

PRESIDENT'S PAGE

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With the death of Sen. Edward M. Kennedy on August 25, we lost the most passionate defender of civil justice in Congress. We will greatly miss his leadership, friendship, and advocacy.

Before Kennedy's death, the insurance and medical care industries began floating the idea of restrictions on medical negligence claims as a quid pro quo for providing affordable health care for Americans in the pending health care bill. Because of his failing health, Kennedy was not able to participate in the debate in a meaningful way.

Within hours of his passing, the issue moved to the top of the insurance industry's agenda, and many senators and representatives—some who in the past have been defenders of civil justice—began talking about the idea of limiting recoveries for medical negligence as if it merited legitimate consideration in the health care debate.

The reality is that compromising patients' legal rights will do nothing to either improve the quality of health care or provide health care to uninsured Americans. This year marks the 10th anniversary of the Institute of Medicine's seminal report on patient safety, *To Err is Human*, which reported that 98,000 Americans die annually as a result of preventable medical errors—at a cost of \$29 billion each year. The Institute for Healthcare Improvement estimates that there are 15 million incidents of medical harm each year. And recent studies conclude that in the past decade, the incidence of deaths and injuries from preventable medical errors has increased by about 10 percent.

The health care debate should be focused on patient safety, not on the misguided idea of compromising injured patients' rights as part of a national health care plan. The most effective way to reduce medical malpractice claims is to reduce the incidence of malpractice.

Kennedy was passionate in his conviction that patients' rights should never be compromised to provide a financial benefit to the insurance and medical industries, which in recent years have posted record profits. In May 2006, during debate on an effort to restrict patients' rights, Kennedy said:

“In reality, this legislation is designed to shield the entire health care industry from ba-

sic accountability for the care it provides. . . . While those across the aisle like to talk about doctors, the real beneficiaries will be insurance companies and large health care corporations. This legislation would enrich them at the expense of the most seriously injured patients . . . whose entire lives have been devastated by medical neglect and corporate abuse.”

As Kennedy noted then and on many other occasions, “less accountability for health care providers will never improve the quality of health care.” This fundamental premise has not changed and should not be forgotten in the current debate.

An ardent champion of civil justice, Kennedy stood on the floor of the Senate time and again to speak out against efforts to push access to justice out of reach of ordinary Americans while providing special privileges to corporate interests, including the insurance and health care industries. In a floor debate in 2002 he cautioned, “[L]et us all remember that we are dealing with people’s lives—many of them have suffered life-altering injuries as a result of substandard medical care. The law is there to protect them, not to shield those who caused their injuries.”

Passion and principle

Kennedy never wavered in his belief that the American civil justice system is a great equalizer—where an ordinary individual, with or without great means, can take on major corporations and industries to hold them accountable for negligent and wrongful conduct that results in injury or harm. In the words of Atticus Finch in Harper Lee’s classic *To Kill a Mockingbird*:

[T]here is one way in this country in which all men are created equal—there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentlemen, is the court.

Kennedy’s life reflected his profound understanding of this principle. It would be a great shame to witness after his death the passage of a health care bill that compromises the legal rights of individuals as a quid pro quo for what Kennedy sometimes described as the cause of his life—providing affordable health care to all Americans.

We will honor his memory by continuing his fight for a strong civil justice system in the current health care debate—and in every other challenge mounted against this funda-

mental principle of a strong democracy.