Why Prop. 202 should be defeated

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By HARVEY ROSENFIELD

If bank robbers were to put an initiative on the ballot to get rid of the police, how would you feel? Think about it, because next Tuesday you're going to be asked to vote on just that kind of proposal — Proposition 202.

A conglomeration of powerful Wall Street investment firms, billionaire business people, insurance companies and high-tech tycoons have spent $11 million to convince you that lawyers' fees ought to be cut by up to 50 percent. But wait. Before you start frothing at the opportunity to regulate lawyers into oblivion, it's essential to ask: Whose lawyers' fees does Proposition 202 limit?

Not the lawyers for insurance companies like Transamerica, which has put $50,000 into the campaign for the initiative. Not lawyers hired by David Packard, a massively wealthy computer-industry executive who has pumped $600,000 of his own money into 202.

Not the lawyers for Wall Street's Kohlberg, Kravis & Roberts, the nation's best-known "leveraged buyout" firm. Proposition 202 doesn't apply to any of these big shots, who can afford to pay their lawyers $300 to $500 per hour.

Proposition 202 only limits lawyers who work on a contingency fee. These attorneys represent consumers who can't afford to pay $300 an hour for legal assistance. Instead, they represent you for free, then take a percentage of what they collect for you — assuming they win. If they lose, you owe them nothing.

Contingency-fee lawyers are the ones who sued to get defective products, like the Ford Pinto, taken off the market. They won compensation for the families poisoned by toxic waste at the Stringfellow dump in Riverside.

They forced the manufacturer of a faulty heart valve to take it off the market after it killed 600 people. Contingency-fee lawyers who prosecuted the civil case against savings and loan swindler Charles Keating recovered $240 million for 23,000 small investors.

These lawyers are, in effect, the private cops of our legal system. Ask any law-enforcement official about white-collar crime, and he will tell you that government doesn't have enough resources to protect every consumer against rip-offs, con jobs and profit-driven corner-cutting that kills people every day. Contingency-fee lawyers are the people who go to court to make wrongdoers pay you back.

Contingency-fee lawyers are much-maligned these days. But the strongest of the criticisms — which are chiefly made by corporate-sponsored propaganda machines — actually has it backward. Since contingency lawyers are only paid if they win, they have zero incentive to bring frivolous claims.

As a writer for the conservative Heritage Foundation wrote in *The Wall Street Journal*, "rather than encourage baseless lawsuits, the contingent fee actually helps screen them out."

Indeed, it is the lawyers of the powerful and rich special interests behind Proposition 202, themselves untouched by the initiative, who are responsible for most of the litigation in the California courts, and who have a costly impact on our society: "For the hourly fee lawyer, the longer the case goes on, the more money he will get," wrote the Heritage Foundation analyst. "Every pleading, motion, deposition and delay will mean more money for him."

You don't have to have an M.B.A. to understand why the corporate moguls want to slash the fees of contingency lawyers. Proposition 202 would limit a contingency lawyer's fee to 15 percent of the amount a defendant offered to settle your case for. That is roughly 50 percent less than the amount contingency-fee lawyers typically charge if they succeed in court. The limit applies even if you reject the settlement.

Slashing the amount you can offer a lawyer will have the same affect as cutting the pay of doctors, architects and engineers in half. Lawyers just won't take your case — especially against rich defendants. That's exactly what the sponsors of Proposition 202 want. Who will be around to protect consumers then? Some government agency?

Millions of dollars have been donated to Proposition 202 and its siblings, Propositions 200 and 201, by individuals and firms that have been sued — some repeatedly — for securities-law violations, consumer fraud and dangerous products.

For example, the software giant Symantec, whose CEO is under indictment for stealing trade secrets, has paid out at least $18 million to investors for securities violations. Its $200,000 campaign contribution to the Proposition 202 campaign could be the best investment in evading future law enforcement a company might make.

There are plenty of things about the legal system that need to be fixed; but the biggest problem, as we have all witnessed in excruciating detail, is that money can buy the best "justice." As it is, wealth too often tips the scales of justice in favor of the powerful and the large corporations. Proposition 202 would effectively demolish a fundamental, conservative pillar of our democracy — the right to a trial by jury — that protects the middle class against the mighty.

The special interests behind Proposition 202 already own the Legislature. Now they want to close consumers out of the courts. Then their domination of democracy would be complete.

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