

Civil Justice Reform

THE ISSUE:

Abusive litigation is one of the most harmful strains on our economy. Tort law should compensate victims and deter harmful events as efficiently as possible. The current system, however, encourages plaintiffs' lawyers and activists to manipulate the civil justice system for their own ends at the expense of the public. Unchecked and open-ended liability inevitably leads to litigation abuse and increased risk of liability that, in turn, cause unintended consequences such as the withdrawal of consumer products from the market and a chilling effect on innovation and entrepreneurial risk-taking. We can simultaneously protect, improve, and make our civil justice system more efficient *and* bring greater fairness and predictability to market participants and consumers.

THE FACTS:

- **The Tort Explosion.** From 1996 through 2005, more than 135 million civil lawsuits were filed in state courts—an average of 52,000 new cases every business day—and payouts for tort losses and insurance premiums increased by 60% in inflation-adjusted dollars.
- **The Social Cost: \$838 per Person.** Our tort system directly costs our economy billions of dollars each year: \$254.7 billion, or \$838 for every person, in 2008 alone. That does not include indirect costs such as defensive medicine and the lost benefits of products and vital drugs that are withdrawn from the market.
- **High Cost, Low Reward.** Less than 15 cents of every tort-cost dollar goes to pay compensatory damages to the injured plaintiff.
- **Higher Costs of Goods and Services.** A poll of small-business owners and managers found that 62% make

business decisions to avoid lawsuits that make their products and services more expensive. One study shows that 83% of doctors practice defensive medicine by ordering unneeded tests and treatments, costing the American health care system more than \$100 billion annually. Our tort system is the most expensive in the world.

- **The Problem of Defensive Medicine.** In 2009, Howard Dean, former Chairman of the Democratic National Committee, told a town hall meeting that the proposed health care legislation did not include tort reform because Democrats in Congress did not want to “take on” the trial lawyers. Yet fully 83% of Americans believe that frivolous lawsuits are a problem, and 79% agree that new laws encouraging even more of these lawsuits will negatively affect the economy.

THE SOLUTIONS:

- **Oppose Federal Policies That Encourage and Facilitate Lawsuit Abuse.** The Obama Administration and Congress have been busy promulgating executive orders and laws that increase the amount of contentious litigation or drive up the expense and difficulty of litigation. This chills entrepreneurship and economic growth while putting justice out of reach for many individuals and businesses.
- **Discourage Regulation Through Litigation.** Under our Constitution, how and when commerce is regulated is determined by Congress and state legislatures. Measures that encourage or allow courts to regulate through litigation—including a failure by the Administration to support federal preemption where it genuinely exists—damage specific industries, retard economic growth, undermine democratic accountability, and hurt consumers.

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- **Support Medical Liability Reform While Respecting the Role of the States.** Many states have implemented caps on non-economic damages and limits on attorney contingency fees, helping to speed settlement of valid claims, providing injured patients with a greater share of recoveries, reducing medical malpractice premiums, and reducing physician shortages. Congress failed to include any meaningful tort reform in the health care overhaul bill. To the extent that Congress is going to regulate the health care industry, it should enact similar

reforms and not interfere with the states' efforts in this area.

- **Encourage Arbitration as an Alternative to Litigation When Voluntarily Agreed to and Oppose All Efforts by Congress to Void Arbitration Agreements.** Arbitration serves as a beneficial alternative to litigation because it provides a more expeditious and less expensive resolution of disputes. It would be a major error for Congress to invalidate arbitration clauses in employment, consumer, brokerage, and other contracts.