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STATEMENT OF J. CLAY SMITH, JR.*
HEARINGS BEFORE THE COMMITTEE
ON THE JUDICIARY AND COMMITTEE ON HUMAN SERVICES
(JOINTLY) DISTRICT OF COLUMBIA CITY COUNCIL
FEBRUARY 5 - 6, 1992
ON BILL 9-285

Chairperson [Wilhelmina] Rolark (Judiciary) and Chairman [H.R.] Crawford (Human Services), the purpose of this statement is to express my opposition to Bill 9-285 the "District of Columbia Health Occupations Revision Act of 1985 Amendment Act of 1991", a Bill that places a cap of \$350,000 that juries can award on pain and suffering damages in medical malpractice claims. The proposed Bill apparently is driven by representations that medical doctors are leaving the District of Columbia because insurance rates are too high to remain in the city. Naturally, the suggestion of such flight has caused some concern, concern enough to become a political issue.

The basis of my objection to the Bill is two fold. First, I believe that it is inappropriate for government to limit liability on provable or proven negligent harm to the individual. Secondly, I believe in the jury system-which means that proof of injury duly established during a trial on the merits should not be tampered with by legislative tools such as caps. There are democratic interests at play here: First, the injury of individuals due to negligence should be to compensate for cost of treatment and for pain and suffering, proven at trial, considered and determined by

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a jury. Citizens, the individual, should not be denied the right to be made whole for certified, negligent injury caused by anyone. When the legislative arm of government is asked to reach in to limit the power of juries, the courts on selective matters, it does violence to the democratic principle that access to the courts should not be restricted to right wrongs.

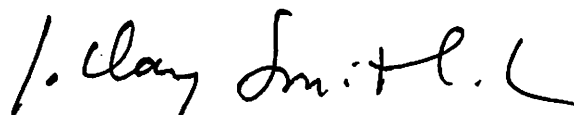
Secondly, I believe that a legislative act which predetermines the dollar extent of pain and suffering requires infinite wisdom. To limit damages in disregard of facts to the contrary is a direct act against individual citizens harmed by negligent acts. I should also make clear that I believe that defendants in malpractice cases are no less entitled to fairness and justice as are claimants. They suffer, also. They are citizens, too. Injustices to doctors is wrong and cannot be tolerated. But, we have a system for justice to evolve and to balance conflicting interests and that is the jury system. Leave it to the jury, unfettered by legislative restrictions, to do justice.

Blaming lawyers for the proper representation of their clients is not the proper approach. Doctors sue other doctors for malpractice to members of their families. Doctors testify against each other for medical malpractice. So, the issue should not be "a us against them."

Something much more significant is at stake here and that is

should government stay out of the business of forecasting damages for pain and suffering in medical malpractice claims.

I think it should.



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