

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE
& DEMOCRACY
NEWS

IN THIS ISSUE: FOCUS ON ELECTION 2004

Not the Best Election: An Overview

Dear Friend,

Our Winter newsletter covers the stark reality in which, as defenders of the civil justice system, we find ourselves after the 2004 election.

We know that many states are facing intense battles this year, some focused on medical malpractice and others on broader bills. In addition, after a six-year fight, we have lost the battle to protect the class action system – although as bad as this legislation was, it is still not as bad as it could have been in this anti-consumer environment.

Next on the agenda for Congress are bills to limit medical malpractice and asbestos lawsuits, and special bills to limit liability for certain industries, like the gun, oil and chemical industries.

We are making plans to visit a number of states this year to help where we can. In addition, CJ&D has already brought some 50 families from 26 states to Washington, D.C. to voice their strong opposition to Congress's civil justice agenda.

Let us know if you would like to help. And don't forget - information about CJ&D can be found on Page 4. Please join today! Thank you.

Sincerely,

Joanne Doroshow
Executive Director

The 2004 election results were not good news for the U.S. civil justice system. The GOP, which has traditionally supported so-called "tort reforms," now holds a 55-45 majority in the U.S. Senate, four more than the 51-49 advantage they previously had over Democrats and the one Independent aligned with them.

This new balance of power in the U.S. Senate, combined with the reelection of a President that has made "legal reform" a top priority, as well as a significant Republican majority in the

House, makes enactment of business-backed restrictions on consumer lawsuits far more likely than ever.



And Congress has wasted no time. On February 17,

Congress passed a class action bill that makes it more difficult for consumers to win class action lawsuits against corporations that commit fraud and other violations of consumer health, safety and environmental laws. The President signed the bill the next day.

New action is anticipated on other "tort reform" legislation, the most prominent of which are limits on medical malpractice and asbestos lawsuits.

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Chamber of Horrors

On August 24, 2004, the U.S. Chamber of Commerce made an unprecedented announcement. Having never endorsed a presidential candidate in its 92-history, the Chamber announced the creation of the "November Fund" ("Fund"), a 527 organization created to attack and oppose the candidacy of former trial lawyer John Edwards and the Democratic presidential ticket in seven critical swing states.

The Fund pledged to spend \$10 million on ads and media campaigns that not only targeted Edwards and trial lawyers but also promoted "tort reforms" supported by George W. Bush.

According to the Center for Responsive Politics, the Chamber gave \$3 million to the Fund, making it the Fund's top contributor.

"We cannot ignore what may be a make-or-break

election for legal reform," said Chamber President and CEO Tom Donohue. "When voters go to the polls, they need to know lawsuit abuse destroys jobs, drives doctors out of business and forces companies into bankruptcy."

The Chamber's involvement in election politics is nothing new.

For example, between 2000 and 2002, it spent \$100 mil-

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Chamber of Horrors *continued...*

lion to unseat state court judges and attorneys general viewed as being pro-plaintiff and anti-business. The amount of money and resources the Chamber devoted to this past election cycle was equally extensive.



The Chamber ran an “education and get-out-the-vote” campaign in Wisconsin, West Virginia, New Hampshire, New Mexico, Florida, Iowa, Nevada and Ohio that targeted independent women ages 18 to 49 with children. Through full-page ads in major newspapers, nearly one million pieces of mail, two million phone calls and over 3.4 million e-mails to women voters in those eight states.

The Chamber put 215 people on the ground in 31 states, sent 3.7 million pieces of mail, made 5.6 million phone calls and sent more than 30 million e-mails.

Stories highlighting the Chamber of Commerce’s endorsement of U.S. House and Senate candidates appeared in countless local newspapers around the country.

According to the Center for Responsive Politics, the Chamber contributed over \$169,000 in PAC money to federal House and Senate

candidates, 78 percent of which went to Republicans.

The Chamber also funneled corporate cash into congressional races in other ways.

In North Carolina, the Chamber spent more than \$500,000 promoting Representative Richard Burr for the U.S. Senate. It conducted mail and phone campaigns and relocated a staff member from Los Angeles to Raleigh to recruit support for Burr among businesspeople and find more volunteers for the campaign.

In July 2003, the Chamber told Forbes it planned to spend \$50 million or more in Supreme Court races around the country, targeting areas where courts were not “business-friendly.”

In the South Carolina U.S. Senate race, the Chamber ran a campaign strategy called “Team DeMint” on behalf of U.S. Senate candidate Rep. James DeMint, spending more than \$100,000 on television ads before the state primary and having Chamber leader Tom Donohue come to South Carolina to promote the group’s endorsement before the state primary.

When the 2004 Elections were over, 249 of the 269 candidates the Chamber endorsed (i.e., 93%) had won.

Judicial Elections and Attorney General Races

The Chamber’s Institute for Legal Reform (ILR) used untold resources to help elect pro-industry judges, though it is unclear how many state judicial races the Chamber became involved in.

ILR spokesman Sean McBride told *The Recorder* in October 2004 that there were more than 20 states, including Ohio, where the Chamber was involved in Supreme Court or attorney general races. “We go into places where we can make a difference,” he said, refusing to elaborate. “It doesn’t help the purpose of our program to give too much information.”

Tracking how much the Chamber invested in the 2004 judicial elections is just as difficult.

In July 2003, the Chamber told *Forbes* it planned to spend \$50 million or more in Supreme Court races around the country, targeting areas where courts were not “business-friendly.”



Without state donor disclosure laws, said Samantha Sanchez of the Institute for Money in State Politics, “it’s hard to pin this down to anything you can prove. It’s all anecdotal evidence. The

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Chamber of Horrors *continued...*

Chamber can operate below the radar.”

Deborah Goldberg, Director of the Brennan Center’s Democracy Program at NYU, agreed, explaining that the Chamber does not spend any money directly on state judicial elections but funnels funds into state chambers, independent groups or PACs, making it difficult to track down exact information on the Chamber’s involvement in judicial races.



Moreover, the Chamber’s spending on state judicial

races has become more covert with each election cycle, Goldberg added.

In addition, the Chamber’s ILR does not have to divulge how much money it spends on campaign-related activities, publicly identify donors or reveal much about anything it does.

The group is only required to file an annual report with the Internal Revenue Service six months after elections are over.

What is known to date is that the Chamber poured \$2.3 million into the Illinois Supreme Court race, mostly through the Illinois Republican Party and the Illinois Civil Justice League. In Washington State, the Chamber used a front group to spend \$1.5 million on attack ads targeting attorney

general candidate Deborah Senn before the Democratic primary.

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And in 16 states, the Chamber’s ILR spearheaded “voter education” efforts aimed at undermining public confidence in American judges and the legal system, a campaign condemned by the American Bar Association, among others.

Ultimately, 15 out of 16 Chamber-endorsed state judicial and attorney general candidates were elected in 2004.

In a December 6, 2004 letter to the Chamber’s Board of Directors, Tom Donohue wrote, the “bottom line is that by aggressively and successfully participating in the political process in 2004, we have created a tremendous opportunity for real progress in 2005. Now we must do something with that opportunity!”

More to come, for sure.



Farewell to Three Champions of the Civil Justice System

The year 2004 marked the departure of three staunch defenders of the civil justice system from the United States. Senate - Senators Tom Daschle, John Edwards and Ernest “Fritz” Hollings.

As Minority Leader, Tom Daschle defended consumers’ rights by blocking several “tort-reform” bills in the Senate, such as a \$250,000 cap on non-economic damages in medical malpractice cases and severe limits on class action law-

suits. His refusal to back down despite pressure from special interests made him a target in November 2004, costing him the election.

While in the Senate, North Carolina’s John Edwards stood up to corporate America on behalf of injured victims, displaying the same passionate advocacy he showed as a trial lawyer.

Among Edwards’s more noteworthy actions was his co-sponsorship of the

Patients’ Bill of Rights, which allowed mistreated, misdiagnosed or neglected patients to hold their HMOs accountable in court.

For 38 years, Fritz Hollings of South Carolina was a tireless advocate of the right to trial by jury.

He became known as one of the Senate’s most vocal opponents of product liability legislation that restricted consumers’ abilities to bring lawsuits against manufactur-

ers and sellers of defective products.

And in 2003, Hollings took on the insurance industry by introducing “The Insurance Consumer Protection Act of 2003,” which eliminated the insurance industry’s anti-trust exemption under the McCarran-Ferguson Act and federalized regulation of insurance.

We thank these men for their public service on behalf of all Americans.

Not the Best Election: An Overview continued...

But legislation is also expected that would grant immunity from liability for oil and chemical companies manufacturing MTBE, a toxic gasoline additive that has contaminated water supplies, and protection for the gun industry from lawsuits brought by gun violence victims.



Industry after industry will no doubt start to line up to ask Congress for special measures that limit their legal liability.

State Races

Election results at the state level are also expected to lead to more limits on victims' access to the courts. As reported in the January 14, 2005 edition of the *New York Times*, "The movement to restrict litigation is being propelled mainly by Republicans, led by a new generation of first-term governors."

All told, Republicans have complete power over the

House, Senate and governor's office in 12 states, compared to Democrats, who hold exclusive control in 8.

In terms of controlling legislatures, Democrats hold the majority in both chambers in 20 state legislatures compared to Republicans, who control 19.

2004 also saw the election of 15 pro-industry state judges and attorneys general and the defeat of judges who typically support plaintiffs' verdicts.

State Supreme Court campaigns in Illinois and West Virginia were among the most vicious, with millions

being spent in corporate money to attack the records of candidates deemed "anti-business" (see Chamber article).



No matter where you live, defenders of the civil justice system clearly have their work cut out for them in light of the 2004 election results.

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Fellow (\$5,000) and receive: all Associate benefits, plus exclusive personal correspondence from CJ&D containing inside information and analyses of trends and topics.

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