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FACT SHEET: CORPORATIONS PURSUE LEGAL IMMUNITY BY ATTACKING STATE ATTORNEYS GENERAL

State Attorneys General (AGs) are charged with enforcing both state and federal law.

- AGs act on behalf of citizens in many areas including consumer protection, financial fraud, utility regulation, and environmental protection.
- Instances of widespread corporate law-breaking can often cost taxpayers millions of dollars; AG lawsuits not only cause lawbreakers to disgorge ill-gotten gains, but also allow states to recover substantial money.
- Without state AG involvement in large consumer actions, an important check on the behavior of some of our most powerful industries would be severely weakened.
- Twenty-two federal laws provide for concurrent federal and state public enforcement authority; state cases have generated no conflict with federal enforcement.¹

State AGs are regularly attacked by big corporations for doing their job.

- Enormous corporate trade associations like the U.S. Chamber of Commerce and the American Legislative Exchange Council are pushing state and federal legislation to block state AG actions against law-breakers.
- These bills would, in various ways, prevent AGs from enforcing laws to protect their citizens, including bringing civil lawsuits or hiring outside counsel to assist them.
- The U.S. Chamber of Commerce has called for “federal intervention” to prevent AGs from enforcing laws.² It has also financed vicious campaigns through local front groups to oust state AGs who have aggressively tried to protect state consumers.³

Underfunded and understaffed state AGs sometimes hire outside counsel on a contingency basis; this costs taxpayers nothing, helps level the playing field and is critical to consumer protection.

- Contingency fee arrangements make it possible for underfunded and understaffed AG offices to bring important public interest lawsuits that are too large, complex, and expensive for an AG’s office to bring on its own.
- Private counsel working on a contingency receive no fee up front. If the case is lost, they are paid nothing.

¹ Amy Widman & Prentiss Cox, State Attorneys General’s Use of Concurrent Public Enforcement Authority in Federal Consumer Protection Laws, 33 CARDOZO L.REV. 53 (2011); http://judiciary.house.gov/_files/hearings/Hearings%202012/Widman%2002022012.pdf

² *Ibid.*

³ See, e.g., <http://centerjd.org/content/secret-chamber-inner-workings-us-chamber-commerce-and-hijacking-election>

- If successful, settlements and fees are paid for by the wrongdoers, not the taxpayer, shifting the costs back to the company that broke the law.
- States that hire contingency fee firms can get better results for their taxpayers.⁴ Expertise and time are required in state settlements and an attorney's reputation and ability can greatly influence the speed and amount of a settlement.
- But for Minnesota's AG case against Big Tobacco, which was brought only with the assistance of well-funded outside counsel, the industry would never have been forced to release 30 million pages of internal documents, which created a seismic shift in public opinion against cigarette companies.⁵

Significant efforts are underway to undermine state AG's ability to retain outside counsel.

- At the federal level, the U.S. Chamber has called on Congress to forbid state AGs from "retaining contingency-fee counsel."⁶
- At the state level, corporations are pushing bills to undermine a state AG's ability to retain outside counsel.
 - The American Legislative Exchange Council's bill is called the "Private Attorney Retention Sunshine Act" (PARSA). Other corporate groups are pushing the "Transparency in Private Attorney Contracting" (TIPAC),
 - Groups supporting these bills have worked to limit AG consumer protection authority and oust pro-consumer AGs; these bills would accomplish the same general goals:
 - PARSA requires, after meeting a monetary threshold, that a state seeking outside counsel engage in a competitive bidding process, forcing AGs to contract with the lowest bidder, not the most qualified attorney.
 - In some cases, a state contingency fee contract must undergo a lengthy review by the state legislature; this places the AG at a significant disadvantage by giving the corporate wrongdoer advance notice of the lawsuit and allowing them time to hide or destroy documents.
 - Both PARSA and TIPAC require contingency fee attorneys to keep extensive time records and create the overhead and expense that such record-keeping entails, wasting time and money.
 - Both PARSA and TIPAC, cap contingency fees (again, paid by the wrongdoer not the state). Research shows this will make it harder for states to find competent counsel particularly in costly and complex cases. At the same time, corporate wrongdoers are free to spend an unlimited amount of resources on their attorneys.

For more information, see CJ&D's more extensive "backgrounder," <http://centerjd.org/content/backgrounder-corporations-pursue-legal-immunity-attacking-state-attorneys-general>; the January 31, 2012, consumer group letter to Congress, <http://centerjd.org/system/files/CoalitionLtrStateAGsF.pdf>; and CJ&D's earlier study, *State Attorneys General: The People's Champion*, <http://centerjd.org/content/white-paper-state-attorneys-general-peoples-champion> and fact sheet <http://centerjd.org/content/fact-sheet-examples-important-cases-brought-state-attorneys-general>.

⁴ <http://www.postandcourier.com/article/20091024/PC05/310249942>

⁵ David Phelps and Deborah Caulfield Rybak, "Prelude to War: Origins of the Minnesota Tobacco Trial," *Star Tribune*, November 21, 1998.

⁶ http://judiciary.house.gov/_files/hearings/113th/03132013/Beisner%2003132013.pdf;
<https://www.uschamber.com/sites/default/files/documents/files/120202BillMcCollumtestimony.pdf>