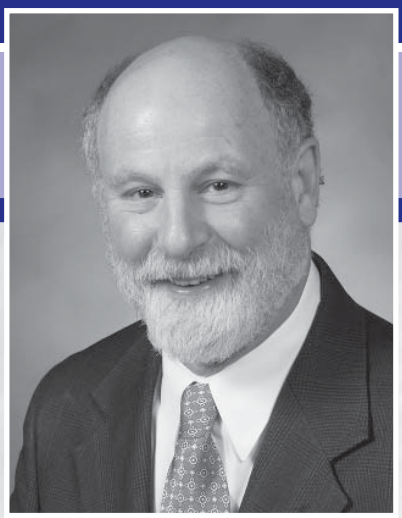
LEGISLATIVE UPDATE

Senator Adam Kline

37TH LEGISLATIVE DISTRICT • SESSION 2010



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Dear Neighbors,

For a short legislative session, this was a doozy. We wrestled with yet another huge shortfall in our tax-revenues, cut some services, raised taxes to defray the severity of the cuts, and generally kept the ship of state afloat with chewing gum and duct tape. I believe we're sailing into calmer economic waters, if not in the coming two-year cycle then soon thereafter, but that before we get there we'll have to work out a real overhaul. The teachable moment is still with us, and we are capable of getting it if only more voters insist. (Sorry, but we're creatures of the voters—that's democracy for you.)

In this newsletter, we'll discuss the never-ending fight to maintain the balance between public safety and civil liberties, **or how I got between the Sheriffs and the ACLU**; then spend a page on **the Budget War of 2010**; and we'll spend some time pondering **our archaic and benighted K-12 funding system**. You'll pardon me, I hope, if this issue is a bit Budget-centric; that's the big news this year. But there's more: Honorable Mentions include a diversion to yet another (more literal) war over **military-style assault weapons**, as in What on earth are they doing in our community?, and then a diversion into **protecting people from lawsuits caused by their exercise of free speech**; and finally an environmental bill on **baby bottles**.

To paraphrase a saying from my younger days: hope will get you through times of no money better than money will get you through times of no hope.

This was my fourteenth session living in a cold and tiny cabin outside this soggy town, away from my wife and dogs, unable to take a weekend to visit my delicious grandbabies, having to come to work in a suit and tie (and they have to match), and this year I got to watch the cherry trees bloom in the unseasonably warm early March but I couldn't even go smell the fragrance because I was busy budget-cutting and taxing—but do I ever complain? Ever hear me complain? Nooooo! I love this job!

Adam Kline

Adam

How I Got Between the Sheriffs and the ACLU

For about eight years, I worked hard to perfect a bill that would limit the scope of the infamous Three Strikes law, and other bills tempering the excesses that have lead us to incarcerate so many minor non-violent criminals for lengthy terms. Then, on October 31, a police officer was shot in our district, and on November 29, four police officers were shot to death in a coffee shop in Lakewood, south of Tacoma, followed shortly by the murder of yet another officer near Yelm. Suddenly, six families of law enforcement officers were without a husband, wife, son, daughter, father, mother, sister and brother. Their grief must be respected; their loss is overwhelming. Yet for those of us who seek to maintain the delicate balance between heightened public security and the maintenance of basic civil liberties, these tragic events often bring in their wake political consequences that go far beyond the facts of these cases. The political mood changed in a matter of months, from one in which a rational conversation was possible about criminal sentencing, to one in which public outrage was intense, and the reigning sentiment was to lock 'em up and be done with it. I decided not to run my Three Strikes bill, and to assume a defensive posture: the goal this year was not to lose ground.

As the session started, it became obvious very quickly that we were on defense: the murders set off a hue and cry that "something must be done," but the suggestions as to what precisely we needed to do were often outrageous in their sheer breadth and in their disregard for the Bill of Rights. There were demands that we restrict the right to bail, because the alleged murderer, Maurice Clemmons, had been bailed out. There was a bill to increase the sentence for rendering assistance to a fugitive, because one of his relatives had allegedly done that. It seems to be a fact of our political life that a high-profile or particularly heinous crime leads many to believe that the system itself is broken.

The Governor, meanwhile, met with law enforcement and prosecutors soon after the murders, and announced a series of general ideas that she wanted to see in the form of bills. One of these was a proposed amendment to our state constitution, Article I, Section 20, regarding bail. In her version, SJR 8224, judges would be allowed to deny bail to *any* offender—even one charged with a minor or non-violent offense—if the judge believed that the offender might be "dangerous." There is no objective and accurate predictor of dangerousness; it's really a hunch. My concern, based on our courts' experience with sentencing in the decades before the Sentencing Reform Act, when judges were left to their unfettered discretion, was that without some criteria that are really predictive of violence, the result would be racial disparity in bail decisions. Further, despite the loud cries about judges being lenient, we have our jails stuffed full with non-violent offenders who are simply there because they can't afford bail. Still, SJR 8224 was "Governor's Request Legislation." It's a traditional courtesy for a committee chair to sign and introduce a Governor's Request, and I did. However, I did not schedule it for any public hearing or vote, and it died in the Judiciary Committee.

Early in the session, Sen. Mike Carrell, a conservative Republican whose district includes Lakewood, the scene of four of the police murders, had filed SJR 8218, which in its initial form was a broadly-worded constitutional amendment by which judges would be *required* to deny bail to all offenders charged with a broad range of offenses. Sen. Carrell, the ranking Republican on my committee, has the confidence of the Republican caucus, including its libertarians, as I have the confidence of the Democrats. In my conversations with some Superior Court judges, I heard that they did, in fact, have a problem with the current constitutional provision, in that it doesn't allow them to deny bail altogether to a truly dangerous non-capital offender who gives every sign of intending further violence. Thus, there was in fact a real purpose that could be achieved only by a change to the constitution, and if we could reach compromise, it would be accepted with near-unanimity. I worked with Sen. Carrell to turn his proposed *requirement* into an *authorization*, and to reduce drastically the scope of the offenses to which it would apply. We agreed that we would add only a very narrow set of offenders to those to whom bail *could* be denied: persons charged with offenses that carry a sentence of Life Without Parole. Capital offenses, of which there were eight charged in 2009, are already bail-deniable at the discretion of the judge, so we would just add this second small group, which in 2009 had accounted for about 50 charges. (To get an idea of how narrow this is, there were 36,719 felony charges filed that year.) We also inserted a clause that gives rule-making authority to the Legislature. As we had hoped, the Senate passed this compromise on a near-unanimous vote.

The House, however, passed a broader version, HJR 4220, much more to the liking of the police, and refused to take action on our Senate version. HJR 4220 in its original version would have allowed bail-denial for all persons charged with any Class A felony that could lead to a regular "life" sentence, which allows parole, as well as with all Life Without Parole offenses. Those two categories accounted for 1,482 charges last year. Reps. Santos and Pettigrew had both voted No.

At that point, the two houses had widely divergent views. As in my first year as Chair of Judiciary in 2002, the year following the terror attacks of 9/11, the House had staked out a position in favor of whatever the police wanted—then it was Gov. Locke's overly-broad definition of "terrorism" that we felt could have included political activity, and Rep. Hurst's proposed increase in wiretapping authority—and the Senate sought only a narrower change that identified and punished terrorism but respected the civil liberties that define our country. I couldn't help but think back to a memorable event that year, my first as chair of Judiciary, when I had organized a bipartisan coalition of 32 members, liberal Democrats and libertarian Republicans, to oppose both House bills, and to pass only SB 6704, our narrower one on terrorism. On the next-to-last day of that session, Gov. Locke had summoned me to his office downstairs from the Senate chamber for what turned out to be an hour-long meeting with him, Attorney General Gregoire, Rep. Hurst, and their staffs. The Governor and the Attorney General wanted his bill, with its broad definition of "terrorism," and Rep. Hurst wanted both that bill and his own expansion of wiretapping. The Governor and AG were intense in their insistence on a broad definition; Rep. Hurst insisted just as intensely that the police needed enhanced wiretap authority to snare terrorists in our state.

We agreed on some technical changes, but I held my own on the big issue. I remember saying, "I have 32 votes upstairs for the narrower civil liberties version, and I bet 25 of those would be happy with no bill at all." At the end of the hour, the Attorney General leaned over and made this offer: "Alright then, your terrorism bill, the technical changes, and we forget wiretapping." We left with that understanding; I went to get my staff counsel to draft the amendment. A half-hour later, word came that the House, apparently at Rep. Hurst's motion and with the acquiescence of the Speaker, had stripped our language from SB 6704, amended it with the full texts of *both* House bills, and sent it back to the Senate. It seems our House friends thought I was bluffing, and were going to call me on it. Given the public pressure to get tough on terrorism, how could the Senate keep a majority together against these bills? But the choice was obvious: after a quick conference with the Senate's libertarians and with Democratic leadership, I moved the bill to a vote, and asked my colleagues to join me in voting it down. We did. I'll bet we're the only state that didn't pass a terrorism bill that year.

Late in the 2010 session, this memory stayed with me as the Governor insisted on her broad scope of offenses, and the House committee chair and ranking Republican (Reps. Hurst and Hope) went on the talk radio circuit and wrote an op-ed in the Tacoma paper, where the Lakewood partisans were sure to see it. The e-mails came thick and fast, demanding that the Senate just pass the House version. In late February, I spent a few days straight negotiating a compromise with Senator Carrell, the Governor personally, and the two Representatives. After much back-and-forth, and despite my nagging fear that the Republicans would be swayed by the talk-radio screamers who were by now in full throat, we placed an agreed amendment on HJR 4220.

You'll see this language on the ballot in November. It adopts the House's wide scope of offenses, but adds this language: *Bail may be denied for offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons.* If this constitutional amendment is adopted by a vote of the people, judges will be able to deny bail only upon evidence, proven to the highest standard applied to civil cases, that the alleged offender is actually, presently, demonstrably, dangerous. It will not be enough that he or she *looks* dangerous, or even *was* in the past, or *might be* in the future. At this point, the accused is presumed innocent, and to be denied the constitutional right to bail, the evidence of *present* danger must be articulable, and the evidence convincing. There is no room here for preventive detention. There is no room for the subtle un-articulable biases and fears that lead to racial disparity. (That's not to say that there is no racial disparity in the treatment of offenders, especially in sentencing, but rather that we will not add to it in this change.)

Between Sen. Carrell's libertarian Republican colleagues and my liberal Democrats, there is a vast difference of opinion on many matters. But members of both camps have a deep respect for our civil liberties, and for the state constitution's grant of specific rights to the individual against the much more powerful force of government. When we work together, rather than in opposition, we can carry the vast middle along with us. And we did, again. The resolution passed the Senate unanimously.

The Budget War of 2010

It was the best of times, it was the worst of times. Nah--it was just the worst of times.

Much is being made of this year's "first:" we are actually raising some taxes to close the gap between rising demand for services and the plummeting revenue from our existing taxes. This is two or three years overdue, but has finally been made necessary and politically possible by the painful math.

Still, let's not lose perspective: the revenues for this two-year cycle (2009-11) are down this year by $2.8 billion after last year's shortfall of $9 billion, a total loss of $11.8 billion in revenue from the moderate 2007-09 level. We've just raised taxes by less than $0.8 billion. For the biennium, the rest of the $12 billion was made up of cuts (about $9 billion, much of that in truly vital programs), and one-time federal stimulus funds, about $2 billion. And it took a 30-day extra session to reach agreement. Remember that the next time you hear that "Democrats rushed to raise your taxes."

In the end, we raised $794 million in new revenue to fund programs like healthcare, worker-retraining, and economic development that specifically support the most vulnerable. The Senate's original proposal, for which I voted earlier in the session, would have brought in $918 million in new revenue: http://blog.senatedemocrats.wa.gov/kline/the-budget-the-good-the-bad-amp-the-ugly/.

Earlier in February, I pushed my colleagues to raise at least $1.5 billion so that we could minimize the pain of the cuts to critical public programs, many of which were already cut to the bone last session. By putting the tax burden on the businesses and individuals most able to shoulder it, we could have done this without harming our state economy or the pocketbooks of working families or people currently unemployed due to the recession.

At the end of this article, I've included a link to a more complete list of the components of the revenue package, and below I'll discuss a few highlights. One of the most notable aspects of the package is that it does not include an increase in the *rate* of the Retail Sales Tax (RST), that most regressive of all taxes and the most volatile in a recession. However, it does include an extension of the base of the RST to some individual products like candy, gum and bottled water. The burden of the new taxes on the businesses and individuals most able to shoulder it; very little falls on those struggling in this economy. The exceptions to this are the extensions of the RST to candy, gum, and bottled water, and the additional taxes on soda, beer and cigarettes, but those have health and environmental implications that turned my vote.

The revenue package doesn't include the closure of some tax loopholes, such as the tax exemption that is currently granted to banks on the interest earned on first mortgage investments. This exemption means that banks don't currently pay Business and Occupations (B&O) taxes on the interest -- or even the investment earnings made from the interest -- from residential first mortgages. I and several of my progressive Senate colleagues advocated for the closure of this loophole (with an exception for local community banks), but we couldn't convince a majority of our colleagues to support it. You can read my post about this loophole here: http://blog.senatedemocrats.wa.gov/kline/blog-ending-the-tax-exemption-granted-to-banks/ Although we didn't close the

entire bank loophole, the new proposal does close an expansion of the loophole made through a recent State Supreme Court ruling that interpreted the existing deduction to apply to other streams of business revenue.

We also closed other tax loopholes, imposing a significant part of the burden of this revenue package on those who can carry it, such as out-of-state businesses that do enough business in Washington to have a legal nexus or connection that allows us to tax their Washington sales. Here's an overview of a few of the major components of the proposed revenue package (the dollar figures show the annual revenue from each tax).

$84.3 million from closing the tax loophole for businesses that have a substantial nexus to Washington. We will now charge B&O tax to out-of-state firms which own $50,000 worth of property in Washington, or have annual payroll of over $50,000 here, or sell over $250,000 of goods or services here.

$154.7 million by eliminating the tax loophole for corporations like Dot Foods that sell into Washington using a direct seller's representative. The Supreme Court found that the vague language of our existing law gave them an out. Wrong.

$243.5 million from a temporary increase in the B&O rate for services, including lawyers, accountants, architects and realtors. It will increase from 1.5% to 1.8% the B&O tax paid by service businesses, with exemptions for hospitals and for new product research and development. In order to relieve the burden of this tax on *small* businesses, their tax credit will be permanently doubled. This tax increase will end in June of 2013.

$65.8 million from extending the retail sales tax to three previously exempted items: candy, gum, and bottled water. Although I'm not a big fan of sales tax, I support closing these exemptions partly because we desperately need money to fund critical public services, and partly because of the social policy behind the tax itself. Charging sales tax for candy and gum acknowledges that these items aren't "food" and shouldn't be exempted from sales tax. The extension of the sales tax to bottled water favors an environmental policy, in addition to bringing in an anticipated $35.3 million annually. We recognize the need to reduce the use of plastic bottles, which are non-biodegradable and end up for the most part in landfills. If we are going to bring water with us through the day, why not re-use one bottle and fill it with tap water? Exceptions are made in this tax for those without potable water.

$101.4 million from increasing cigarette taxes by $1 per pack, and an increased tax on other tobacco products. This is the type of "sin tax" that is often a politically expedient fallback plan when we need extra revenue. There is some logic in this – folks who smoke cigarettes should contribute to the public coffers because they are more likely to use publically funded healthcare at some point in their lives. Researchers tell us that with an added dollar, there may be 36,000 quitters. The downside is that our cigarette taxes are already among the highest in the nation, and this is frankly an extension of the regressive sales tax that impacts low-income smokers more than those with higher incomes.

$34.7 million from taxing soda two cents for each 12 oz bottle or can. Bottlers with less than $10 million in annual sales are exempt. The soda pop tax is set to sunset on June 30, 2013. The two cents per can is much less than the original proposal of 12 cents. I am mindful that some 300 residents of this district work at a bottling plant on Rainier Avenue, and I received messages from some asking that I vote No on this. I feel that the tax is reasonable, and that the bottling industry has benefitted from its absence these many years.

$57.8 million from an additional surtax for mass-market beer. We increased the tax on beer by 50 cents/gallon, or $15.50 barrel (a barrel contains 31 gallons), for three years. This will drive up the state tax on a six-pack of mass-marketed beer by 28 cents, leaving it at a total of 43 cents. Micro-breweries that already qualify for a lower tax rate under current law would not be subject to the new surtax. Any brewery that produces 2,000,000 barrels (or less) of beer per year and sells fewer than 60,000 barrels of beer in Washington is not subject to the additional tax. If a small brewery does sell more than 60,000 barrels of beer in Washington, it would be subject to the higher tax only on those barrels sold over 60,000.

For a complete rundown of the revenue package as well as other budget information, go to my blog (http://www.sdc.wa.gov/senators/kline/) or the Senate Democratic Caucus blog: http://blog.senatedemocrats.wa.gov/

K-12 Funding, Kinda, Sorta

It's an irony of the highest order that the folks who screamed loudest this year against raising taxes are the same who complain at the drop of a hat about our under-performing public schools. In past years, the public's very understandable dissatisfaction with public education was used by some as a reason to push not for better funding but for charter schools and vouchers, the latter being a not-too-subtle way of draining yet more funds from public education. This year, we attempted to hold the line against further cuts in K-12 funding, while maintaining, as much as we could, the distinctive programs that districts adapt to their local needs. Here are a few of those statewide programs that the Seattle Schools have put to good use, and what we did in the recent past and this year to keep them working in hard times. (Note: to meet the printer's deadline, I'm writing this in Olympia in the last days of the special legislative session in mid-April, so some references to the 2010 budget are the likely result, but subject to change. If you're interested in the final result, call me at 206.625.0800.)

All-day Kindergarten: Under current law, school districts must offer 450 hours of instruction annually for kindergarten. That's three hours a day. In 2007 the Legislature began phasing in voluntary all-day kindergarten programs consisting of at least 1,000 instructional hours and meeting other specified criteria, starting with schools with the highest percentages of students from low-income homes. That same year, the Legislature provided funding to support all-day K programs for approximately 10 percent of the state's kindergarten enrollment during the 2007-08 school

year and 20 percent during the 2008-09 school year. Those schools continue to be funded for all-day K but there has been no additional phase-in. Last year the Legislature passed HB 2261, which expanded the definition of basic education to include all-day K and requires the Legislature to fully fund and implement it by the 2018-19 school year. SHB 2776, passed this session, accelerates the process by requiring that starting in 2011, funding shall continue to be phased-in each year until full statewide all-day K is achieved in the 2017-18 school year.

Readiness to Learn: The primary purpose of this program, established in 1993, is to link education with human service providers in an effort to assist in the removal of non- academic barriers and ensure that all children are able to attend school prepared to learn. It links families with whatever their child needs: group and community activities, food and clothing banks, parenting classes, recreation programs, tutoring programs, mental health counseling, transportation, health and social services, substance abuse prevention activities and the like. Parenting classes and mental health counseling is also available for the parents if that's what's interfering with the child's learning. In the 2007–08 academic year, RTL provided direct supports to 7,350 students in 107 school districts. A full evaluation from 2007-08 can be found at: http://www.k12.wa.us/ReadinessToLearn/pubdocs/RTL2007-2008StatewideEvaluation.pdf. In the biennial budget last year, we provided $3.594 million per year for this program, for a total biennial appropriation of $7.188 million. This year, seeing that some 4% of that—about $325,000--would remain unspent, it's most likely that we'll re-appropriate that small amount to the Ending Fund Balance, the amount we leave purposely unspent as a hedge against next year's possible revenue shortfall.

Enhanced staffing ratio: State funding to school districts is based, in part, on the number of students enrolled in each district and the cost of the staffing levels needed to serve those children. Current law requires 49 *certificated* instructional staff per 1,000 full-time equivalent students for grades K-3, and 46 per 1,000 for grade 4. Certificated instructional staff are primarily teachers but this category includes others who have professional education certificates such as librarians, counselors, speech/language pathologists, etc. Since 2000, the Legislature has gone beyond this statutory minimum, enhancing this staffing level by providing funds in the Budget to add 2.2 more certificated staff per 1,000 students for all four grades, above the statutory minimum. This entire K-4 enhancement costs $138.3 million per school year. There was talk early this session of eliminating it for the coming school year, for the first time since 2000. That would save somewhat less, $110.6 million, since most of the next school year – but not all of it – falls in the current two-year budget cycle. Note: this enhancement is for all students in those grades. We appear to be on track to keep the funding for K-3, but as of this writing the grade 4 element is subject to negotiations.

There are also three specific enhancements for children who need additional staff time in order to thrive. First, for students in special education programs, districts receive an additional amount of funding: 215% of the basic per-capita for kindergartners under age 5, and 193% for those 5 to 21 years. Second, the Learning Assistance Program is aimed at children from very low-income families; it allows districts with over 20% bilingual students an additional dollar amount per eligible student, based on a measure of poverty, the percentage of the schools' students who receive a free or reduced-price lunch. Third, the Bilingual Assistance Program provides an additional dollar amount to districts for those students who have a primary language other than English and whose language skills are sufficiently lacking or absent that learning is delayed, as determined by a placement test. The additional amount provided by this program is meant to add 13.5 more certificated staff per 1,000 full-time bilingual students.

Given the great need for special ed and for assistance to the South End's low-income students, I have been voicing my support for holding the line against further cuts here. The bilingual program is defined as one of the elements of "basic education" and is not being considered for reduction.

Honorable Mention

We Don't Need Machine Guns In Leschi

We didn't need the deaths of a 17-year-old in Leschi last July and of a police officer in the Central Area in late October to teach us that semiautomatic firearms capable of firing at a rate of 200 rounds per minute have no place whatever in civilian society. They are designed to allow soldiers to sweep a close area of enemy combatants in seconds. They are much more lethal than ordinary rifles and shotguns and can be used effectively by shooters with little or no marksmanship. Like fully automatic machine-guns, they should be banned outright. With that in mind, I filed SB 6396, which defines and bans a class of semi-automatics that are particularly lethal: those with pistol-grips, large magazines, barrel-shrouds and other characteristics that make a dangerous weapon into a killing machine. The NRA let it be known that in its view it's impossible to define this class of weapons and that to ban any class of semi-automatics is in effect to ban Uncle Bud's deer rifle. Of course this notion was broadcast on the talk-radio shows, where it was received as fact. In the absence of an organized progressive voice, this "fact" went unchallenged. I am sad to report that as preposterous as this argument is, it gave rural and suburban Senators the cover they needed to oppose the bill. A vote-count of the Judiciary Committee, of which I'm the Chair, yielded a 4-4 split, one vote shy of the needed majority.

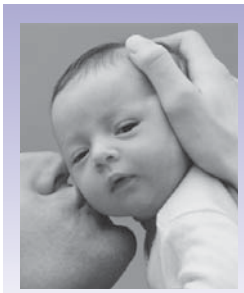
There may well be success on this issue, or on the related issue of closing the loophole that Congress left in federal law, by which state legislatures decide whether record-checks may be required for sales made at gun-shows. But neither will happen until activists organize a more robust opposition, based on the simple message that Uncle Bud doesn't need a weapon of war to hunt deer.

"Slapp" Suits

Remember the first wave of SLAPP suits? They first arose in the 1980s as a way for suburban land-developers to silence their opponents—sometimes motivated by real environmental concerns, sometimes by NIMBYism—who spoke out against development. The Strategic Lawsuit Against Public Participation was, I am sad to say, an invention of lawyers. The idea was simple: when criticized publicly by neighbors opposed to a development, don't advise the developer to reply with a nice letter or an appearance at the city council--just sue the critics. The practice soon spread to other corporate players. Consumer advocates say your product is dangerous? Sue them. That'll shut them up. Sue them for libel, make some poor couple mortgage their home to hire a lawyer, it doesn't matter that they might ultimately prevail. Hey, it's hardball but it's legal, and it works—it shuts down the opposition. Until the Legislature acted to slow this practice in 1989, *it was technically legal to use the courts themselves as a weapon against free speech*.

The need for an update to strengthen this law was brought to my attention by some lawyer friends who specialize in free speech cases, and yes, it amazed me that this still happens. So I filed SB 6395, which broadens the scope of the protection to cover "any statement submitted in connection with an issue under consideration by a legislative, executive, or judicial or other proceeding authorized by law…or that is reasonably likely to encourage or enlist public participation [in such an effort]… or made in a public forum in connection with an issue of public concern." The bill creates a procedure by which a court, at an early point in the lawsuit, can consider whether it was brought to stifle speech. If so, it can award the speaker costs of litigation and attorney's fees, as well as a penalty of up to $10,000, paid by the wrongdoer.

The First Amendment freedom to "petition government for redress of grievances" means nothing if one can be forced to defend one's words against a well-funded antagonist, even though the court may ultimately agree that they are protected speech.



No More Toxic Baby Bottles

With SB 6248, we banned the use of bisphenol A (BPA for short) in baby bottles, sippy cups, and other baby dishware, and in sports bottles. I co-sponsored the bill, which makes us only the second state to ban this plastic-hardening chemical in sports bottles, and the fifth to ban it from baby bottles. The chemical industry and some manufacturers complained, but the fact is that there are safe alternatives already in use. Testing has shown high levels of BPA in kids, and has linked it to hormone disruptions that cause two symptoms already seen too often in youth: obesity and hyperactivity. (Now a friend tells me this same stuff is used in the heat-sensitive paper used for grocery-store receipts. Hmm, I feel a bill coming on.)

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