

Resolution 7
Urging the United States Congress to Consider State Policies and Principles of Federalism with Regard to Reforming Health Care Liability Systems

WHEREAS, the Conference of Chief Justices and Conference of State Court Administrators, in fulfilling their leadership role for state judicial systems, have traditionally taken positions to defend against proposed policies that threaten principles of federalism or that seek to preempt proper state court authority; and

WHEREAS, both Houses of the U.S. Congress, in an effort to establish national policies on health care access and medical cost containment, are considering legislative proposals, such as the Medical Care Access Protection Act of 2009 (S. 45) and the Help Efficient, Accessible, Low-cost, Timely Healthcare (HEALTH) Act of 2009 (H.R. 1086), to create uniform national mandates with respect to health care lawsuits in state and federal courts; and

WHEREAS, the above-described legislative proposals would, if enacted, federalize in significant ways many state policies and practices, as provided in both statutory and common law, including provisions to: (1) require state courts to impose a Federal Rule of Civil Procedure Rule 11-type sanction upon attorneys and law firms in certain circumstances; (2) dictate the content of jury instructions on damages; (3) limit contingency fees for claimant attorneys; and (4) institute uniform qualifications for persons to testify as experts in health care lawsuits; and

WHEREAS, these legislative proposals to regulate important features of personal injury lawsuits should defer to state courts and legislatures which are better situated to determine and control the impact of reform within their own communities;

NOW, THEREFORE, BE IT RESOLVED that the Conferences urge Congress, during its consideration of the above described legislation, to be mindful of the principles of federalism and particularly of the fact that state constitutions vest state supreme courts with responsibilities and authority over the procedures employed in state courts and the admission and discipline of attorneys and that the proposed legislation may create conflicts with state constitutional provisions; and

BE IT FURTHER RESOLVED that the Conferences urge that a federalism assessment of proposed legislation regulating health care be included in every Congressional committee and conference report.

Adopted as proposed by the CCJ/COSCA Government Affairs Committee at the CCJ/COSCA Annual Meeting in August 2009.