

# BALINT'S BULLETIN

## CLIENT LAW UPDATE

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### Elections Endorsements

The general elections will be on November 6, 2018. This may be the most important midterms in a generation. Please vote if you are registered, and please register if you haven't. It's so easy in Washington—your ballot is mailed to you then all you have to do is color in an oval. Even the return postage is free this election! The following endorsements are based on two limited factors: support for the rights of injured persons and safety of the public, i.e., preventing harm.

### Congressional Offices

In Congressional District 3, Carolyn Long. In Congressional District 4 Christine Brown. In District 5, Lisa Brown. In District 8, Kim Schrier. This last one deserves a bit of explanation. Dr. Schrier's opponent, Dino Rossi, has consistently promoted limitations on the rights of injured persons. True to form, Mr. Rossi has engaged in offensive negative campaign advertising which relies on the ignorance of voters. His ads claim Dr. Schrier has, in her medical practice, engaged in dishonest medicine. However, she is a member of a huge medical clinic and none of the conduct criticized by Mr. Rossi pertains to her personally. It seems like he will do anything to get elected to some office at some time.

### State Supreme Court Race

The State Supreme Court is a crucial part of our Washington government. For Position 8 on the State Supreme Court, I strongly endorse Justice Steve Gonzalez. He is highly qualified, which is reflected in his ratings. I have had my disagreements with some of his

opinions (especially recently) but nevertheless he cares about justice. His opponent, Nathan Choi, is not qualified to be a judge in any court, let alone our state Supreme Court. He is counting only on ethnic issues, both for himself and against Justice Gonzalez. He has been sanctioned by the Washington State Bar Association for misconduct and further investigations remain pending. If elected, he would be a disaster for our justice system.

### Initiatives

I recommend voting for Initiative 1631 which empowers our state to do its part in what is probably one of the most pressing issues facing our country and the world—climate change. A company that pollutes the environment should be made to be responsible for those damages. Environmental harm should be part of a company's pricing and factored into profit calculations. Yet what many companies simply do now is transfer the costs of pollution to the general community. In other words, we the citizens end up suffering the harms, letting the polluters off without having to accept any responsibility.

I recommend voting for Initiative 1639 relating to firearm safety. I believe that people who sell and own guns should be responsible for misuse that causes harm to others. 1639 is not a "gun-control" law. Rather, it is a public safety and common sense regulation.

I recommend voting no on Initiative 1634. Big business, including the junk food and beverage industries, want to continue to produce and promote products they know are

likely to harm consumers in the long run. Again, they want to enjoy unrestricted profits and to continue to outsource the harms their products cause to the very people who consume their products.

### Children as Collateral Damage

Children separated from their parents at the border are frequently in the news. This occurs when immigrants or those seeking refugee status enter the United States illegally and are arrested. Once the custodial adult is arrested and incarcerated, their children are removed from them. Sometimes there is a relative somewhere in the United States who can care for the children until the parent's legal status is resolved. Otherwise the children are put into foster care or institutions. The images in the news of terrified children and desperate parents breaks my heart. It is outrageous. The children may suffer permanent psychological damages. But separating children from parents has a long history. How? In the criminal justice system, when a person with minor children is arrested, the

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children are not, of course, included in the incarceration. They go to next of kin or some other responsible adult selected by the parent, or are placed in foster care pending the release of the parent from incarceration. This probably happens hundreds of times a day in our country whenever, for example, a single mother is arrested. In many cases, when a pregnant woman is arrested, and she gives birth, the child is taken away from her in a similar fashion. I don't see how the trauma for the child is any less whether the crime is illegal immigration or any other crime. Where is the outrage? Where are the reformers to propose changes in our system to reduce this collateral damage to children? Most of the time these collateral damages remain hidden and don't make the news. It is time we change that.



### Distracted Driving-the New Law

The new Washington State distracted driving law took effect on July 23, 2018. It has been estimated that at any given time up to 10% of drivers are holding a device in their hands while driving. The law already prohibited texting while driving as well as holding a device up to a driver's ear. Despite some enforcement efforts, the existing law was so easy to evade that it was considered ineffectual. The new law prohibits all uses of hand-held devices, including composing or reading messages, watching videos, or Facebook postings. It is illegal to use these devices even while at a stop light or stop sign. They can be used legally only when the car is stopped off-road. Built-in electronic systems, including phones, are legal as is talking on a phone properly mounted on a cradle so that it does not have to be handled

manually. Police will be more vigilant about issuing tickets. The fine will be \$136 for the first offense and \$235 for the second offense. More importantly, this crime becomes reportable to insurance companies and will have the effect of raising insurance rates. So my advice is, just don't do it. In fact, I encourage my friends and clients not to talk on the phone at all, even on legal devices, while driving. For the most part, multitasking like this is impossible and creates needless danger

### Homelessness in America-Just the Facts, Ma'am

Sometimes it seems as though homeless encampments are everywhere. We see them beneath freeway overpasses, vacant lots and church parking lots. How bad is the problem and who are these people? According to the Federal Center for Disease Control (CDC) there were about 554,000 people defined as 'homeless' on any given night in 2017. Despite the booming stock market and the low rate of unemployment, the problem has been inexorably growing. Not all people classified as "homeless" actually live on the street. Two-thirds of the homeless live in some kind of shelter or temporary housing, such as homeless shelters, stay with friends, or are put up temporarily in motels. Who are these people? It is estimated that one-fourth of people are classified as homeless due to mental illness, alcoholism, or drug addiction or any combination thereof. Here is the shocking statistic: 75% of the homeless in America fall into that status simply because they cannot afford housing of any kind. We all know how rapidly the cost of houses has escalated. Increased cost of renting homes or apartments has skyrocketed across the country. Wage growth, although starting to creep up slowly, has been stagnant for almost 20 years. The recent tax cuts have translated more into corporate re-

tained earnings and benefits for the wealthy rather than into increased wages. In places where the minimum wages are less than \$8 an hour, there are only 12 counties out of thousands in which a person working full time could afford an apartment. Furthermore, a huge percentage of the homeless are children, an important fact to keep in mind for critics who say that these people are just lazy. Because the issue of homelessness confronts us when we see these encampments, it is easy to overestimate its prevalence. As bad as it is, the national average is still just .17%, less than one-fifth of one percent of the total U.S. population. Still we all should be ashamed that there are so many homeless in what is the wealthiest country on earth.

### Our Outrageous and Expensive Medical System

When I shop for gasoline or other goods and services, I often compare prices. We see ads constantly on TV for Trivago and Expedia and other websites that compare prices. All are competing on the basis of price. Not so in the medical sphere. The doctors and the insurance companies hide behind an Iron Curtain of secrecy and obscurity. Can we compare services in the medical field? Now we theoretically can, because each service and each discrete part of the service is coded. But do we really care what the price is when we are insured? Probably not. Therefore, it is rare for medical providers to compete on price. The insurance companies have prearranged rates with medical providers that we never know about until we get the explanation of benefits (EOB) in the mail giving us the balance we must pay after insurance. The system is distorted. In one of my recent cases, Virginia Mason Hospital did a procedure on my client and charged about \$60,000. Kaiser Permanente paid nearly \$120,000. You are reading this correctly. Because they had a prearranged agreement, the actual price of

the service didn't matter. Between Kaiser Permanente and Virginia Mason, the agreed price for that procedure was \$120,000. What is extremely pernicious about this is that once a case settles, clients often need to reimburse the medical insurance company for all or some of the medical charges. Kaiser Permanente wants to base their recovery on the \$120,000 figure. In most circumstances the contractual rate arranged between the medical insurance companies and the providers is discounted from the book price. The price for a colonoscopy, for example, can vary from a couple of thousand dollars to nearly \$20,000. Same procedure. No complications. When was last time we saw a hospital advertising on TV that it has high quality but lower rates? Until we shred the veil of pricing and demand that doctors and hospitals post their charges, and someone creates an Expedia-type website, we can expect that medical bills will continue to skyrocket. The only losers are all of us, especially those with no insurance.



### Sidewalk Safety—Do You Want to Get Sued?

One of the purposes for this Bulletin is to keep clients and friends safe and to keep them out of the legal system. In that spirit, I offer this advice to everyone who owns a home. In Seattle and many other jurisdictions, sidewalk safety is the primary responsibility of the adjacent landowner. If someone trips over a defect in the sidewalk in front of your home, you are liable. If you do not have enough homeowners insurance, a serious injury could expose your personal assets, including the equity in your home.

Seattle long-ago passed an ordinance making the homeowners adjacent to sidewalks responsible to repair all de-

fects that pose a danger to pedestrians. The city law considers a sidewalk dangerous if there is a fault or other discontinuity greater than ½ inch in your sidewalk. What this means is that if there is an uplift or "stub toe" of ½ inch or more in any part of the sidewalk in front of your house, and if somebody tripped over it and gets hurt, you will be liable. If the lift is one inch or less the rough edge can be ground down, basically beveled. If it is greater than an inch then an asphalt fill or shim should be used to convert the uplift into a ramp. These are temporary measures awaiting sidewalk replacement, i.e., new pavement. There is more detail that can be found by going to the Seattle Department of Transportation website and finding Client Assistance Memo (CAM) 2208. Approved materials only should be used and permits for the work are required. There are additional complications if a tree planted in the parking strip or near the sidewalk has caused the sidewalk damage. In such a case a city arborist will need to be consulted.

The City of Seattle is secondarily liable to someone injured on the sidewalks if it had notice of the defect. The city can, and often does, the corrective work, but more often the city demands that the work be done or paid for by the adjacent landowner. In the summer of 2017 Seattle hired a crew of college people to walk every block of sidewalks in the city. This 2017 survey noted all of the sidewalk defects including discontinuities (uplifts) of more than .4 inches. They found 93,000 of them! It's pretty obvious that the City of Seattle does not take seriously its responsibility for pedestrian safety. Since the adjacent landowner can be made to fix these discontinuities one wonders how many Street Use Warnings were issued to adjacent landowners as a result of the survey. The answer: one! Each of these discontinuities was located on a map and this

information is available online on the Seattle Department of Transportation (SDOT) website. Therefore, in the future, the city cannot claim lack of notice. I recently finished such a case against the homeowner and the city resulting in a substantial payment. In my opinion, only substantial verdicts will get the city to take seriously its responsibilities for safety for its citizens

There are two additional requirements for sidewalk safety that all homeowners should be aware of. The first is that there should be no vegetation overhanging or encroaching the sidewalk. Furthermore, overhanging bushes or trees must be cut back so that there is at least 8 feet clearance above the sidewalk and 12 feet above the roadway. It is our collective responsibility to promote safety for ourselves and for others. Please examine the sidewalk in front of your house, and cut back any shrubbery that's encroaching on the sidewalk or over the sidewalk. Most of all, fix the sidewalk so that it is safe for pedestrians and so that you do not go through the unpleasantness, time consumption and expense of a lawsuit.

### Threat to Social Security?

As elections approach the political rhetoric boils over. Appeals based on fear are often the most effective but most of the time they are based on appeals to ignorance. Politicians count on a highly uninformed population, at least as it comes to the crucial issues. Both major parties assert that success of the other party would result in severe harm to the Social Security benefits that most of us count on. It can be scary. For one-third of retirees, Social Security counts for 90% of their monthly income. In other words, for many people every penny counts. Here are some key facts. The Social Security system was established in 1935. It was designed as a self-paying safety net. The hope was that in addition to Social Security people retiring would also

have pensions from their businesses and personal savings, including equity in real estate. Unfortunately pensions have been disappearing and Americans have a dismal savings rate. How is Social Security funded? Out of each paycheck received during our working years 6.2% is deducted and paid into the Social Security trust fund. This is matched by a 6.2% required payment from employers. Salary levels over \$128,400 are not currently "taxed." For most years since Social Security was enacted the amount of income into the trust fund exceeded the benefits paid out. In fact, the trust fund has a reserve at the present time of \$2.9 trillion. Yes, trillion. That money is also growing because it is invested in U.S. savings bonds, and the interest payments from the general fund go into the trust fund. In other words, the Social Security system is nearly completely independent of other governmental budgets.

Here is the real threat to the system. My generation, the so-called World War II baby boomers, are retiring in huge numbers. When people retire from the workforce they are not paying into the system anymore, but rather are receiving benefits. Another 'problem' (fortunately for me) is that life expectancy has increased substantially from the projections made in

1935. In other words, retirees are receiving benefits for a longer period of time. The declining birthrate in America, combined with increasing restrictions on immigrants who would become workers, also reduces income into the system. This year, 2018, is a watershed moment. It is projected that this year benefits paid and expenses will exceed income and the reserves built up over decades will be called upon to make up the difference. If no adjustments are made to the system the fund will be depleted by 2034. Once there is a zero balance in the trust fund, it is projected that the annual shortfall will result in immediate reduction in benefits of just over 20% for all beneficiaries.

So what can be done other than reducing benefits--which is unfair to people who have been paying into the system all their lives? Suggestions include: 1. The retirement age at which point benefits are payable can gradually be raised. Right now it is being slowly phased-in from the retirement age in 1983 which was 65 years old and it is rising gradually to 67 years old. This is in recognition of the fact that we are living longer and many of us are working longer. 2. We can raise the amount of wages taxed from the current level of \$128,400 or

perhaps just continue the tax for people earning much more money. 3. We can raise the percentage of payroll tax. 4. We can reduce or eliminate benefits to people who continue to work, at least those who are higher earners. 5. The cost of living indexes can be adjusted down.

Because so many people depend on Social Security benefits when they retire, this is a hot button issue. But the politicians can only do so much to harm the system because in a recent poll 86% of Republicans and 95% of Democrats wanted to protect the system and their benefits.

#### Quote of the Month

"Eloquent lips are unsuited to a fool — how much worse lying lips to a ruler." Proverbs 17:7

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