



By Maresa Taylor Fawns
Executive Director, Kentucky Justice Association

Tort Reform Is Not Conservative

I recently had the opportunity to read about a trial lawyer from a nearby state who has taken on a crusade to educate members of the Tea Party and other conservatives about so-called “tort reform.” As you know, this issue is one that has been trumpeted by the right for years; however, this particular gentleman, who is a staunch conservative, believes strongly that his colleagues have taken the wrong approach to this issue, and he’s done a great job of explaining why he believes what he believes. I want to share some of his thoughts with you because I think he makes some very good points.

His approach takes several mainstay beliefs of conservatives and discusses them in the “tort reform” frame. This point-counterpoint method is very helpful in understanding his logic.

His first point is that conservatives believe in *less government*. However, he argues that “tort reform” contains arbitrary, government-mandated limits on individual rights and limits on the efficacy of our judicial system. He believes that this represents a government intrusion, which *increases* their scope and authority. So how can conservatives support an issue that so blatantly grows the size of government? Interestingly, I have had similar conversations with some of my conservative friends about the upcoming nursing home legislation. That measure will lead to an unnecessary increase in the size of government, and once you explain that to folks, many are quick to rethink their positions.

He goes on to state that conservatives believe in *local control*. Yet, “tort reform” takes power and control *away* from local citizens. There is no smaller, more committed or more effective form of government than a jury of twelve unbiased citizens who listen to the specific facts of a case and decide among themselves what is right. “Tort reform” places that power in the hands of legislators and bureaucrats, which flies in the face of personal responsibility. Conservative? Not at all.

And speaking of responsibility, that is something about which conservatives have strong convictions. They believe in holding others accountable for their actions. Yet “tort reform” puts arbitrary limits on how much a wrongdoer can be held

personally accountable. How does that promote personal responsibility? It doesn’t, and it’s not conservative.

Along those same lines, he says that conservatives believe *people should solve their own problems* rather than have “big government” get involved to “bail out” one side or the other. Our justice system allows people the freedom to resolve their disputes fairly and evenhandedly. Undermining the court system through “tort reform” causes the public to demand greater governmental regulation of our conduct.

He says conservatives believe those who are responsible for something should pay for it. We teach our children, “*If you break it, you fix it.*” Yet, “tort reform” tells wrongdoers they will only have to fix part of the harm they caused, leaving taxpayers to pick up the tab for the rest of the harm. Everyone remembers the old story of the kid who throws the baseball through his neighbor’s window, right? The parents use it as lesson to teach the young man about owning up to one’s mistakes and taking responsibility for one’s actions. Well, in the case of “tort reform,” the same story would be changed with the parents telling the child that even though he threw the ball through the window, he’d only have to take responsibility for a small part of it, if at all.

Finally, and this is a message I have used on a regular basis, he says that “tort reform” runs counter to one of the major principles of the conservative movement: protection of the Constitution. Limiting an American’s right to hold wrongdoers accountable for their actions through the civil justice system is an affront to the 7th Amendment of the U.S. Constitution. That’s where our right to a civil trial by jury was embedded by the Founding Fathers. If we’re going to fight for other Amendments, shouldn’t the 7th be protected, too?

I’m happy to say KJA has members from both sides of the aisle with multiple political philosophies. And I hope our friends on the right will take this message to their colleagues to spread the word that “tort reform” is in fact, not a conservative principle. However, protecting the rights of all injured citizens is something we can all support. 