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Senator Jim Shockley, Chair
Senate Judiciary Committee
Opposition to SB 4

The Montana Trial Lawyers' basic position flows from our support of the basic principle that individuals, business entities and governmental entities should be accountable and responsible for their actions or omissions that cause harm to another. This principle is set forth in the Declaration of Rights, Article II, Section 16 of our Montana Constitution which provides that "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property or character." This mirrors the 7th Amendment to the U.S. Constitution that protects our right to a trial by jury in civil matters. These constitutional rights are the impetus of section 27-1-701 of the Montana Code which provides that "each person is responsible not only for the results of the person's willful acts but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of the person's property or person...."

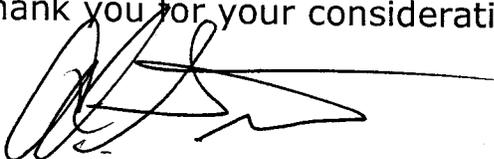
What bills like Senate Bill 4 mean, is that you are being asked to say that some group is so special that they deserve a privilege or immunity that exempts them from liability if they fail to act with ordinary care or skill - the standard that the rest of us are accountable to. Because Article II rights are fundamental, you need more than just a rational basis for limiting the right to a remedy for "**every** injury."

The gross negligence standard in SB 4 does not alleviate our concerns. It is still a limitation of rights. If a person veers over the center line and hits you, he is responsible and liable for his ordinary negligence - but, he would have to also be speeding or in some other way acting recklessly if he is responsible only for gross negligence.

Of all the institutions of government, only one - the judicial system - is dedicated to the individual. In court, every person is not only the equal of their neighbor, but also the equal of the largest corporation, and even the government itself. One role of the courts is simply to protect our constitutional rights - including the rights of liberals, conservatives, Republicans, Democrats, consumers and businesses, athletes and officials.

There is a cost to protecting our individual rights. That cost is making sure that the legal rights of each of our fellow citizens is also protected, without compromise, without exception, without special privileges. Like an alcoholic who takes that first drink, when we start compromising the rights of our "less worthy" neighbors, or granting privileges and immunities for "more worthy" groups, there may be no end until finally rights we individually hold dear are swept away as well.

Thank you for your consideration in voting no on SB 4.



Al Smith
Executive Director

Constitution of Montana -- Article II -- DECLARATION OF RIGHTS

Section 16. The administration of justice. Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.