



THE SHERMAN LIBERTY LETTER

Representative Brad Sherman - District 91

February 10, 2023

The past week largely focused on Medical Malpractice Tort Reform (HF 161). The bill places a cap on the amount of non-economic damages that a jury can award. The cap is 1 million dollars and 2 million dollars if a hospital is included in the lawsuit.

Over the last few weeks, we have heard many voices on both sides of this issue. The argument for placing these limits on the jury included the following:

- Big jury verdicts are out of control causing malpractice insurance premiums to go through the roof.
- The lack of caps is causing unscrupulous lawyers from out of state to come to Iowa looking for a fat payday.
- Insurance companies are losing money and will pull out of Iowa in favor of states who have caps.
- Doctors will leave Iowa, because of high insurance premiums, or will not come in the first place.
- Rural Hospitals and the availability of medical care in Iowa is in jeopardy.

All these things seem pretty convincing. But as it says in the scriptures: The first one to plead his cause seems right, until his neighbor comes and examines him (Pr 18:17). Some of the points made by those who opposed this version of tort reform include:

- Big jury verdicts are few and usually are not the final outcome and rarely represent what is actually paid.
- The proposed caps are just corporate protection for Insurance companies.
- Malpractice premiums in Iowa are among the lowest in the nation.
- The doctor per patient ratio in Iowa is not decreasing, but slightly increasing.
- Caps undermine the constitutional right to trial by jury.
- Legislators should not place a value limit on a person's life.

I discovered that those on both sides of the issue tended to spin their points in the most positive way, so I tried to focus on foundational principles and unemotional facts as much as I could. This was not an easy decision to make and, to be honest, I lost some sleep over this issue. But after much deliberation, I came to a decision to vote no on this bill for the following reasons.

First is the principle that individual rights must not be lost in the big picture of corporate interests. Though the proposed caps might work in most cases, situations will arise where the limits of caps will not meet the need. This is why we have trial by jury, so that each case can be judged on its own. I refer to a quote painted on the wall in our Capitol which I used in my last newsletter, and it fits here as well. **“The perfect state - that in which an injury done to the least of its citizens is an injury done to all.”** This concept is echoed by the words of Jesus who said, **“... inasmuch as you did it to one of the least of these, My brethren, you did it unto Me.”**

Secondly, this bill does not address a major part of the problem which is bad faith behavior by some insurance companies. Unfortunately, there seems to be a dichotomy that has developed pitting medical professionals against lawyers/patients. This is sad because health care workers and patients should be on the same team working for the same outcome. However, mistakes certainly happen from time to time that constitute malpractice. This is why insurance companies exist. I have learned that, in many cases, insurance companies will not even come to the table to negotiate a settlement when everyone else desires to do so. This kind of bad faith behavior facilitates the above mentioned dichotomy and drives many cases to the courts resulting in large legal fees and huge verdicts. I hope we can come up with some legislation later that addresses this, as well as addressing frivolous or fraudulent cases before they go through an expensive litigation process.

I respect my colleagues who voted for this bill, though I disagreed with them. But in the end the bill passed the House by a narrow margin and it passed in the Senate as well. So, it looks like non-economic damages will have a 1 million dollar cap for doctors, and a 2 million dollar cap if a hospital is named in the suit. I hope this does not cause undue targeting of hospitals, just to seek a higher verdict.

Also, in the final version of the bill, all punitive damages in a malpractice case will be awarded to the claimant. Previously, a good portion of punitive damages would often be paid to the state. Punitive damages are rarely awarded in a malpractice case because there is almost never any malicious intent on behalf of a doctor or healthcare professional, just unfortunate unintended mistakes. I assume awarding all punitive damages to the claimant was a good faith effort to potentially provide a higher award to some victims of malpractice. But my concern is that this could give rise to undue accusations of a punitive nature being made toward doctors and hospitals.

We will soon be dealing with the same issue as it relates to trucking companies, who are looking for similar protections from lawsuits. Sorting all these things out is not an easy job, but in the end the best solution to these situations comes about when those on both sides of the issue put aside greed, selfish desires and truly seek to do the right thing. When this happens, liberty flourishes.

Best Regards,

A handwritten signature in black ink, appearing to read 'Brad Sherman', written in a cursive style.

Representative Brad Sherman
House District 91
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