

Memorandum in **OPPOSITION** to legislation that would diminish the authority of states to regulate state tort law.

NYSBA Federal Memorandum 3

February 13, 2017

ISSUE: State Regulation of the Tort System

The Association has for many years objected to federal legislation that would seek to regulate the tort system at the federal level. States must remain fully responsible for governing the field of tort law, including medical malpractice. There is no reason for Congress to interfere with a system of civil justice that has worked well throughout our nation's history.

Our position is based on the premise that such federal activity would erode common-law doctrine which has evolved at the state level for more than two centuries and on the recognition that systemic problems can be dealt with most effectively at the state level.

Congress is currently giving serious consideration to the possible replacement of the Affordable Care Act. The current debate has revealed many different views as to how health care should be provided to the citizens of this country. However, what has not been seriously debated is the operation of the civil justice system. Yet, some of the health care proposals have included, without much notice, civil justice reform as part of a package of changes. Language has been included in some proposals without valid, empirical justification. Serious consideration of the issues involved must be given in what is a complex area of law.

The Association recognizes that in order to enhance the operation of the civil justice system, review and periodic changes to components of the system are needed. Appropriate and reasonable legislative initiatives should be aimed at making the system more workable and at striking a balance that will ensure the needs and protections of all parties. Notwithstanding our view that this subject is properly within the realm of the states, the Association opposes proposals that would impair the rights of injured patients and families of those killed or injured by negligent action in our healthcare system.

Fundamentally, our civil justice system in the field of tort law has developed within each of the states. There is no one model, as each state has enacted procedural and substantive laws that best fit its citizens. This approach has functioned well throughout our history, and there is no reason for Congress to step into an area that has long been reserved to the states.

The debate over health care will continue. However, we strongly urge that changes to our civil justice system not be part of this debate, as action in this area would be federal government interference in what is a long-recognized state function without any valid reason for doing so.

Based on the foregoing, the New York State Bar Association **OPPOSES** federal legislation that would diminish states' authority to regulate the tort system.