The Hidden Costs of Statutory Caps for Medical Malpractice Recoveries

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I. INTRODUCTION

In 2018, Kathleen Kromphardt was admitted to Mercy Hospital in Iowa City, Iowa with painful contractions.[1] Her baby was having fetal distress due to a lack of oxygen.[2] The unborn baby's condition worsened to the point that he suffered a hypoxic brain injury.[3] Rather than performing a cesarian section, which is the typical route taken when these kinds of complications arise, the baby sustained serious head injuries by the use of forceps and a vacuum to pull him out.[4] After birth, the Kromphardt's son was transferred to the NICU at Stead Family Children's Hospital at the University of Iowa, where he stayed for

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1. Trish Mehaffey, *Jury Awards Nearly $98 million to Iowa City Parents of Newborn Left with Brain Injury*, THE GAZETTE (Mar. 22, 2022), https://www.thegazette.com/crime-courts/jury-awards-nearly-98-million-to-iowa-city-parents-of-newborn-left-with-brain-injury/ [https://perma.cc/4JSL-NRBR].

2. *Id.*

3. *Id.*

4. *Id.*

46 days.[5] He was diagnosed with ischemic brain injury, seizures, facial nerve palsy, and a skull fracture with subdural hemorrhage.[6] The Kromphardts subsequently sued Mercy Hospital, Obstetric and Gynecologic Associates of Iowa City, and the attending OB-GYN for medical negligence for their son's permanent disability—likely requiring 24-hour care for the remainder of his life.[7] In March 2022, a Johnson County jury awarded almost $100 million to the Kromphardts, making it the largest medical malpractice judgment in Iowa history.[8]

After another large jury verdict for medical malpractice was awarded in November 2022 after a misdiagnosis of bacterial meningitis,[9] Governor Kim Reynolds and the Iowa Legislature were quick to enact a statutory cap on medical malpractice recoveries, giving a hard cap to recoveries for non-economic damages at $1 million against individual medical providers, or $2 million against hospitals.[10] Economic damages, such as medical expenses, lost wages, and in extraordinary circumstances, punitive damages remain uncapped.[11] The impact that capping pain and suffering damages will have on hospitals, insurance providers, patients, and the general public remains uncertain.[12]

This Note will first discuss the legislative history and background justifications for enacting this tort reform, namely, recruiting and retaining doctors in Iowa and preventing excessive verdicts in favor of plaintiffs. Next, this Note will discuss the shaky grounds of this reform, including the effects of targeting non-economic damages, comparing medical malpractice insurance rates between states, and introducing potential constitutional concerns. This Note will then analyze the private benefit to insurance companies, to the detriment to those who are victims of malpractice and then discuss avenues for a constitutional challenge to the law. This Note will conclude by recommending that, assuming a constitutional challenge arises in the near future, the Iowa Supreme Court should hold that the non-economic damages cap is an unreasonable restraint on Iowans' inviolate right to trial by jury, and should abrogate Iowa Code section 147.136A—steering the Iowa legislature to craft an amendment that better balances private and public benefit—without infringing on constitutional rights. This Note aims to provide a useful case study for how states can balance constitutional requirements, justice for injured patients, and the economic realities of medical malpractice insurance. Iowa, in its current balance, gets it wrong.

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5. *Id.*

6. Mehaffey, *supra* note 1.

7. Clark Kauffman, *Record-Setting Malpractice Case Pits Medical Clinic Against Insurer*, IOWA CAP. DISPATCH (June 9, 2023), https://iowacapitaldispatch.com/2023/06/09/record-setting-malpractice-case-pits-medical-clinic-against-insurer/ [https://perma.cc/MCA4-RMNG].

8. *Id.*

9. Michaela Ramm, *Iowa Jury Awards Man $27M After He Was Sent Home with the Flu. It Was Really Meningitis*, DES MOINES REG. (Nov. 21, 2022), https://www.desmoinesregister.com/story/news/health/2022/11/22/jury-awards-iowa-man-millions-after-meningitis-misdiagnosed-flu-symptoms/69668716007/ [https://perma.cc/4QNR-NQQS].

10. IOWA CODE § 147.136A (2023).

11. *Id.*

12. Laura Belin, *What Iowa's Remarkable Medical Malpractice Debate Revealed*, BLEEDING HEARTLAND (Feb. 20, 2023), https://www.bleedingheartland.com/2023/02/20/what-iowas-remarkable-medical-malpractice-debate-revealed/ [https://perma.cc/AM83-CZEZ].

II. BACKGROUND

On February 16, 2023, Iowa Governor Kim Reynolds signed HF 161 into law after it passed through the Iowa Senate in a 29–20 vote, with five Republicans joining every Democrat in opposition.[13] This bill amended Iowa Code § 147.136A, which gives guidelines for non-economic damage awards against health care providers.[14] The amendment sets a hard cap on non-economic damages at $1 million for doctors or $2 million for hospitals.[15] Non-economic damages include pain and suffering, emotional distress, and the loss of consortium, among others.[16] This bill also calls for the formation of a Medical Error Task Force to convene and review medical error rates in Iowa, and make recommendations to address reducing error rates, improvements in education, and whether applicable penalties for medical errors and physician licensure review measures are sufficient.[17]

Unsurprisingly, some of the largest and most well-funded lobbying groups from the insurance and health industries heavily advocated for this amendment that drastically cuts their liability for medical negligence.[18] What is surprising is the amount of bipartisan resistance this bill encountered by the Iowa Legislature.[19] Tort reform has largely become a partisan issue in recent years, with Republicans heavily pushing tort reform measures that limit plaintiff recoveries.[20] With a wide Republican majority in the legislature and overwhelming lobbyist support for this amendment to Iowa Code 147.136A, the fact that many Republican legislators voted against this bill is indicative of how troubling this amendment's effects could be on the general public.[21]

A. History of the Iowa Legislature's Tort Reform for Medical Malpractice Claims

The Iowa legislature has undoubtedly made it a priority to limit claims and recoveries in cases of medical malpractice. For example, similar study bills as HF 161 were proposed and denied in 2020.[22] Going further back, a soft cap to recoveries was enacted in 2017 after

13. Stephen Gruber-Miller, *Iowa Legislature Passes $2M Cap on Medical Malpractice Damages. Here's the Likely Impact*, DES MOINES REG. (Feb. 8, 2023), https://www.desmoinesregister.com/story/news/politics/2023/02/08/iowa-house-votes-to-limit-medical-malpractice-damages-a-gop-priority/69866480007/ [https://perma.cc/4PY2-CHWU].

14. IOWA CODE § 147.136A (2023).

15. *Id.*

16. Christy Bieber & Adam Ramirez, *What Are Non-Economic Damages?*, FORBES: ADVISOR (Feb. 3, 2023), https://www.forbes.com/advisor/legal/personal-injury/non-economic-damages/ [https://perma.cc/9MQ5-EP6K].

17. TOM EVANS, RISING STANDARD OF CARE: A SPECIAL REPORT ON MEDICAL CARE IN IOWA 6 (2023), https://www.legis.iowa.gov/docs/publications/DF/1442259.pdf [https://perma.cc/RMG2-FK4V].

18. *See Lobbyist Declarations – HF 161*, IOWA LEGIS., https://www.legis.iowa.gov/lobbyist/reports/declarations?ga=90&ba=HF161 [https://perma.cc/V8VW-GUQV] (displaying all the lobbyist groups for and against HF 161 to amend Iowa Code § 147.136A).

19. Gruber-Miller, *supra* note 13.

20. Ulrich Matter & Alois Stutzer, *The Role of Party Politics in Medical Malpractice Tort Reforms*, EUR. J. POL. ECON., Dec. 2016, at 17, 18.

21. Gruber-Miller, *supra* note 13.

22. The Iowa study bills HSB 596 and SSB 2085 attempted to put a hard cap on statutory damages at $250,000, regardless of how egregious the medical error or the extent of permanent disability or death. David P. Lind, *Proposed Iowa Medical Malpractice Cap is a Snake Oil Cure*, DES MOINES REG. (Feb. 10, 2020),

stark resistance to the prospect of enacting a hard cap on damages.[23] The 2017 enactment is a 'soft cap' because it caps recoverable damages at $250,000 unless "the jury determines that there is a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death which warrants a finding that imposition of such a limitation would deprive the plaintiff of just compensation for injuries sustained."[24] Accompanying this soft cap, 2017 medical malpractice tort reform also heightened the requirements for plaintiffs to bring medical negligence cases by requiring them to file a certificate of merit.[25] Cumulatively, these reforms pose a significant hurdle to a plaintiffs' ability to bring a medical malpractice claim.

B. Justifications for Amending Iowa Code § 147.136A

This Part will primarily discuss three of the justifications that the Iowa Legislature used to justify this reform: the need to recruit and retain physicians, lowering medical malpractice insurance premiums, and generally lowering healthcare costs. First, Iowa Legislators have cited the need to recruit and retain physicians to care for Iowans to justify their persistent attempt to add obstacles and lower potential recoveries for victims of medical malpractice.[26] However, do statutory caps and adding barriers for plaintiffs to bring medical negligence claims actually attract medical professionals? Most evidence suggests that the answer is no.[27]

In terms of drawing medical professionals in due to lower medical malpractice insurance premiums, studies suggest that there is little correlation between non-economic damage caps and the cost of insurance premiums.[28] Further, Iowa already had the fifth-lowest medical malpractice insurance premium rate in the nation in 2022.[29] This suggests Iowa is enacting tort reform for a problem that does not exist for the benefit of Iowa's medical malpractice insurers. To illustrate, Iowa's northern neighbor, Minnesota, has no statutory caps for medical negligence recoveries and has the lowest average medical malpractice premium in the nation.[30] Conversely, Iowa's eastern neighbor, Illinois, similarly has no statutory cap—yet had the second-highest medical malpractice insurance rate in the United

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https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2020/02/10/iowa-legislature-proposal-cap-medical-malpractice-awards-snake-oil-cure/4713151002/ [https://perma.cc/3TDP-J588].

23. Brianne Pfannenstiel, *Branstad Signs into Law Medical Malpractice Reforms*, DES MOINES REG. (May 5, 2017), https://www.desmoinesregister.com/story/news/politics/2017/05/05/branstad-signs-into-law-medical-malpractice-reforms/311848001/ [https://perma.cc/4UNG-EDMT].

24. IOWA CODE § 147.136A (2) (2023).

25. *Id.* § 147.140. This statute creates a large hurdle for plaintiffs because it requires them to find an expert witness familiar with the standard of care applicable to the specific area of medical negligence. That expert needs to swear under oath that the applicable standard was breached, and the plaintiff must ensure that the affidavit is signed and served within sixty days of the defendant's answer. *Id.*

26. Belin, *supra* note 12.

27. Leonard J. Nelson III, Michael A. Morrissey & Meredith L. Kilgore, *Damage Caps in Medical Malpractice Cases*, 85 MILBANK Q. 259, 278–79 (2007) (discussing that studies have found very little evidence that damage caps on non-economic damages affect physician's location decisions, or even medical malpractice premium rates).

28. *Id.*

29. Natalie Krebs, *Who Really Benefits When Damages are Capped in Medical Malpractice Lawsuits?*, IOWA PUB. RADIO (Mar. 8, 2023), https://www.iowapublicradio.org/health/2023-03-08/who-really-benefits-when-damages-are-capped-in-medical-malpractice-lawsuits [https://perma.cc/C524-UXLB].

30. *Id.*

States in 2022.[31] The correlation between not having a statutory cap and high insurance premiums is attenuated, at best.

Studies suggest that tort reforms can be entirely subjective as to whether they increase or decrease healthcare costs.[32] However, there seems to be an intuitive consensus that higher quality medical care, and subsequently fewer medical errors, results in substantially lower medical malpractice, and even health insurance premiums.[33] This is where Iowa falls short. According to Leapfrog Hospital Safety Grade, Iowa is ranked 48th in the country for hospitals' "ability to protect patients from preventable errors, accidents, injuries and infections."[34] Despite the high prevalence of medical errors in Iowa, there has been very little reflection of the error rate in malpractice premiums.[35]

Another illuminating point regarding the recruitment and retention of physicians arises in discussing OBGYNs. OBGYNs have one of the highest rates of medical malpractice claims in Iowa, yet one of the lowest overall payouts per claim against them.[36] Iowa currently has the fewest OBGYNs per capita, and is projected to continue to have the greatest shortage of OBGYNs in the Midwest, along with North Dakota and Kansas.[37] There is very little evidence as to how or why a cap on noneconomic damages would promote the recruitment and retention of OBGYNs, yet overwhelming evidence exists as to other factors that have led to the decline of OBGYNs practicing medicine in Iowa.[38] Even the Iowa

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31. *Id.*; *see also* David A. Hyman et al., *Estimating the Effect of Damages Caps in Medical Malpractice Cases: Evidence from Texas*, 1 J. LEGAL ANALYSIS 355, 394 (2009). Illinois had a $500,000 non-economic damages cap; $1,000,000 if the primary defendant is a hospital. *Id.* The Illinois Supreme Court ruled that this statutory cap was unconstitutional in Lebron v. Gottlieb Mem'l Hosp., 930 N.E.2d 895, 897 (Ill. 2010).

32. Ronen Avraham, Leemore S. Dafny & Max M. Schanzenbach, *The Impact of Tort Reform on Employer-Sponsored Health Insurance Premiums*, 1–2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 15371, 2009). In essence, the argument is that having substantial liability can incentivize doctors to take greater precautions and avoid risky procedures, but could also have the inverse effect, often described as "defensive medicine," where doctors provide unnecessary treatments to leave no question that they met the standard of care. *Id.*

33. *See* MICHAEL D. GREENBERG ET AL., DOES IMPROVED PATIENT SAFETY REDUCE MALPRACTICE LITIGATION? 1–2 (2010) (finding there is a strong correlation between patient safety (i.e. higher standards to reduce medical errors), and medical malpractice liability).

34. Belin, *supra* note 12.

35. Krebs, *supra* note 29; David P. Lind, David R. Andresen & Andrew Williams, *Medical Errors in Iowa: Prevalence and Patients' Perspectives*, 16 J. PATIENT SAFETY e199, at *e199 (2020) ("Nearly one fifth of surveyed Iowa adults (18%) reported being involved in a medical error in their own care or in the care of someone close to them, and yet only four in 10 (39.1%) were notified of the error by the responsible provider.").

36. Krebs, *supra* note 29; *see also* RICHARD CADWELL & AMANDA ROCHA, IOWA MEDICAL MALPRACTICE ANNUAL REPORT 3 (2021) (reporting that Obstetrics/Gynecology has highest number of closed claims reported). This report also published a graphic breaking down the total benefits and expenses by specialty in Iowa for the 2021 calendar year; Obstetrics/Gynecology had the second most claims (17), with the next most being Radiology (14). *Id.* at 11.

37. Krebs, *supra* note 29. The shortage of OBGYNs and the narrative that it is somehow connected to medical malpractice suits is not a new phenomenon. President Bush noted to a Missouri crowd in 2004 that "frivolous lawsuits are running up the cost of care . . . . Too many ob-gyns aren't able to practice their love with women all across this country" because of the associated costs. President George W. Bush, Remarks in Poplar Bluff, Missouri (Sept. 6, 2004) (transcript available at https://www.presidency.ucsb.edu/documents/remarks-poplar-bluff-missouri).

38. Deidre McPhillips & Kyla Russel, *After Fall of Roe, Future Doctors Show Less Interest in Training in States with Abortion Bans or as OB/GYNs*, CNN (Apr. 19, 2023), https://www.cnn.com/2023/04/19/health/abortion-ban-affects-physician-training/index.html [https://perma.cc/2M57-DYKQ] (describing new doctor's hesitancy to practice medicine in states that try to dictate women's health); Emily Nyberg, *Iowa Has the Fewest OB-*

Supreme Court has acknowledged the shortage of OBGYN, expressing their worries that Iowa's fetal heartbeat bill will further exacerbate the shortage.[39]

C. The Realistic Effect of Amending Iowa Code § 147.136A

The Iowa Legislature specifically targeted noneconomic damages rather than an overall statutory cap for individual recoveries from medical malpractice.[40] This calls into question the justifications for these reforms. Namely, targeting noneconomic damages disproportionately affects those with minimal economic losses who sustain devastating permanent injuries or even death.[41] Studies have shown that the people most damaged by non-economic damage caps are the elderly who no longer work, women who may stay at home or work part-time to take care of their children, and children who have never worked.[42]

The average price of medical malpractice insurance in Iowa was $22,184 per year in 2022.[43] Although on average around 160 medical malpractice cases are filed per year in Iowa, from 2018–22 only 48 cases went in front of a jury.[44] Of those 48 cases, only seven found for the plaintiff.[45] In 2022, the only two cases that resulted in a jury verdict for the plaintiff were the Kromphardts and Joseph Dudley.[46] Both of these verdicts have since been vacated and remanded.[47] In 2021, of the ten medical malpractice jury verdicts, nine verdicts found for the defense, and only one of the ten verdicts was for the plaintiff, which

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GYN Specialists Per Capita Nationwide, Regent Report Reveals, DAILY IOWAN (Nov. 9, 2022), https://dailyiowan.com/2022/11/09/iowa-has-the-fewest-ob-gyn-specialists-per-capita-nationwide-regent-report-reveals/ [https://perma.cc/3D5C-N8H8] ("Nationally there are about four and a half OB-GYN providers for every 10,000 women, but in Iowa, we see that ratio as low as 3.3 OB-GYN providers for the same amount of women."); Julie Rovner & Rachana Pradhan, *Medical Residents Are Increasingly Avoiding States with Abortion Restrictions*, CNN (May 16, 2024), https://www.cnn.com/2024/05/16/health/medical-residents-abortion-restrictions-kff-health-news-partner/index.html [https://perma.cc/9C73-FC7B] (finding that "the number of applicants to OB-GYN residency programs in abortion ban states dropped by 6.7% compared with a 0.4% increase in states where abortion remains legal.").

39. Planned Parenthood of Heartland, Inc. v. Reynolds, 9 N.W.3d 37, 66 (Iowa 2024) (Christensen, C.J., dissenting) ("[D]ata shows medical residents are starting to avoid even applying for positions in states with significant abortion bans . . . . This should be cause for concern in Iowa, where we already rank dead last with the fewest OB-GYNs per capita of any state.").

40. IOWA CODE § 147.136A (2023).

41. Lucina M. Finley, *The Hidden Victims of Tort Reform: Women, Children and the Elderly*, 53 EMORY L.J. 1263, 1265–72 (2004).

42. *Id.*

43. Krebs, *supra* note 29.

44. *Id.*

45. *Id.*

46. Belin, *supra* note 12; Clark Kauffman, *After Record-Breaking Malpractice Award, Coralville Clinic Files for Bankruptcy*, DES MOINES REG. (Nov. 7, 2022), https://www.desmoinesregister.com/story/news/crime-and-courts/2022/11/07/coralville-clinic-files-bankruptcy-malpractice-award-mercy-hospital-obstetric-gynecologic-associates/69626615007/ [https://perma.cc/GNZ4-PBEY]; Michaela Ramm, *Iowa Jury Awards Man $27M After He Was Sent Home with the Flu. It Was Really Meningitis*, DES MOINES REG. (Nov. 23, 2022), https://www.desmoinesregister.com/story/news/health/2022/11/22/jury-awards-iowa-man-millions-after-meningitis-misdiagnosed-flu-symptoms/69668716007/ [https://perma.cc/5HRN-WCW2].

47. S.K. v. Obstetric & Gynecologic Assocs. of Iowa City & Coralville, P.C., 13 N.W.3d 546 (Iowa 2024); Order on Motions for New Trial and Remittitur, Joseph Dudley v. Iowa Physicians' Clinic, LACL138335 (Polk County Dist. Ct., Jan. 21, 2024) (on file with author).

awarded damages in the six-figure range.[48] Looking at the litigation data reveals that any award from a jury finding for a plaintiff is exceedingly rare, which further undermines the common sentiment pushed by lobbying groups that statutory caps are necessary.

There are, of course, some genuine issues in the medical malpractice insurance industry—namely that providing medical malpractice insurance has become exceedingly difficult to remain profitable.[49] This was first reported around 2001 by the Physician Insurers Association of America, a lobbying group representing some of the largest medical malpractice insurers throughout the United States.[50] In 2001, they reported losses in the amount of money paid out of medical malpractice compared to money they took in from premiums at 116%.[51] This means that for every dollar the insurance carrier receives in premiums, they would end up paying out $1.16 for medical malpractice claims.[52] Since 2001, this loss ratio has fluctuated greatly but overall has improved;[53] although there are still years when medical liability insurers are taking losses.[54] Although, for background, medical malpractice insurers can still be profitable with a loss ratio of around 105% from investment income.[55] Since 2001, there has been an overall decrease in medical malpractice insurance carriers due to "perfect storms,"[56] when loss ratios occur contemporaneously with drops in investment income yields. The underlying cause of this happened in the late 1990s, as carriers were hypercompetitive; selling medical malpractice policies for lower than market value to limit their taxable income and sell more policies.[57] However, when the investment economy sank, insurance carriers were forced to raise premiums or close shop, a result that quickly spurred tort reform across the United States.[58] In essence, it appears tort reform for medical liability has been more of a bail-out for questionable business practices by insurance companies rather than some inherent issue of injured patients getting windfall recoveries for their injuries sustained by medical malpractice.

The average recovery for injured patients is drastically affected by these tort reforms.[59] The data shown by David Hyman and co-authors in their comprehensive study of state med-mal noneconomic damage caps reveals exactly how much the insurance industry benefits from limiting recoveries for meritorious plaintiffs that have incurred devastating injuries.[60]

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48. Belin, *supra* note 12.

49. Richard G. Roberts, *Understanding the Physician Liability Insurance Crisis*, FAM. PRAC. MGMT., Oct. 2002, at 47, 48.

50. *Id.*

51. *Id.*

52. *Id.*

53. *See* Andrew Vega, *Challenges Faced by Medical Professional Liability Insurers in 2022 and Beyond*, MILLIMAN, fig. 1 (July 25, 2022), https://www.milliman.com/en/insight/challenges-faced-by-medical-professional-liability-insurers-in-2022-and-beyond [https://perma.cc/45KQ-35L3] (comparing direct earned premiums to direct loss & DCCE Ratio).

54. *Id.*

55. Roberts, *supra* note 49, at 48.

56. *Id.*

57. *Id.*

58. *Id.*

59. Hyman et al., *supra* note 31, at 393 tbl.11 (2009).

60. *See generally id.*

D. The Constitutionality Issue of Iowa Code 147.136A

Factoring in the questionable basis and logic behind the statutory cap enacted in section 147.136A gives rise to a genuine question of the constitutionality of this statute. Returning to the case of the Kromphardts, the aftermath of the nearly $100 million jury verdict has been tumultuous, to say the least.[61] After the verdict was lowered to around $75 million, and the judge apportioned the dollar figure between the three defendants (the physician, the clinic, and the insurer), MMIC, the insurance carrier, allegedly refused to pay the outstanding balance.[62] The hospital had a policy limit with MMIC of $10 million and had to file for bankruptcy due to its liability above the policy limit.[63] The bankruptcy court subsequently denied the hospital's request to discharge the debt due to underlying evidence of bad faith.[64] Evidence is now being presented by the hospital that MMIC, the insurance carrier, acted in bad faith, as all parties involved wanted to settle the claim, except MMIC.[65] Rowley, a prominent plaintiffs' attorney who is representing the hospital, is further alleging that MMIC effectively manufactured the verdict to bankrupt the hospital, in hopes of using the verdict to force Iowa legislators to enact tort reform that would predominantly benefit tort insurance providers.[66] This result further highlights that while the Kromphardts' award may seem excessive, it is not a representative case of anything remotely typical for Iowa malpractice cases, and was allegedly used to illicit a reaction from the Iowa Legislature, giving them justification for the statutory cap.[67] The Kromphardts' case is also illustrative that Iowa courts can handle issues of 'run-away' verdicts without the Iowa legislature imposing: The Iowa Supreme Court ordered a new trial because of hearsay evidentiary issues.[68]

Since 2017, many have theorized that a hard cap on medical negligence damages would be unconstitutional in Iowa,[69] however, it appears no challenge to the validity of Section 147.136A has arisen to date. Going beyond just the historical lens of the right to a civil jury trial and the right of jurors to make factual determinations, the shaky ground that this statute is based on seriously calls into question this statute and who exactly Iowa legislators are attempting to benefit in enacting it.

But is it the Iowa Supreme Court's duty to strike down this legislation? After all, the Iowa Legislature has made its intention clear as to the purpose of amending Iowa Code

61. Kauffman, *supra* note 7.
62. *Id.*
63. *Id.*
64. *Id.*
65. *Id.*
66. Kauffman, *supra* note 7.
67. *Id.*
68. S.K. v. Obstetric & Gynecologic Assocs. of Iowa City & Coralville, P.C., 13 N.W.3d 546 (Iowa 2024).
69. *See* Theodore Thomas Appel, Note, *Do Legislators Under Iowa's Golden Dome Know Better?: Surveying Jury-Trial Constitutional Challenges on Damage Caps and Application to the Iowa Constitution*, 106 IOWA L. REV. 813, 820 (2021) (analyzing Iowa's "inviolate" right to a jury trial under Iowa common law and Article I section 9 of the Iowa Constitution as a bar to a non-economic damage cap, as it would materially impair the fact-finding function of the civil jury); Belin, *supra* note 12 (hypothesizing that an Article I section 6 claim could arise from the non-economic damage cap because identical incidents could occur, but if it happened in a hospital the plaintiff "could recover up to $2 million in non-economic damages. But the one whose calamity occurred elsewhere would have compensation for pain and suffering capped at $1 million.").

147.136A.[70] The answer is almost certainly yes, and the Iowa Supreme Court wouldn't be alone in striking down their state legislature's attempts to enact damage caps.[71] Over a dozen other states have had their statutory caps on non-economic damages struck down;[72] and while the justifications for striking down the legislation varied by state, the most common grounds for striking down the caps were Equal Protection Clause violations, and impermissible interference from the legislature on the right to trial by jury.[73]

A constitutional challenge under Article I, section 9 appears to be the most likely avenue for invalidating the amendment to section 147.136A. Article I, section 9 of the Iowa Constitution states "[t]he right of trial by jury shall remain inviolate; but the General Assembly may authorize trial by jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law."[74] Of note in this constitutional provision is the attachment of the due process clause to the inviolate right to jury clause. Because these two critical provisions are separated by a semicolon and the word "but," there is a reasonable inference that the two are related.[75] Further, although the common law has long acknowledged the right of the legislature to modify procedural elements of the right to a jury trial,[76] substantive aspects of the right to a jury are beyond the reach of the legislature, such as allocating questions of fact.[77] A longstanding history of the determination of damages being factual matters solely to be decided by the jury suggests that damages fall under this umbrella of the "inviolate" right to a jury trial.[78] Looking towards other states with similar "inviolate" provisions in their constitutions regarding the right to a jury trial, such as Alabama, there is a common understanding that non-economic damage caps are a significant infringement on the "inviolate" right to trial by jury.[79]

That being said, this Note will not provide an in-depth textual or originalist interpretation of Iowa's Constitution to try to determine how a court would interpret the constitutionality of the recent amendment to section 147.136A, because that has largely already

70. Krebs, *supra* note 29 (discussing Iowa Republicans' justification for amending Iowa Code section 147.136A).

71. *See Constitutional Challenges to State Caps on Non-Economic Damages*, AM. MED. ASS'N ADVOC. RES. CTR., https://www.ama-assn.org/media/14451/download [https://perma.cc/GM9U-UU2B] (listing the legal challenges to state caps on non-economic damages).

72. *Id.*

73. *Id.* Perhaps most notably, the Alabama Supreme Court struck down their legislature's statutory cap on noneconomic damages, stating "if it clearly appears that an act of the legislature unreasonably invades rights guaranteed by the Constitution, we have not only the power but the duty to strike it down." Moore v. Mobile Infirmary Ass'n, 592 So.2d 156, 159 (Ala. 1991). North Dakota also held that noneconomic damage caps for medical malpractice recoveries were unconstitutional under the Equal Protection Clause of the State Constitution. Arneson v. Olson, 270 N.W.2d 125, 135 (N.D. 1978).

74. IOWA CONST. art. I, § 9.

75. *Id.*; *see also* Appel, *supra* note 69, at 856 (giving an in-depth textual analysis of Article I section 9 and the relationship between the clauses).

76. *See* Pitcher v. Lakes Amusement Co., 236 N.W.2d 333, 338 (Iowa 1975) (holding that allowing non-unanimous jury verdicts did not violate Article I section 9 of the Iowa Constitution).

77. Appel, *supra* note 69, at 866.

78. *Id.* at 866–67 (discussing Iowa case law regarding the "inviolate" right to trial by jury and identifying damages as a substantive aspect of that right).

79. Moore v. Mobile Infirmary Ass'n, 592 So.2d 156, 159 (Ala. 1991).

been accomplished.[80] Rather, this Note predicts that a constitutionality challenge will likely hinge on a balancing test between the public interest/benefit versus the impingement of the "inviolate" right to a jury trial in civil matters. The 'public interest' from this bill is attenuated, the only direct beneficiaries of these reforms seem to be large insurance and hospital conglomerates, with possible savings being passed down in a trickle-down formation.[81]

III. ANALYSIS

A. Impacting the Most Vulnerable Populations for the Benefit of the Insurance Industry

This Part will primarily discuss how this amendment provides a significant barrier to Iowa's most vulnerable populations to pursue medical malpractice claims. Although Iowa now joins a wealth of states with similar statutory caps on medical malpractice recoveries,[82] there are significant ramifications for the public because of the Iowa legislature's decision to amend section 147.136A.[83] The given justifications for enacting this statute was to protect medical providers from excessive jury verdicts, resulting in increased recruitment and retention of medical professionals, and subsequently increased access to affordable healthcare to the public.[84] However, these justifications are largely illusory.[85]

Iowa Code section 147.136A, in effect, limits injured patients' access to a remedy, as Plaintiffs' attorneys are disincentivized from incurring the substantial cost necessary to litigate medical malpractice claims.[86] Because Iowa has already built up barriers for patients to bring medical negligence claims,[87] this amendment has a devastating impact on

80. *See id.* (giving an in-depth analysis of various ways to interpret the constitutionality of damage caps); *see also* sources cited *supra* note 69 (outlining publications that have already theorized as to the constitutionality of noneconomic damage caps in Iowa).

81. Krebs, *supra* note 29.

82. Erin Murphy, *Medical Malpractice Awards Capped Under New State Law*, THE GAZETTE (Feb. 16, 2023), thegazette.com/state-government/medical-malpractice-awards-capped-under-new-state-law/ [https://perma.cc/3ZM4-W5D4] (providing "Iowa joins the majority of states with at least some medical malpractice caps.").

83. *See* Krebs, *supra* note 29 (describing how the hard-cap will likely have more adverse impacts on patients and doctor's than any intended benefit).

84. Gruber-Miller, *supra* note 12.

85. *See* Nelson, Morrissey & Kilgore, *supra* note 27, at 278–79 (discussing how little medical malpractice caps play into physicians' decisions on where to practice, public benefits, and medical malpractice insurance rates).

86. Law professors and Iowa trial lawyers have both stated that these caps present a significant barrier to patients, as lawyers cannot take on the substantial costs associated with bringing a medical negligence claim, as the likelihood of success for these claims is already so low. *See* Krebs, *supra* note 29. *See also*, Christopher D. Stombaugh, *Medicolegal Sidebar: Blowback: The Unintended Consequences of Medical Liability Reform*, 474 CLINICAL ORTHOPAEDICS RELATED RSCH. 31, 32 (2016) ("[P]erhaps [the] most plausible explanation for the reduction [in med-mal cases] is that many cases cannot be realistically brought by laws as medical liability reform makes them cost prohibitive.").

87. *See* IOWA CODE § 147.140. Of note is the 2017 amendment requiring a certificate of merit, where plaintiffs must find an expert witness who is familiar with the standard of care applicable to the specific area of medical negligence. *Id.* Such an expert needs to swear under oath that the applicable standard was breached, and plaintiff must ensure that the affidavit is signed and served within sixty days of the defendant's answer. *Id.* This expedited demand for medical records, expert review, and affidavits is enormously costly for litigants, especially

patients' ability to recover.[88] Data suggests that mandatory caps on malpractice damages create more harm than benefit for the public, as insurance carriers and hospitals have no economic incentive to provide consistent, high-quality care to avoid litigation.[89] This has already been evidenced in Iowa; which recently ranked among the worst states for their "hospitals' ability to protect patients from preventable errors, accidents, injuries and infections."[90] Further, section 147.136A's cap on non-economic damages specifically impacts those who have the most serious injuries and those who have minimal economic losses, such as lost wages.[91]

The absence of public outcry against statutory caps throughout the United States is unsurprising, as most Americans view medical malpractice insurance as a major problem in our healthcare system.[92] While it is easy to point toward excessive jury verdicts and stories of frivolous litigation in the medical malpractice region to justify hard caps—as previously mentioned, the underlying issue of increased medical costs and medical malpractice premiums can be attributed to patient safety, or lack thereof—not necessarily the victims of malpractice being overcompensated.[93] This is further evidenced by Minnesota, who does not have a statutory cap on medical malpractice recovery yet has the lowest medical malpractice insurance rate in the country.[94]

B. The Role of Article I Section 9 in Determining Constitutionality

Article I section 9 of the Iowa Constitution grants an "inviolate" right to civil jury trials.[95] Understanding the history and basis that this statutory amendment arose out of, the constitutionality of section 147.136A's cap specifically gives rise to serious constitutionality concerns.[96] Notably, Iowa law practitioners and legal scholars have long thought that a hard cap on non-economic damages should be held unconstitutional.[97] While in-depth

considering the already stringent expert disclosure deadlines in the Iowa Code. *See id.* § 668.11 (outlining the expert disclosure deadline that controlled med-mal litigants prior to 2017).

88. Krebs, *supra* note 29.

89. Shirley Svorny, *Could Mandatory Caps on Medical Malpractice Damages Harm Consumers?*, CATO POL'Y REP., no. 685, 2011, at 3.

90. Belin, *supra* note 12.

91. Non-economic damages are usually greatest in cases with serious permanent disability or death, and the most common demographic of people to be victims of malpractice, newborn children and the elderly, often have low economic losses in comparison with non-economic losses, because economic losses include lost wages, past and future medical expenses, etc. *See* Finley, *supra* note 41, at 1264–66.

92. Rick Blizzard, *Politics Shape Views on Malpractice Issue*, GALLUP (Feb. 11, 2003), https://news.gallup.com/poll/7762/Politics-Shape-Views-Malpractice-Issue.aspx [https://perma.cc/ZD4T-ZT3S].

93. *See generally* TOM BAKER, THE MEDICAL MALPRACTICE MYTH (2005); *see also* Greenberg et al., *supra* note 33 (denouncing the idea that compensating plaintiffs excessively drives the cost of medical malpractice premiums).

94. Krebs, *supra* note 29.

95. The full clause of Article I section 9 states: "The right of trial by jury shall remain inviolate; but the general assembly may authorize trial by a jury of a less number than twelve men in inferior courts; but no person shall be deprived of life, liberty, or property, without due process of law." IOWA CONST. art. I, § 9.

96. Kauffman, *supra* note 7.

97. There have been multiple notes over the past few decades arguing that damage caps would effectively obstruct the common law understanding in Iowa of the inviolate right to a jury trial. *See* Appel, *supra* note 69; Michael P. Murphy, Note, *Tort Reform: Would a Noneconomic Damages Cap be Constitutional, and is One Necessary in Iowa?*, 53 DRAKE L. REV. 813, 816–17 (2005).

historical and textual analyses can provide insight as to where exactly the line is drawn in regards to constitutional limits on a jury's right to decide damages, case law illuminates roughly where Iowa stands in regard to similar constitutional issues.[98] While many aspects of Iowa Code § 147.136 have been upheld by the Iowa Supreme Court,[99] no constitutional challenge has arisen regarding the "inviolate" right to a jury trial.[100] These section 147.136 cases, such as *Rudolph v. Iowa Methodist Medical Center*, can be properly distinguished from what a constitutional challenge would look like specifically under 147.136A, as there is a clear and direct infringement on the right of a jury to determine non-economic damages—a duty that is exclusively under the purview of a jury.[101] All of the section 147.136A cases may have limited a plaintiffs' recovery to some extent but did not significantly intrude on the jury's fact-finding, non-economic damage determinations.[102] Further, Iowa courts have not always shied away from standing up to the Iowa legislature for unconstitutional acts.[103]

The largest potential barrier for an Iowa court to deem section 147.136A unconstitutional is if a court determines that the hard cap is more of a procedural rather than substantive infringement on the inviolate right to a jury trial.[104] Iowa has held that the Iowa legislature can enact reasonable regulations to the procedure for civil jury trials, so long as it does not materially impair the right to a civil jury trial.[105] When applying this to the statutory cap, the reasoning would likely be that the damages actually awarded relate to procedure. Looking towards other states' "inviolate" right to trial by jury—and how their Supreme Courts have interpreted non-economic damage caps—illuminates that Iowa Code

98. The Iowa Supreme Court has held that provisions of section 147.136 are constitutional, noting that challenging the constitutionality carries a heavy burden, and can ultimately hinge on whether the legislature has a legitimate purpose to limit recovery. *See* Lambert v. Sisters of Mercy Health Corp., 369 N.W.2d 417, 423–24 (Iowa 1985) (holding that even if the defendant hospital doesn't pay medical malpractice insurance premiums, the legislature still had a legitimate interest in enforcing section 147.136 to "assure the public of continued health care services at affordable rates"); *see also* Heine v. Allen Mem'l Hosp. Corp., 549 N.W.2d 821, 823 (Iowa 1996) ("We have stated 'the legislature's purpose in enacting section 147.136 was to reduce the size of malpractice verdicts by barring recovery for the portion of the loss paid for by collateral benefits'" (quoting Rudolph v. Iowa Methodist Med. Ctr., 293 N.W.2d 550, 558 (Iowa 1985))).

99. Rudolph v. Iowa Methodist Med. Ctr., 293 N.W.2d 550, 557–59 (Iowa 1985).

100. Appel, *supra* note 69, at 869.

101. *Rudolph* revolves around the "Collateral Source Rule", which permits the jury to factor in mitigating damages when a plaintiff has already been compensated for something like medical treatment by insurance. *Rudolph*, 293 N.W.2d at 424–25. Conversely, section 147.136A limits the jury's fact-finding ability to determine damages based on the evidence, capping damages at $1 million for individual doctors, or $2 million for hospitals. IOWA CODE § 147.136A (2023).

102. IOWA CODE § 147.136A (2023).

103. *See, e.g.*, Clark Kaufmann, *Citing 'Crony Capitalism,' Iowa Supreme Court Blasts Late-Night Legislative Logrolling*, IOWA CAP. DISPATCH (Mar. 30, 2023), https://iowacapitaldispatch.com/2023/03/29/citing-crony-capitalism-iowa-supreme-court-blasts-late-night-legislative-logrolling [https://perma.cc/4TZT-ZNPG] (outlining a case in which the Iowa Supreme Court struck down legislation due to unconstitutional 'logrolling').

104. *See* Schloemer v. Uhlenhopp, 21 N.W.2d 457, 458 (Iowa 1946) ("There seems no doubt of the proposition that the legislature may make reasonable regulations as to the practice and procedure in civil cases so long as the right to a jury trial is not materially impaired.")

105. *Id.*

147.136A imposes a significant constitutional infringement on the inviolate right to trial by jury.[106]

For these reasons, a constitutional challenge of 147.136A would likely be subject to a different burden than the previous section 147.136 constitutional litigation.[107] Iowa, amongst other states, has placed a special emphasis in its constitution to preserve the right to trial by jury.[108] Based on the clear language and similar states' precedents, there is a clear path to success in a constitutional challenge if a plaintiff can show there is very little genuine state interest being advanced by the amendment to section 147.136A, but a significant encroachment to the "inviolate" right to a jury trial as prescribed by Article I section 9 of the Iowa Constitution.[109]

IV. RECOMMENDATION

Although the Iowa Supreme Court has yet to face a constitutional challenge to Iowa Code § 147.136A, a challenge will inevitably arise soon.[110] While many have theorized that a damage cap in Iowa similar to what has been enacted under section 147.136A would be unconstitutional,[111] the Iowa Supreme Court will likely have an extremely difficult time analyzing this statute's constitutionality. This is predominantly due to old precedent and the history of Iowa's "inviolate" right to a jury trial, suggesting that a limitation on a jury's ability to award non-economic damages (pain and suffering) is unconstitutional.[112] That being said, the difficulty emerges when considering that the Iowa Supreme Court has upheld the constitutionality of similar statutes that limit recoveries for indemnified medical payments and punitive damages.[113] This suggests that the Iowa Supreme Court is shying away from strictly enforcing the civil right to trial by jury by applying a rational basis test.

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106. *See* Appel, *supra* note 69 and accompanying text; *see also* Arneson v. Olson, 270 N.W.2d 125, 137 (N.D. 1978) (holding non-economic damage caps unconstitutionally deprived plaintiffs of the right to a jury trial under North Dakota's constitution).

107. *See supra* note 98 and accompanying text (discussing the heavy burden placed on constitutional challenges for the collateral source rule imposed by 147.136).

108. *See* IOWA CONST. art. I, § 9 ("The right of trial by jury shall remain inviolate . . . ."); *accord* ALABAMA CONST. art. I, § 11 (1901) ("[T]he right of trial by jury shall remain inviolate."); Moore v. Mobile Infirmary Ass'n, 592 So.2d 156 (Ala. 1991) (citing identical language between the Iowa and Alabama constitution to strike down Alabama's med-mal cap).

109. *See* Appel, *supra* note 69, at 871 (concluding that any hard cap on non-economic damages would go against over 170 years of Iowa case law and could not be framed as a reasonable regulation on procedure).

110. Iowa has enacted a similar hard-cap in commercial vehicle collision cases, which has also been highly contested. Stephen Gruber-Miller, *Kim Reynolds Signs Iowa Law Capping Damages in Truck Driving Lawsuits. Here's How it Will Work*, DES MOINES REG. (May 12, 2023), https://www.desmoinesregister.com/story/news/politics/2023/05/12/kim-reynolds-signs-iowa-law-limiting-damages-in-truck-driving-lawsuits/70207274007/ [https://perma.cc/TS2A-HFJ8].

111. Appel, *supra* note 69, at 820; Murphy, *supra* note 97, at 834.

112. *See* Appel, *supra* note 69, at 860–64 (discussing how it is exclusively under a jury's fact-finding duty to determine non-economic damages).

113. *See* Rudolph v. Iowa Methodist Med. Ctr., 293 N.W.2d 417, 424–26 (Iowa 1985) (holding that Iowa Code section 147.136 has a rational-relationship with the legislature's goal of reducing medical malpractice premiums); *see also* Shepherd Components, Inc. v. Brice Petrides-Donohue & Assoc., Inc., 473 N.W.2d 613, 619 (Iowa 1991) (ruling that there is no constitutional violation in limiting punitive damage recoveries in negligence cases).

Unfortunately, it is not the role of the Supreme Court to decide whether a statute is effective at furthering the proposed purpose,[114] with the rationale here being to recruit medical providers and limit the cost of medical malpractice insurance premiums. The term 'unfortunately' is used here because it is hard to controvert that there is at least *some* rational relationship between this hard cap on non-economic damages and the amendment's stated purpose. The Iowa Supreme Court has often held that so long as the regulation is "reasonable" and does not materially impair the right to a jury trial, they will uphold the regulation.[115] Again, while precedent and other states' Supreme Court's interpretation of the inviolate right to trial by jury suggests this cap is unconstitutional,[116] as an issue of first impression, the Iowa Supreme Court may very well lean towards previous section 147.136 precedent and uphold the statutory cap. Further, many State courts have upheld statutory damage caps under the reasoning that "plaintiff is entitled to have the jury make an assessment of damages under the right to a jury trial but has no right to receive that sum if the law limits those damages to a lesser figure."[117]

Factoring some of these messy components together, although the path of least resistance for the Iowa Supreme Court may be to uphold Iowa Code § 147.136A, they should not do so. Because medical malpractice claims are extremely cost and labor-intensive to bring, this is a material impairment for plaintiffs' ability to bring a case.[118] As discussed, non-economic damage caps tend to have a devastating impact on those who are permanently disabled or killed due to medical errors.[119] Further, this is a blatant attack on Iowa's right to trial by jury. If section 147.136A stands, it sets the precedent that the Iowa Legislature can take away the jury's fact-finding role of determining damages.[120] Such a result simply cannot stand. For a civil trial, a jury's main fact-finding role is to determine which side will prevail and the amount of damages incurred.[121] While things like economic damages have objective criteria, non-economic damages are a purely subjective determination to be made by a jury.[122] The Iowa Legislature has overstepped its power by putting an unreasonable regulation on Iowa's judicial system.[123]

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114. Planned Parenthood of the Heartland, Inc. v. Reynolds, 2023 WL 4635932, at *29–32 (Iowa June 16, 2023) (discussing the Supreme Court's role and appropriate standard of review for constitutionality challenges).

115. Schloemer v. Uhlenhopp, 21 N.W.2d 457, 458 (Iowa 1946) ("There seems no doubt of the proposition that the legislature may make reasonable regulations as to the practice and procedure in civil cases so long as the right to a jury trial is not materially impaired.").

116. *See* Appel, *supra* note 69 and accompanying text.

117. Michael S. Kang, *Don't Tell Juries About Statutory Damage Caps: The Merits of Nondisclosure*, 66 U. CHI. L. REV. 469, 469 n.1 (1999).

118. *See* Gruber-Miller, *supra* note 13.

119. *See supra* note 35 and accompanying text.

120. *See* Gruber-Miller, *supra* note 13 (noting that the legislature should trust juries to analyze the unique facts of each case and reach a reasonable determination of the appropriate liability).

121. *See generally Jury Service*, IOWA JUD. BRANCH, https://www.iowacourts.gov/iowa-courts/jury-service [https://perma.cc/63U6-MZGU] ("In a civil case, jurors decide which party should prevail and whether damages (usually money) should be awarded.").

122. *Id.*

123. *See e.g.*, Busch v. McInnis Waste Sys., Inc., 468 P.3d 419, 433 (2020) (finding noneconomic damage caps enacted to reduce insurance costs and improve insurance availability unconstitutional because it "did not advance the state's interest in sovereign immunity or any other interest with constitutional underpinnings"). Although this analysis was based on the remedy clause of Article I, section 10 of Oregon's Constitution, the

Rather than upholding the Iowa Legislature's amendment to section 147.136A, the Iowa Supreme Court should abrogate Iowa Code § 147.136A as a material impairment to Iowa's longstanding inviolate right to a trial by jury.[124] It should not be the Iowa Legislature's place to rob a jury of its ability to determine pain and suffering damages incurred by a plaintiff. The legislature can put reasonable regulations on procedure, but capping noneconomic damages, irrespective of the severity or egregiousness of the misconduct by all accounts, should be seen as a material impairment to the right to a civil jury trial.[125]

Instead, the Iowa Legislature should focus on enacting laws that promote patient safety rather than punishing the victims of medical negligence through an arbitrary noneconomic damages cap. There appears to be no real tangible relationship between states that have hard-economic damage caps for medical negligence, and states that do not.[126] Further, as demonstrated by the two large verdicts in 2022, remittitur and appellate review are the proper remedies for 'run away' jury verdicts, not the legislature effectively abolishing a common law cause of action.[127] Ultimately, there is very little public interest served by limiting a victim's ability to recover for suffering as a result of medical negligence; the only tangible beneficiary is the medical malpractice insurance providers.[128] Meanwhile, victims of the most serious medical errors will be left with an inadequate remedy or no remedy at all, since plaintiffs' lawyers are now deterred from taking on the substantial risk associated with bringing a medical malpractice claim on a contingency basis.[129] The Iowa Legislature should not be permitted to stand in for a jury to decide how much compensation for an individual's life or livelihood that was taken as a result of medical negligence. While Iowa is a good case study for why such malpractice reforms are harmful, this is a national issue. Under the guise of runaway jury verdicts and physician shortages, statutory caps have become commonplace nationwide, most of which have the same simple effect as Iowa's: making injured patients bear the cost of being injured rather than the tortfeasor and their insurance provider.[130]

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underlying reasoning translates to Iowa; that the legislature is overreaching in capping noneconomic damages if a constitutionally based state interest is not being advanced. *Id.*

124. IOWA CONST. art. I, § 9.

125. R.E. Morris Invs., Inc. v. Lind, 304 N.W.2d 189, 190 (Iowa 1981) (outlining the Iowa Supreme Court's views on Article I section 9 protections).

126. Minnesota has one of the lowest medical malpractice insurance rates in the Nation and does not have any kind of hard-cap on non-economic damages, while Illinois has one of the highest premium rates in the nation and they used to have a hard-cap for non-economic damages. Krebs, *supra* note 29.

127. *See supra* note 47 and accompanying text; *see also* David Baldus, John C. MacQueen & George Woodworth, *Improving Judicial Oversight of Jury Damages Assessments: A Proposal for the Comparative Additur/Remittitur Review of Awards for Nonpecuniary Harms and Punitive Damages*, 80 IOWA L. REV. 1109 (1995).

128. Krebs, *supra* note 29.

129. *Id.* (noting a plaintiffs' lawyer who stated "[i]t may cost me . . . $100,000 to $200,000 to bring [a medical malpractice] case. There's not much left"); *see also* Stephen Daniels & Joanne Martin, *The Texas Two-Step: Evidence on the Link Between Damage Caps and Access to the Civil Justice System and Access to the Civil Justice System*, 55 DEPAUL L. REV. 635, 636 n.7 (2006) ("[L]imitations on the contingent fee 'would reduce the incidence of meritorious medical malpractice actions and further reduce legal exposure for those who commit medical malpractice.'" (quoting JAMES K. CARROLL ET AL., REPORT ON CONTINGENT FEES IN MEDICAL MALPRACTICE LITIGATION 11 (2004))).

130. For an illustration of medical malpractice dynamics on the national scale, see William M. Sage, MD, JD, Richard C. Boothman, JD & Thomas H. Gallagher, MD, *Another Medical Malpractice Crisis? Try Something Different*, JAMA (Sept. 11, 2020), https://jamanetwork.com/journals/jama/fullarticle/2770929 (on file with the *Journal of Corporation Law*).

V. CONCLUSION

The Iowa Supreme Court will likely be tempted to follow previous Iowa Code § 147 decisions and refuse to abrogate 147.136A because there is a legitimate interest in lowering medical malpractice insurance premiums, promoting recruitment and retention of Iowa physicians, and increasing access to affordable healthcare throughout Iowa. However, the Iowa Supreme Court cannot permit the Iowa legislature to undermine Iowans' right to trial by jury by taking away the fact-finding ability of jurors to determine the amount of pain and suffering a victim of medical negligence incurred. This amendment is most detrimental to low-income, underrepresented individuals who suffer serious permanent injury or death as a result of medical negligence. Further, upholding the hard cap on non-economic damages vastly undermines Iowa's inviolate right to trial by jury, opening the door for the Iowa Legislature to further overstep and undermine the judicial system. There is a dubious correlation between a hard cap on non-economic damages and the interests, and therefore the Iowa Supreme Court should protect Iowa's inviolate right to trial by jury by striking down the Iowa Legislature's amendment to Iowa Code § 147.136A. Simply put, the Iowa judiciary has proven it is effective at limiting 'run-away' verdicts, leaving little rational justifications for the Iowa legislature's overstep. Striking down section 147.136A will not only protect Iowans but will also serve as an example on the national scale that the private interests of tort insurance companies do not outweigh the rights of individuals to recover for their injuries.