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Study questions cost reductions from tort system changes

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OKLAHOMA CITY – Recent changes to the state’s tort system, touted by lawmakers as a way to reduce medical costs and keep physicians in the state, may not do that much to actually reduce costs, a study of a similar law shows.

Published in the *Journal of Empirical Legal Studies* in July 2012, the study examined a 2003 law that changed Texas’ tort system. In the report, the authors said they could find no evidence that Texas’ tort law changes bent the cost curve downward. The study also noted, though, that it did find evidence of higher post-reform spending by Texas physicians who practice in high-risk areas.

As far back as 2004, Texas’ efforts to change its tort system were touted by supporters of a similar effort in Oklahoma as an example of legislation that lowered health care costs. In February 2004, the group Oklahomans for Lawsuit Reform brought Texas Gov. Rick Perry to Oklahoma City to help push the effort here.

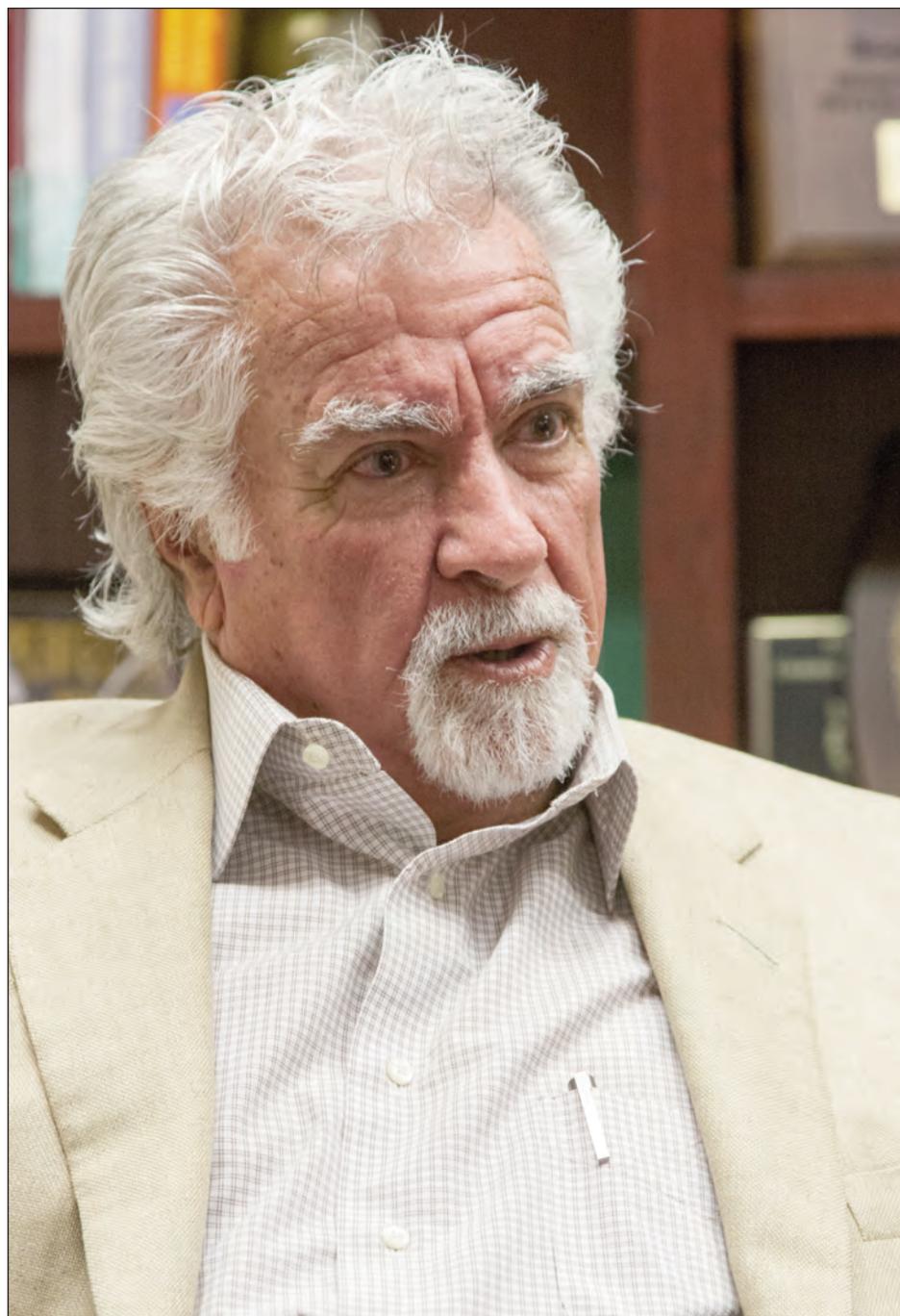
In 2009, after the passage of their initial package of tort changes, former Oklahoma House Speaker Chris Benge said Oklahoma’s legislation would change the economic landscape of the state.

“(The bill) will say to companies that we welcome their business in Oklahoma,” Benge, R-Tulsa, said. “The days of Oklahoma being known as a jackpot justice state are over.”

But four years later, the Oklahoma Supreme Court ruled that the 2009 legislation violated the Oklahoma Constitution’s prohibition against measures addressing more than one subject. On Sept. 3, lawmakers returned to the Capitol in a special session to solve the problem by breaking the 2009 legislation into 23 separate bills, all of which passed.

Yet even with the new laws back on the books, the tort package may not do much to actually lower health care insurance costs. According to the Texas study, there is little evidence that tort changes actually spawn lower health care costs.

“Recent state-level studies find no significant effect of tort reform on health care spending. Others find a modest 1-percent to 3-percent drop in



Shawnee attorney Terry West. PHOTO BY BRENT FUCHS

health care spending,” the study indicated. “One early study finds a 4–5 percent drop for heart attack patients. This accumulation of recent evidence finding zero or small effects suggests that it is time for policymakers to abandon the hope that tort reform can be a major element in health care cost control.”

Conservative lawmakers, however, said they were convinced that the new laws will improve Oklahoma’s health insurance and business climate.

“This Legislature, after a short five-day special session, has undone the damage a handful of activist judges, or

some might even call a ‘super legislature of judges,’ attempted to do to this state,” wrote House Speaker T.W. Shannon, R-Lawton, in a column sent to *The Journal Record*.

The new laws would reduce the number of frivolous lawsuits that were bad for the state’s economy, Shannon said.

“Frivolous lawsuits hurt hardworking families and are one of the primary causes of skyrocketing health care and consumer product costs. When a business or medical provider is forced to pay damages or settle a frivolous claim, they don’t just take a loss, they pass those

costs on to consumers,” Shannon wrote.

However, while the study’s authors acknowledged that changes in the tort system did lead to lower medical malpractice insurance premiums, those costs, they said, represented only a small fraction of health care spending.

“Because direct costs account for a small fraction (likely under 1 percent) of health care spending, a drop in direct costs has limited potential to make health care cheaper,” the study said. “Even a 50-percent drop in direct costs will reduce spending by less than 1 percent – and the states that have already adopted tort reform have captured most of these savings.”

Shawnee attorney Terry West said the effort behind changes in Oklahoma’s tort system had several goals, including one to insulate corporate America from liability.

“We’ve been in and out of tort reform for 10 or 12 years,” West, a plaintiff’s attorney, said. “And they have done basically what they set out to do, which was insulate corporate America from individuals and they have succeeded to a great extent.”

West, who twice served on the state Judicial Nominating Commission, said supporters of the tort reform effort also seek to make major changes in the judicial branch. Those same groups, he said, are now trying to control the judicial system.

“They’ve got control of the legislative process, and the executive process and now they want the third branch of government,” he said. “And to me this is the biggest crisis we face. This is the basic fundamental fabric of our society.”

Fred Morgan, CEO of the The State Chamber of Oklahoma – which spearheaded the effort to change the tort system – countered that the new laws were necessary for future growth in a media statement emailed to *The Journal Record*.

“I applaud our legislative leaders and governor for recognizing this important need to reinstate lawsuit reform and working swiftly to address it in special session,” Morgan said. “These bills, just as the law did in 2009, will help reduce frivolous lawsuits in Oklahoma, allowing businesses to grow and health care costs to remain affordable.”