

Amend the Michigan Constitution to Preserve Tort Reform Give Legislative Branch Power In Civil Suits

Physicians in Michigan should be concerned about what was reported in *Michigan Medicine* March/April 2010-Volume 109-No.2, page 5, *Illinois Supreme Court Rules Non-Economic Damages Cap Unconstitutional*, by Daniel J. Schulte, J.D. Mr. Schulte pointed out that the Illinois and Michigan constitutions contain very similar language concerning the separation of powers of the legislative, executive, and judicial branches of state government. In Illinois the *Cap* was declared unconstitutional because the Illinois Supreme Court ruled that the determination of economic damages resided with the judiciary.

Tort Reform in Michigan appears safe at this time. However, the same article stated that the constitutionality of the *Cap* has not been tested in the Michigan Supreme Court, only the appellate court. The Michigan Consumer Protection Act was enacted in the 1970s. The Act was an effective law in Michigan for more than twenty years. Then the composition of the Michigan Supreme Court changed, and the Court ruled that most of the provisions of the Michigan Consumer Protection Act were invalid. The Court was criticized for not honoring precedent. *Tort Reform* laws, especially the *Cap* could meet the same fate when the composition of the Michigan Supreme Court changes.

I am running in 2018 for the Michigan House of Representatives, District 45, Rochester Hills, MI. I would like to change the Michigan Constitution as follows:

Michigan's current Constitution states in Article III, Section 2, § 2 Separation of powers of government.

Sec. 2. The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch **except as expressly provided in this constitution.**

(Note: Bold Highlight Applied.)

At this time Michigan's Constitution does not expressly give the legislature authority to establish many conditions concerning civil cases. Article IV, Sec. 44 states:

Article IV, Section 44

§ 44 Trial by jury in civil cases.

Sec. 44. The legislature may authorize a trial by a jury of less than 12 jurors in civil cases.

History: Const. 1963, Art. IV, §44, Eff. Jan. 1, 1964.

Former Constitution: See Const. 1908, Art. V, §27.

Article IV, Section 44 should be replaced as follows:

§ 44 Laws concerning civil cases.

Sec. 44. The legislature may authorize conditions in order to bring forth civil cases. The legislature may authorize a trial by a jury of less than 12 jurors in civil cases. The legislature may authorize procedural rules in trials of civil cases. The legislature may authorize laws concerning monetary or non-monetary outcomes in civil cases. The legislature may authorize laws concerning legal fees in civil cases. The conditions and laws the legislature authorizes concerning civil cases are binding upon all Michigan Courts.

Comment:

The current Michigan Constitution has tainted the Michigan Supreme Court by giving what should be the non-political branch of government the power to make highly political conditions and rules concerning civil suits. This should be done in the political arena of the legislative branch where political debate is the norm, and the members are subjected to political scrutiny. Legislation must also be approved by the governor. Current Tort Laws (*Tort Reform*) with the *Cap* were written by the legislature and approved by the governor. Presently the majority of the politically motivated justices like the Tort Laws and the laws are allowed to remain. However,

the Michigan Supreme Court on a political whim can wipe these laws from the books by declaring the Michigan Constitution gives the Court the power to determine these matters. Tort Reform has been used as an example. The Michigan Supreme Court has established by their rulings case law that stipulates the conditions of many potential civil suits. Another example is issued opinions establishing conditions governing *slip and fall lawsuits*.

In all these matters all of the justices are legislating from the bench regardless of what action they take because of the unique authority they have by the separation of powers clause.

Ted Golden, M.D.