

From: [Daniel Breen](#)
To: [Amy Bowne](#)
Subject: Proposal 18-01
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Amy:

I am writing in opposition of the amended proposal to Supreme Court 218, which calls for a waiver of the the constitutional right to privacy for litigants whose physical condition is at issue in a lawsuit. The proposal is short-sighted in its implications, overreaching in is operation, and an unnecessary solution to an issue that calls for a pragmatic response.

As we sit on the precipice of the implications of a 'big-data' world, the amendment in question calls for the entire health history of litigants, particularly plaintiffs, to be accessible to the insurance industry. The amendment fails to, in any capacity, limit (1) what an insurance company can seek and (2) what an insurance company can do with private health data once it is obtained. It is hard to imagine that a desirable purpose exists to recipients of such a windfall of data and it's difficult to overstate how problematic such a trove of exposed data might be for those individuals (victims of serious injury, no less) as the ability to exploit such reams of data becomes easier and easier.

Sweeping and widespread nature of this proposal is both extreme and unnecessary, especially where other options exist. It bears repeating that we are talking about the literal waiver of a constitutional right in a manner that will most acutely impact injury victims. Even if such a sweeping mechanism is necessary (which it is not), there is no reason for such a broad mechanism to be the first iteration of this proposal.

I'll grant you that implementing a uniform statewide mechanism to allow appropriate access to protected health information is a worthy initiative. I've worked with the Illinois State Bar Association's Committee on Privacy and Data Security to craft an appropriately limited proposal. However, the proposed amendment currently before the committee is neither appropriate nor necessary. Any mechanism that the committee considers regarding access to protected health information must be sensible, responsible and consider the interests of all implicated parties. Any appropriate proposal must be at least (1) Limited in scope; (2) Limited in time; (3) Include a requirement that the information sought only be used for litigation purposes and then destroyed; (4) Limited in who has access to PHI.

-Dan Breen

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