

February 5, 2026

Greetings,

I submit this testimony on SB 1563 (2026) as a private citizen who is interested in good governance and precision in the legislative process. I am not taking a position on the legislation, but I submit these comments because I am concerned that the scope of the attorney-fee provision has not always been portrayed accurately in some testimony and other descriptions of the bill.

Some commenters have suggested broadly that SB 1563 (and similar bills introduced in earlier sessions) would simply do for claims based on alleged violations of the Oregon Constitution what 42 USC section 1983 does for certain claims based on alleged violations of the federal constitution. That is, SB 1563 is sometimes described as analogous to 42 USC section 1983. That is not entirely accurate, at least with respect to the attorney-fee provisions.

When a plaintiff prevails in a Section 1983 action, 42 USC section 1988 provides that, in most cases, “the court, in its discretion, may allow the prevailing party \* \* \* a reasonable attorney’s fee \* \* \*.” That is, the court *may* award attorney fees to a person who successfully sues for a violation of the person’s rights under the federal constitution. In its guide to Section 1983 actions, the Ninth Circuit Court of Appeals asserts that -- although prevailing parties should ordinarily receive a fee award unless special circumstances would make such an award unjust -- an attorney-fee award to a prevailing plaintiff may not always be appropriate, for example, if “the plaintiff sought compensatory damages, and only received nominal damages.” See [https://cdn.ca9.uscourts.gov/datastore/uploads/guides/section\\_1983/Section-1983-Revised-2024.pdf](https://cdn.ca9.uscourts.gov/datastore/uploads/guides/section_1983/Section-1983-Revised-2024.pdf) at pages 92 and 94 (citing cases). Thus, the court has at least some discretion to *not* award attorney fees to a prevailing plaintiff if the court finds that an award would be unjust or otherwise inappropriate.

SB 1563 (2026) does not give courts that kind of discretion. Instead, it states that, if a plaintiff successfully sues for a violation of Article I of the Oregon Constitution, the court “shall award reasonable attorney fees and costs to a prevailing plaintiff.” Thus, a court would be *required* to award attorney fees to a prevailing plaintiff, even if the court believes – and can articulate why – the circumstances of the particular case would make an attorney-fee award inappropriate.

As noted, I do not take a position on this legislation. I submit these comments only to emphasize the difference between the attorney-fee provisions of SB 1563 and the attorney-fee provisions that apply to actions under 42 USC section 1983.

Thank you for taking the time to consider my comments.

Respectfully,

Erika Hadlock