under a lien or receive no insurance support at all.

- It raises the burden of proof on medical liens to a “**clear and convincing” standard**—dramatically higher than the typical civil standard—further denying recovery to those who cannot afford to pre-pay for care or who lack insurance.

These provisions work in concert to **chill legitimate claims** and make it virtually impossible for many accident victims to obtain counsel. The **real effect** of the measure is not reform—it is **suppression of valid lawsuits** and the transfer of financial burdens onto Medi-Cal and taxpayer-funded systems, as the Legislative Analyst’s Office fiscal impact summary makes clear.

An excellent summary of the deleterious impact of the initiative on access to justice was recently published in the Sacramento Bee. (Nora Freeman Engstrom and Brianne Holland-Stergar, “Uber’s fight to lock poor plaintiffs out of the courthouse,” Sacramento Bee Opinion, November 18, 2025. Read more at: <https://www.sacbee.com/opinion/oped/article312954687.html#storylink=cpy>)

The people of California deserve to understand what they are voting on—not just technical legal changes, but a **structural shift in who can afford justice**.

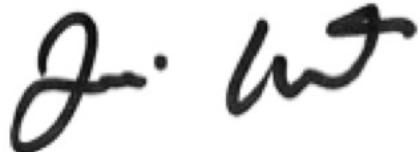
An obvious parallel in California history is what has happened under California’s Medical Injury Compensation Reform Act of MICRA, which similarly imposed a hard cap on both attorney contingency fees and capped recovery. For decades, injured patients, particularly low income and elderly, have been locked out of the legal system. This phenomenon has been well established. Consumer Watchdog has assembled videos and testimonies of injured patients who have suffered because they have no had access to the justice system.

(<https://consumerwatchdog.org/meet-the-patients/>)

The people of California should be forewarned that what appears like a technical change in their right to contract with an attorney will leave them without representation of an attorney.

Thank you for your careful review and your commitment to public transparency.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Court".

Jamie Court
President, Consumer Watchdog

Studies and Reports on Contingency Fees and Access to Legal Representation

This document summarizes selected empirical studies, economic analyses, and policy reports that address how contingency fees — and particularly statutory limits or caps on contingency fees — affect access to legal representation and the civil justice system. These sources collectively support the conclusion that restricting contingency reduces access to justice, especially for low- and middle-income plaintiffs and for complex or lower-value cases.

1. Helland, Eric – Contingent Fees and Access to Justice (Washington University Law Review / RAND, 2024–2025)

Citation: Helland, Eric. "Contingent Fees and Access to Justice." Washington University Law Review (forthcoming, 2024/2025).

Link: <https://wustllawreview.org/>

Summary: Using a large dataset of New York City tort cases, Helland examines how contingent fee arrangements affect access to the courts. He finds that contingent fees "at least partly" solve the access-to-justice problem, with poorer and minority plaintiffs filing and succeeding in tort claims at rates similar to or higher than those in richer ZIP codes. The paper concludes that contingent fees are a key mechanism enabling low-income plaintiffs to obtain representation who would otherwise be shut out of the civil justice system.

2. Civil Justice Council (UK) – Improving Access to Justice: Contingency Fees – A Study of Their Operation in the United States (2008)

Citation: Civil Justice Council. "Improving Access to Justice: Contingency Fees – A Study of Their Operation in the United States." UK Civil Justice Council, 2008.

Link: <https://www.judiciary.uk/related-offices-and-bodies/advisory-bodies/cjc/>

Summary: Commissioned by the the UK government, this report reviews the operation of contingency fees in the United States and their implications for access to justice. It concludes that contingency fees play an important role in enabling ordinary people to bring civil claims. The Council specifically finds that statutory caps on contingency fees can reduce the number of meritorious cases brought and limit access to justice.

3. Cotten, Stephen J., & Santore, Rudy – "Contingent Fee Caps, Screening, and the Quality of Legal Services" (*International Review of Law and Economics*, 2012)

Citation: Cotten, Stephen J., and Rudy Santore. "Contingent Fee Caps, Screening, and the Quality of Legal Services." *International Review of Law and Economics* 32, no. 3 (2012): 340–356.

Summary: This experimental and theoretical paper examines how caps on contingent fees affect clients and lawyers. The authors find that caps reduce the ability of clients to use fee contracts to screen for high-quality lawyers, lower client surplus, and can reduce the average quality of legal representation, even when caps appear non-binding. The economic model suggests that fee caps distort incentives and can lead to worse outcomes for clients seeking counsel.

Demonstrates that fee caps do not merely reduce lawyer income; they can harm clients by reducing access to higher-quality representation and undermining the screening function of contingency contracts.

4. Rubinfeld, Daniel L., & Scotchmer, Suzanne – *Economic Analyses of Contingency Fees* (various articles)

Citation: Rubinfeld, Daniel L., and Suzanne Scotchmer. Various works on the economic analysis of contingent fees, including influential articles in the *Journal of Legal Studies* and related venues.

Summary: Rubinfeld and Scotchmer developed foundational economic models of contingent fees, examining how they affect case selection and the filing of lawsuits. Their analyses show that contingent fees help align attorney incentives with case merit, while caps or restrictions on such fees lower the expected return from representing certain plaintiffs. This can result in fewer cases being brought, including some meritorious but moderate-value or high-cost cases.

5. Dwyer, James – "An Empirical Examination of the Equal Protection Challenge to Medical Malpractice Reform" (*Duke Law Journal*, 2006)

Citation: Dwyer, James. "An Empirical Examination of the Equal Protection Challenge to Medical Malpractice Reform." *Duke Law Journal* 55 (2006): 111–179.

Summary: In analyzing medical malpractice reforms, including California's MICRA, Dwyer surveys empirical evidence on how caps on damages and limits on attorney fees affect access to counsel. The article notes that California's statutory limits on contingency fees and recoverable

damages have contributed to a reduction in the number of malpractice claims brought, particularly for children, the elderly, and those with lower economic damages.

6. RAND Institute for Civil Justice – Studies on California’s MICRA and Medical Malpractice Litigation

Citation: See, e.g., Medical Malpractice: The Role of MICRA in California, RAND Institute for Civil Justice (various reports, early 2000s).

Link: <https://www.rand.org/jie/institute-for-civil-justice.html>

Summary: RAND’s work on California’s MICRA examines the combined impact of damage caps and statutory limits on attorney fees in medical malpractice cases. The reports document that many plaintiff firms reduced or ceased taking med-mal cases after MICRA because the expected fee—given capped damages and fee scales—often did not justify the cost and risk of litigation, especially in complex or smaller cases.

Provides empirical evidence that fee limits, alongside other restrictions, led to fewer lawyers willing to undertake medical malpractice cases in California, thereby limiting access to representation for injured patients.

7. Center for Justice & Democracy – "Courthouse Cornerstone: Contingency Fees and Their Importance for Everyday Americans" (2013)

Citation: Center for Justice & Democracy. "Courthouse Cornerstone: Contingency Fees and Their Importance for Everyday Americans." 2013.

Link: <https://centerjd.org/>

Summary: This advocacy report synthesizes empirical literature, case studies, and economic reasoning to argue that contingency fees are the primary mechanism enabling ordinary Americans to bring civil cases. It highlights how fee caps and other restrictions make it economically infeasible for many attorneys to take meritorious cases, especially those with modest damages or high litigation costs.

8. Kritzer, Herbert M. – "Risks, Reputations, and Rewards: Contingency Fee Legal Practice in the United States" (2004)

Citation: Kritzer, Herbert M. Risks, Reputations, and Rewards: Contingency Fee Legal Practice in the United States. Stanford University Press, 2004.

Summary: Based on extensive empirical research and interviews, Kritzer explores how contingency-fee practice operates in the United States. He shows that contingency-fee lawyers effectively screen cases for merit and rely on the potential upside in fees to justify taking riskier or costly cases for clients who cannot pay hourly rates. The book underscores that limitations on contingency fees would likely reduce the willingness of lawyers to take such cases.