



The Constitution

by John D. Whitaker

Well, it looks like we are going to start looking at whether we should amend the Wyoming State Constitution in the next few months. It seems to me that before we start amending the Constitution we ought to think a little about what the Constitutions is, and what effect it will have if we amend it.

Let's start the discussion with a little history lesson. First of all, our democratic form of government is based upon the fundamental philosophical principle that the people have all the power. No government has legitimacy without the consent of the governed. This basic premise is articulated in Article 1, Section 1 of the Wyoming Constitution which provides:

"All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness; for the advancement of these ends they have at all time the inalienable and indefeasible right to alter, reform or abolish the government in such manner as they may think proper."

So when the people of the state of Wyoming ratified the Wyoming Constitution in 1889 they granted very specific powers to the government in order to allow it to function for our benefit and to preserve our various political and religious liberties. So, essentially a constitution is a limited grant of authority from the people to the government which allows the government to function.

Presently, our constitution prohibits placing limits on damages. Article 10, Section 4 of the Wyoming Constitution provides:

"No law shall be enacted limiting the amount of damages to be recovered for causing the injury or death of any person..."

Finally, the Wyoming Constitution also recognizes the age-old principle that all people are equal. Article 2, Section 1 of the Wyoming Constitution provides:

"In their right to life, liberty, and the pursuit of happiness, all members of the human race are equal.

In order for the legislature to place caps on damages a majority



of the people must vote to change the Constitution. The legislature has now approved a Constitutional Amendment that will allow the legislature to put a cap on non-economic damages which are caused by a health care provider. As voters, we must decide if we want to delegate this power to the legislature to pass such a law.

The proponents of placing a cap on non-economic damages caused by health care providers argue that such a law will decrease the cost of medical malpractice insurance to our physicians, thus allowing our state to keep our good doctors. Those opposing caps argue that placing caps on non-economic damages gives health care providers special protections that no other negligent person gets. In addition, victims of medical malpractice do not get the same amount of protection as victims of any other type of negligence. They also argue that caps won't work to bring down insurance rates for our doctors.

The net effect of the proposed Constitutional Amendment is therefore to shift the burden of paying for the damage caused by malpractice from the negligent health care provider who caused the injury to the victim who was injured. So here is the interesting moral dilemma: Should we reward negligent health care providers at the expense of their victims because it might help to keep medical malpractice insurance rates down? This is really the question we must answer in voting on the proposed Constitutional Amendment.

Amending the constitution was designed to be a hard process in order to protect ordinary people from strong special interests that can muscle support in the legislature to further their specific political agendas. New York Times columnist Tom Friedman writes that America's strength comes from a "... remarkable system of laws and institutions we have inherited — a system, they say, that was designed by geniuses so it could be run by idiots." Whether genius is behind this proposed Constitutional Amendment remains to be seen.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.