



Judicial Elections and Medical Malpractice

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Once they understand what "tort reform" tries to do to victims of medical malpractice, most fair-minded people agree it's just not fair to put artificial legislative limits on the amount of money a patient can recover in a lawsuit. Such limits hurt the most devastated victims: People with spinal cord injuries, brain injuries and similar catastrophic harm are the ones who typically qualify for multi-million dollar damages to set their lives back on track. In the few cases when juries are more generous than the facts warrant -- an occurrence that is statistically rare -- the trial judge and the appeals court judges have the power to roll back the number to something reasonable.

So what does this have to do with judicial elections?

The U.S. Chamber of Commerce has poured millions of dollars into a multi-year campaign to convince the public there is an epidemic of frivolous lawsuits out there -- something no independent objective body has ever found. The reality is that the system works: the only cases that result in big damage awards are those where independent-minded judges have found plenty of evidence to support the jury's award of money, and if they don't, the jury decisions are thrown out.

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The Chamber also has been busy putting money into electing judges who take a more aggressive, pro-business, anti-consumer stance. And the U.S. Supreme Court's recent decision in the Citizen United case unleashed all restraints on corporate contributions to political candidates of all kinds, including judges in those states where judges stand for election. So the Chamber can be expected to ratchet up its judicial elections campaign accordingly.

The Illinois Supreme Court this week adhered to its past precedent and ruled that that state's legislative damages cap violated the "separation of powers" between the judicial branch and the legislative branch. The case is called [Lebron v. Gottlieb Memorial Hospital](#). Historically, it has been up to the courts to decide on a case-by-case basis how much money a particular claimant should be paid, and artificial damage caps imposed by the legislature invade that judicial power.

One of the Chamber's fair-haired judges is Illinois Supreme Court Justice Lloyd Karmeier. The Chamber paid \$2.3 million to help get him elected to the high court's bench in 2004, according to the [Center for Justice and Democracy](#).

Justice Karmeier dissented in the Lebron decision and would have let the damage cap law stand. He may have done so for reasons quite apart from politics. In fact, his dissenting opinion quoted extensively from President Obama's health care reform speech last fall, in arguing that legislatures, not judges, need to set health care policy. True enough, as far as it goes.

What's unfortunate is the continued politicization of all branches of the American government, and the Citizen United decision by the U.S. Supreme Court will make it worse, because the court gives corporations the power to put a very large thumb on one side of the judicial scales of justice-- one elected judge at a time.