



Pennsylvania Coalition for Civil Justice Reform 2018 Candidate Questionnaire

Josh Kail

Candidate Name (Print)

Senate District # _____ **or**

House District # 15

Party: R

/s/ Joshua D. Kail

Candidate Signature

8/28/18

Date

1. From time to time, the Commonwealth of Pennsylvania will contract with outside law firms to represent the Commonwealth in civil cases. These law firms will charge a contingency fee for their services where they keep a certain percentage of any recovery in the lawsuit.

Will you support and vote for legislation known as Transparency in Private Attorney Contracting (TIPAC), such as is found in HB 502? TIPAC imposes limits on contingency fees to outside counsel representing the Commonwealth. This allows the Commonwealth to maintain control of the litigation and ensures that the taxpayer will receive more of the benefit of the litigation, as opposed to the lawyers trying the case.

X yes _____no _____undecided

Comments:

2. Long term care facilities, such as nursing homes, are under attack by out of state law firms. These firms target Pennsylvania nursing homes because there is no limit on punitive damages under Pennsylvania law. Punitive damages allegations are used to drive up the value of a lawsuit and force settlement, regardless of whether the long-term care facility has done anything wrong. Consequently, long term care facilities settle nearly all suits brought against them.

Will you support and vote for legislation to limit punitive damages for long term care facilities such as nursing homes? Legislation such as HB 1037 will limit punitive damages to 250 percent of compensatory

damages to provide nursing homes protection similar to that provided to doctors under Pennsylvania law.

yes no undecided

Comments:

3. Many companies are sued in court for asbestos related injuries even though they had little or no responsibility for an injured person's exposure to the product. The companies most responsible for asbestos exposure are often bankrupt, but have established trusts to compensate those exposed to their products. These asbestos trusts cannot be sued in court and separate claims must be filed to collect from the trusts.

Will you support and vote for "Asbestos Transparency" legislation, such as that found in HB 238, requiring attorneys representing plaintiffs in an asbestos injury case to reveal to the court all bankruptcy trusts that they either have or will file claims against? This will restore fairness by allowing the court to properly apportion liability among all parties responsible for an asbestos exposure.

yes no undecided

Comments:

4. Emergency room physicians face unique challenges that are not found elsewhere in the practice of medicine. They must make quick decisions when taking care of the seriously injured. Often the patient is unable to provide a complete medical history due to the severity of injury. Emergency room physicians are therefore in need of enhanced protection from liability.

Will you support and vote for legislation providing greater protection from liability for emergency room doctors such as HB 1366? HB 1366 raises the burden of proof in a malpractice case against an emergency room doctor to require "clear and convincing" evidence of a grossly negligent act in order to hold an emergency room physician liable for malpractice.

yes no undecided

Comments:

5. Pennsylvania does not have a Statute of Repose for products. A Statute of Repose prevents what could otherwise amount to a form of unlimited liability of the seller or manufacturer of a product, by recognizing that products have a limited useful lifespan.

HB 258 requires that personal injury suits be brought within 15 years of the date of delivery of a product, or the date of completion of a part added to the product, unless the injury does not appear within the 15-year period. Will you support and vote for legislation such as HB 258 to create a Statute of Repose for products in Pennsylvania?

yes no undecided

Comments:

6. A False Claims Act encourages bounty hunters, known as “qui tam” plaintiffs, to sue on behalf of the government when they have information that a business has received government payment for which it is not entitled. The qui tam plaintiff keeps a significant portion of any verdict and thus has an economic incentive to bring lawsuits. Pennsylvania already recovers funding under the federal False Claims Act for any false claims made against the state, yet there are those trying to adopt a state False Claims Act that would divert even more money recovered to the bounty hunting qui tam plaintiff.

Do you support passage of a state False Claims Act in Pennsylvania?

yes no undecided

Comments:

7. Venue shopping is when an attorney files suit in a county known for its high verdicts even though the case has little or no connection to the county. One such high verdict location in Pennsylvania is Philadelphia. Verdicts are known to be so high in Philadelphia that the American Tort Reform Association named Philadelphia the Number 5 “Judicial Hellhole” in the nation.

Will you support efforts to limit venue for all civil tort cases in Pennsylvania to the county where the cause of action arose? Limiting venue to the county where the cause of action arose will prevent parties from being dragged into the high verdict Philadelphia court system, unless the cause of action arose in Philadelphia, for example.

yes no undecided

Comments:

8. Current court rules require posting a bond in the amount of 120 percent of a verdict or judgment in order to stay collection while a case is on appeal. With huge multi-million-dollar verdicts being common today, the ability to afford an appeal bond is often out of reach for all but the wealthiest of parties. This prevents an unjust verdict from being heard and reversed by a higher court.

Will you support efforts to limit the amount of money a defendant must post in order to appeal an unjust or incorrect verdict?

yes no undecided

Comments:

9. The Unfair Trade Practices Act and Consumer Protection Law provides for a minimum recovery of \$100 per claim. This means that actual damages of a few cents (such as a supermarket scanner error of a few cents) results in damages being awarded for \$100 instead of a few cents. In addition, each proven claim is awarded the minimum amount of \$100 and these claims can be aggregated to create class action lawsuits. These “statutory” or minimum damages requirements penalize Pennsylvania businesses well in excess of the actual amount of any damages. The statute also allows these damages to be tripled.

Do you support legislation to raise the minimum amount of damages, also called statutory damages, for suits brought under Pennsylvania’s Unfair Trade Practices/Consumer Protection Law from the current \$100 to \$500 as found in HB 475?

_____yes X no _____undecided

10. The federal courts had interpreted Pennsylvania’s Consumer Protection Act to preclude out of state consumers from suing in-state businesses over an out of state transaction or occurrence. The federal courts reasoned that the legislature did not intend for out of state consumers to be protected by Pennsylvania’s Consumer Protection statute in this situation. Recently, the Pennsylvania Supreme Court, in the Danganan decision, declined to follow the interpretation of the federal courts and held for the first time that an out of state consumer could sue a Pennsylvania company under the Pennsylvania Consumer Protection Act for an out of state transaction or occurrence.

Will you support and vote for legislation that will prevent out of state consumers from suing in state companies for causes of action or transactions that occurred out of state?

 X yes _____no _____undecided

Comments: