



EQUALITY ♦ LAW ♦ JUSTICE

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**2019 Special Committee on Judiciary  
Written-Only Comments  
October 2, 2019**

**Chairman Rucker and members of the committee:**

My name is Mike Burgess. I am the Director of Policy & Outreach at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is the officially designated protection and advocacy system in Kansas. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities.

In 2009, DRC joined other advocates on the amicus curiae brief to the Kansas Supreme Court on the medical malpractice case, *Miller v. Johnson* opposing caps. Protecting the rights of persons with disabilities is our Priority One. DRC joined the amicus brief because our experience representing with persons with disabilities has shown that having caps unfairly discriminates against persons with disabilities.

DRC is granted certain powers under federal law, including access to places where persons with disabilities are served, their records and the ability to conduct abuse, neglect and exploitation investigations. Persons who have disabilities often are the victims of the negligence of others and their rights are substantially and continually impacted in an adverse manner by limits on tort damage recovery.

Caps on noneconomic damages unfairly discriminates against disadvantaged groups, such as persons with disabilities, by inhibiting access to justice, which thereby undermines tort law's deterrent effect. This adverse impact on persons who are disadvantaged also disproportionately diminishes their chances to obtain legal assistance.

DRC continues to oppose noneconomic caps on damages and would ask the committee to not make any recommendation to the 2020 Kansas Legislature that would diminish the ruling of the Supreme Court in the *Hilburn* case. That ruling reverses years of burdensome governmental regulations and restores the constitutional rights of all Kansans to a jury trial, allowing the jury to determine and award damages as supported by the evidence.

Thank you for the opportunity to comment on this important issue that is fundamental to protecting the rights of all Kansans.