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Constitutional Scholar, Former Supreme Court Justice Line Up Behind New \$750,000 Cap

MADISON (February 27, 2006) ---- Prominent constitutional scholar Gordon B. Baldwin endorsed legislation today that would reinstate a cap on awards for pain and suffering at \$750,000.

“In my opinion, the proposed legislation (AB 1073) is constitutional and will cure the defects associated with the present cap on non-economic damages found by the *Ferdon* court,” Baldwin said in his 10-page analysis. “There is more than an adequate basis to find that legislative enactment of a cap at \$750,000 on non-economic damages in medical malpractice cases is rational and reasonable and will overcome (the Wisconsin Supreme Court’s) objections on equal protection and right to jury trial grounds.” (A full copy of Baldwin’s analysis is available at: <http://www.wha.org/medliabilityportal.htm>)

Wisconsin Hospital Association and the Wisconsin Medical Society requested Baldwin’s February 24, 2006 analysis of AB 1073 (as draft legislation). Rep. Curt Gielow (R-Mequon) and Sen. Scott Fitzgerald (R-Juneau) introduced AB 1073 last week. More than 60 legislators from both parties are sponsors of the legislation that will establish a new cap at \$750,000 without indexing for inflation.

“The Governor has said repeatedly that he will sign a cap into law that is constitutional,” said WHA President Steve Brenton. “While no one other than the seven Justices on the Supreme Court can say what is constitutional, one simply cannot ignore the opinion of a scholar the stature of Professor Baldwin.”

On December 1, 2005, Governor Jim Doyle vetoed legislation that would have reinstated a cap on non-economic damages at \$450,000 for adults and \$550,000 for minors. As grounds for vetoing the cap, Doyle relied on a letter authored by UW law professor Walter Dickey, an expert in criminal law, and two other UW law school professors.

Professor Gordon B. Baldwin is a nationally recognized expert in constitutional law who has argued successfully in front of the United States Supreme Court (*Welsh v. Wisconsin*). Among his many national and international

accomplishments, Baldwin has chaired the Wisconsin Elections Board, served on the Wisconsin Ethics Board, and served as Assistant Dean and Associate Dean of the UW Law School.

Baldwin is the latest legal notable to line up behind AB 1073. Last week, former Wisconsin Supreme Court Justice William Bablitch endorsed the proposal at a Capitol press conference. Bablitch, who served on the Wisconsin Supreme Court for 20 years, and 11 years in the State Senate before that, assisted in crafting AB 1073.

“The bill you see before you today is the result of a lot of work by a lot of people,” Justice Bablitch said in a press conference last week. “I am confident it resolves the concerns of at least a majority of the Supreme Court, if not all of them.”

Justice Bablitch will join several others today testifying in support of AB 1073 in front of the Assembly Committee on Insurance.

“For those looking for a guarantee that AB 1073 will be found constitutional, there is none. Only the Supreme Court can do that,” said Wisconsin Medical Society CEO/Executive Vice President Susan Turney, MD. “But before we can even get to the Court, a new cap must be passed by the Legislature and signed into law by Governor Doyle. We join with Professor Baldwin, Justice Bablitch and dozens of legislators who believe not only is AB 1073 urgently needed, but that it will also be upheld by the Wisconsin Supreme Court.”

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