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Ex-Cowboys Running Back Ron Springs Named Plaintiff in Constitutional Challenge to Texas' Malpractice Award Cap

DALLAS, Feb. 25 /PRNewswire/ -- A lawsuit filed today in U.S. District Court for the Eastern District of Texas in Marshall names comatose former Dallas Cowboys running back Ron Springs as one of the eleven plaintiffs challenging the constitutionality of the state of Texas's per person-cap of \$250,000 that can be awarded for non-economic damages as a result of medical malpractice.

In January, Miller Curtis & Weisbrod, LLP, a Texas law firm that specializes in medical malpractice and catastrophic injury litigation, filed a medical malpractice lawsuit in state court in Dallas County on behalf of Springs seeking actual, punitive, and exemplary damages against an anesthesiologist and a plastic surgeon.

"Fundamental constitutional guarantees protect injured patients who prove they were injured as a result of another's negligence from having the legislature impose a second injury on them by taking away their right to compensation," said attorney Robert S. Peck, president of the Center for Constitutional Litigation, a Washington, D.C. law firm that has successfully challenged similar laws in other states. "The Texas legislature has no authority to sit in judgment in individual cases and dictate the outcome, no matter how much their political patrons and special interest lobbyists might want them to do so."

Springs and the other plaintiffs in the federal action are challenging the validity of the 2003 Medical Malpractice and Tort Reform Act (H.B. 4), which limits awards in Texas to \$250,000 per plaintiff in cases of medical malpractice. They base their challenge to the state law on the First, Fifth, Seventh and Fourteenth Amendments of the U.S. Constitution.

"This odious Texas law must be challenged. It limits non-economic damages to \$250,000 in each case of medical malpractice -- no matter how many people were injured or died or how many people suffered," said Les Weisbrod, Miller, Curtis & Weisbrod partner. "Doctors are placed above the dictates of the U.S. Constitution, allowing them to have special legal protection from the consequences of their medical mistakes."

The plaintiffs in this challenge include a group of current and former Texas residents, each of whom is seriously injured due to medical malpractice, who argue that without the state award cap in place, the facts of their cases would prompt Texas juries to award non-economic damages far greater than \$250,000.

The plaintiffs include:

- A Harrison County child severely and permanently brain damaged at birth in 2004 as a result of undiagnosed and untreated fetal distress during delivery;
- Springs, in a persistent vegetative state after botched general anesthesia given unnecessarily for a minor surgical procedure;
- A Tom Green County woman whose physician, during a routine office visit, paralyzed her with narcotics and then sexually assaulted her;
- A Harris County man whose anal canal, rectum, bladder and perineum were severely burned and permanently injured during a 2005 medical procedure, causing excruciating pain and lifelong loss of bladder and bowel control;
- A Harris County man completely paralyzed for life, unable to move or speak yet conscious of his surroundings and physical condition as a result of a botched steroid injection;
- A former Harris County dentist totally paralyzed as a result of a botched spinal imaging procedure;
- A Cameron County girl who suffered catastrophic loss of intestinal

- function at 10 months of age due to botched abdominal surgery in 2001;
- A Harris County woman left permanently paraplegic, in constant pain, unable to walk or stand without support, and suffering impaired bladder and bowel functions after failure to diagnose and treat a spinal cord abscess;
 - A Harris County girl severely and permanently brain damaged during a botched delivery in 1998;
 - A Hidalgo County man who will be on kidney dialysis and unable to eat normally for the rest of his life after three botched surgeries in 2006 to remove food obstructing his esophagus;
 - A Hidalgo County woman now in a persistent vegetative state due to botched thyroid surgery;

On behalf of themselves and others who may be adversely affected by the Texas cap on non-economic damages in medical malpractice cases, Mr. Springs and the other plaintiffs have asked the federal court to declare the Texas cap unconstitutional and therefore void because it violates:

- The petition clause of the First Amendment;
- The takings clause of the Fifth Amendment;
- The right to a jury trial clause of the Seventh Amendment;
- The due process, equal protection, and privileges and immunities clauses of the Fourteenth Amendment.

The plaintiffs also ask that the federal court certify their joint lawsuit as a class action for themselves and any other victims of medical malpractice in the state of Texas whom their joint civil action might represent.

SOURCE Miller Curtis & Weisbrod, LLP