



State of Connecticut
HOUSE OF REPRESENTATIVES
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TESTIMONY

In Support of

H.B. No. 7040, AAC THE CLAIM AGAINST THE STATE OF LORI CALVERT.

Judiciary Committee

March 25, 2015

Dear Rep. Tong, Sen. Coleman, Rep. Rebimbas, Sen. Kissel and distinguished members of the Judiciary Committee:

Thank you for the opportunity to testify in favor of House Bill 7040, An Act Concerning the Claim Against the State of Lori Calvert.

The purpose of this bill is to permit one of my constituents, Lori Calvert, to present her claim against the University of Connecticut Health Center ("UCHC") to the state claims commissioner.

Lori suffers from Devic's disease (neuromyelitis optica), a form of multiple sclerosis in which a person's own immune system attacks the optic nerve. She is seeking damages from UCHC for medical malpractice in connection with an infection she allegedly contracted while being treated at UCHC in January 2010.

Lori is with me today, and I will allow her to provide you with more detail on the circumstances surrounding her alleged injury. Her case, however, has a tortured legal history, and I will focus my testimony on explaining the unique procedural posture of her case.

Some of you may recall that this is not the first time Lori has asked the General Assembly for authorization to pursue her claim. Lori's claim was previously reviewed by the legislature in 2013, after her claim had been dismissed on the basis that she failed to present her claim to the claims commissioner within the one year statute of limitations period provided for by section 4-148(a) of the General Statutes. After reviewing her case, the House and Senate adopted a joint resolution which authorized Lori to pursue her lawsuit against the state outside of the statute of limitations period.

Unfortunately, we have now learned that a joint resolution is not the proper form of legislation for authorizing a person to bring a time-barred claim against the state. This is because, pursuant to section 4-148(b) of our General Statutes, time-barred claims may only be authorized by special act. Unlike a joint resolution, a special act must be signed by the governor. Consequently, the 2013 joint resolution was deficient on its face, and the superior court has again dismissed Lori's claim on statute of limitations grounds.

For this reason, the bill before you is in the form of a special act. You may have also noticed that the bill is drafted a little differently than typical legislation reviewing a claim. This is because section 4-148(b) requires that the special act contain specific findings that the authorization is (1) supported by compelling equitable circumstances and (2) would serve a public purpose.

I believe this bill meets both criteria. Court records show that Lori filed her lawsuit in the superior court just ten months after she alleges her injury occurred. Because the claims commissioner has sole jurisdiction over medical malpractice claims against state hospitals, the court dismissed Lori's claim for lack of subject matter jurisdiction. By the time Lori presented her claim to the claims commissioner, more than a year had passed and the claims commissioner ruled that her claim was time-barred by section 4-148(a). Given these facts, it seems clear that UCHC was on notice of Lori's claim within the one-year statute of limitations period, and it would be inequitable for UCHC to benefit from her mistake. Further, given the complexity and unique nature of our process for suing the state, I believe there is a public purpose in preventing state agencies from taking undue advantage of defective pleadings.

Additionally, we should all expect the hospital of our state university to exercise the highest standards of patient care. Without passing judgment on the merits of Lori's case, or whether UCHC was responsible for her injury, I note that her allegations concern a type of injury that could happen to other patients. I believe that the full adjudication of Lori's claim would serve a public purpose by holding UCHC accountable and ensuring that any problems with UCHC's procedures are identified and corrected.

Lori's story is a tragedy of technical oversights, and I feel terrible that she has been forced to once again ask the legislature for help. After listening to Lori's testimony, I hope you will agree with me that this bill serves a public purpose, and that there are compelling equitable circumstances that warrant giving Lori an opportunity to have her day in court.

Again, thank you for considering this legislation.

Sincerely,



Mike Demicco
State Representative
21st Assembly District