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CENTER FOR JUSTICE & DEMOCRACY
NEWS

Dear Friend,

Lower taxes, free enterprise, family values, personal responsibility, states' rights – these are issues that dominate much conservative thinking in our country. With conservative Republicans now in control of the legislative and executive branches of our federal government, one might think that conservative philosophies would dictate the discussion around civil justice issues.

Think again.

As we wrote in one of our first White Papers, *Not in My Backyard: The Hypocrites of "Tort Reform,"* no one likes a hypocrite. Yet one would be hard pressed to find more hypocrites than in the "tort reform" movement. This hypocrisy takes all forms. Veteran journalist Helen Thomas recently put it this way in a syndicated column: "It's noteworthy that the administration has never pursued the corporate chieftains whose greed stunned the nation last year with the same energy that it goes after lawyers who are fighting for the consumer."

Sincerely,

Joanne Doroshov
Executive Director

IN THIS ISSUE: FOCUS ON CONSERVATIVES

"Tort Reform" and the Hypocrisy of Conservatives

The "tort reform" movement is full of hypocrites. Take Senator Rick Santorum (R-Pa.), for example. Senator Santorum has repeatedly supported limits on consumers' rights to seek compensation in the courts. But in December 1999, Santorum also supported his wife's medical malpractice lawsuit against her chiropractor. At trial, the

Senator testified that his wife should be compensated for the pain and suffering caused by her botched spine adjustment. She asked for \$500,000 and was awarded \$350,000, a verdict the judge set aside deeming it excessive.

Or George W. Bush. As Governor, Bush signed a series of brutal bills that

severely reduced injured consumers' rights to go to court, and as President, Bush has made "tort reform" a significant part of his domestic agenda. Yet in 1999, Bush filed a lawsuit against Enterprise Rent-A-Car over a minor fender-bender involving one of his daughters in which no one was hurt. Although his

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Limiting Damages/Wounding Families

One of the cornerstone principles of the conservative movement is a strong belief in family values, especially the protection of children. Yet the impact of legislation that immunizes drug companies, product manufacturers, hospitals and HMOs from lawsuits can be catastrophic for many families, causing untold suffering, economic devastation and, for some, the destruction of family life. In fact, most "tort reform" legislation, like caps on damages, specifically targets the most severely injured or diseased among us, like brain-damaged children who suffer most and suffer for a lifetime.

The story of 12-year-old Steven Olsen is a case in point. In his upcoming book, *Corporateering: How the Invisible Hand Steals the Individual's Freedom*, Jamie Court of the Foundation for Taxpayer and Consumer Rights discusses this child who is blind and brain-damaged because an HMO refused to give him an \$800 CAT scan when he was two years old. In 2001, Steven had 74 doctor visits, 164 physical and speech therapy appointments and three trips to the emergency room. Steven's mother Kathy had to leave her job to care for him. He must be watched constantly.

A jury awarded Steven \$7.1 million in non-economic compensation for his doomed life of darkness, loneliness, pain, physical retardation and around-the-clock supervision. However, the judge was forced to reduce the amount to \$250,000, to cover Steven's entire lifetime, because of a California law capping non-economic damages in the state. This outraged jurors in the case.

Laws and proposals that increase the obstacles that families face in court do more than just ruin the lives of the sick and injured. They make a mockery of the term "family values."



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In Pursuit of Justice ... Michael Moore and Kathleen Glynn

We at the Center for Justice & Democracy are extremely honored to have two stellar Boards: our Board of Directors and Board of Advisors. Among our two most supportive Board members are filmmaker/author Michael Moore, a member of our Board of Advisors, and producer/writer Kathleen Glynn, a member of our Board of Directors and, incidentally, Michael's wife.

In case you don't know who they are, Michael's film *Bowling for Columbine*, of which Kathleen is one of the producers, is the most successful non-music documentary of all time. The film has already won countless awards and appears on innumerable "top ten" critics lists for 2002. His book *Stupid White Men*, which Kathleen also assisted in writing and editing, was the most

successful non-fiction book of 2002, staying on the *New York Times* bestseller list for most of last year.

Through their foundation, the Center for Alternative Media and Culture, Michael and Kathleen have been among CJ&D's most generous and consistent donors. In fact, back in 1998 when Joanne Doroshow was forming CJ&D, Michael and Kathleen donated the initial seed money to get the organization going. Their foundation has contributed funding to CJ&D every year since.

Joanne's friendship with Michael and Kathleen dates back to the mid-1980s when all three worked together in Ralph Nader's office. Through the years and many different career paths, including all collaborating together

on Michael's 1994/1995 television show, *TV Nation*, and on Michael's earlier book, *Downsize This!*, they have remained close.

Michael has said this about CJ&D: "I've spent much time on the road these past few years, and I've seen lots of organizations struggling to get this country back on track and out of the hands of corporate powerholders. One of the most vital and productive organizations – one I have personally supported – is the Center for Justice & Democracy."

CJ&D would not exist without the generous financial help of Michael Moore and Kathleen Glynn and their ongoing support in a variety of ways. We couldn't exist without friends like these!

"TORT REFORM" VIOLATES MANY CONSERVATIVE PRINCIPLES

PERSONAL RESPONSIBILITY

"Tort reform" relieves corporations and other wrongdoers of responsibility for their misconduct.

LOWER TAXES AND LESS GOVERNMENT SPENDING

In many cases, "tort reform" shifts the cost of compensating injured individuals from corporate wrongdoers to taxpayer-funded health and disability programs.

LAW AND ORDER

"Tort reform" is soft on crime. It lets wrongdoers, including street criminals, off the hook and weakens the system's ability to deter them from causing future harm.

FAMILY VALUES / PROTECTION OF CHILDREN

"Tort reform" can be catastrophic for many children and their families, causing untold suffering, economic devastation and, for some, the destruction of family life.

LESS GOVERNMENT REGULATION

"Tort reform" regulates what is essentially a free-market approach to holding corporations and other wrongdoers accountable for injuring or killing people by their dangerous products or practices.

STATES' RIGHTS

Federal "tort reform" violates most precepts of federalism.

“Tort Reform”: Burdening the Taxpayer

Proposals to limit access to the civil justice system do not eliminate injuries or the need for compensation. They merely shift the costs away from the wrongdoer onto someone else.

So, if someone is brain-damaged, burned or rendered paraplegic as a result of the misconduct of another but cannot obtain compensation from the culpable party, he or she may be forced to turn to taxpay-

er-funded health and disability programs. In other words, while arguing for lower taxes, conservatives who advocate a “tort reform” agenda are actually supporting laws that shift the cost of compensating many injured consumers from corporate wrongdoers to taxpayers, burdening them with covering the cost of injuries.

In 1995, then MIT research consultant Michael Schrage

wrote in the *L.A. Times* that laws that reduce a wrongdoer’s obligation to pay for injuries they cause amount to a government subsidy, with taxpayers footing the bill. As he put it, “tort reform” is “just as much a financial subsidy as sending a government check for research in molecular beam epitaxy or catalytic converters. All of us end up paying for both; it’s just that the direct government subsidies are more clearly defined.”



The States’ Rights Hypocrites

There has hardly been an area more traditionally reserved to the states than tort, or liability law. So one would think that an administration and Republican Congress that campaigned hard on an anti-Washington, states’ rights platform should be committed to keeping the federal government’s nose out of state tort laws.

In a December 4, 2002 article in Capitol Hill rag *The Hill*, Bob Levy, a senior fellow at the conservative Cato Institute articulated the issue this way: “If this administration is true to the principles of federalism as they claim to be, they won’t be initiating any broad sort of tort reform on the federal level.”

Yet federal “tort reform” is not only something Bush and other conservative lawmakers want. It’s a key part of their domestic agenda. In 2001, Bush signed a federal law immunizing teachers who hit their students. But that’s just the beginning.

In a July 2002 speech (recently repeated in January 2003), Bush announced support of a broad federal law that would overturn many state laws and place severe limits on the amount local judges and juries can give patients injured by medical malpractice. The *Washington Post* observed at the time, “States currently set their own tort limits. Bush, a former governor, typically argues for state prerogatives over federal dictates.”

With Congress now dominated by Republicans, it remains to be seen how far they will try to go to overturn state liability laws. In addition to medical malpractice legislation, a controversial class action bill may resurface soon. This law would make it more difficult for consumers to succeed in class action lawsuits against corporations that commit fraud and other violations of consumer health, safety and environmental laws.

There could be no greater intrusion on traditional state authority than federal tort laws that tie the hands of local judges and juries. As the Conference of Chief Justices put it in April 1995 testimony on proposed federal product liability legislation, “The criti-

cal experience of State courts with the long process of interpretation and consistency on major points of product liability law tells us that Federal legislation is not the answer. Re-inventing tort law must occur by and through State courts and legislatures that are best situated to determine and control the impact of reform within their own communities.”

As we look at the agenda of the new Congress, it is becoming evident that conservatives will throw their most basic principles out the window when it comes to protecting their corporate benefactors that want nationwide immunity from lawsuits.

“Tort Reform” and the Hypocrisy of Conservatives (continued)

insurance would have covered the repair costs making a lawsuit unnecessary, Bush sought additional money from Enterprise. The case eventually settled.

The hypocrisy of conservatives who support “tort reform,” like Santorum and Bush, runs far deeper than this, however. Some of the most fundamental conservative philosophies, like protecting family values, lowering taxes, taking personal responsibility for one’s actions and supporting states’ rights, are violated repeatedly by conservatives who support the “tort reform” movement.

The philosophy of “personal responsibility” is a good example. It is a value Bush was careful to mention in his 2001 inaugural address when he said, “America, at its best, is a place where personal

responsibility is valued and expected.” Attorney General John Ashcroft has echoed similar sentiments, with statements like “[r]esponsibility is a concept that needs to be elevated in our consciousness.”

Yet when it comes to the responsibility of corporations that cause injury or death, many conservatives tend to sing a different tune, pushing “tort reform” laws that relieve corporations and other wrongdoers from accountability for the misconduct they cause.

It is the lesson of history that civil lawsuits are often the only reason companies are forced to take responsibility for actions that endanger the lives of innocent consumers. Countless deadly products, from flammable children’s pajamas to the Ford Pinto, would still be on

the market had lawsuits not been brought. Numerous dangerous practices and procedures, from inadequate hospital staffing to unchecked access of pedophilic priests to children, would still be hurting victims had they not sued. The Center for Justice & Democracy’s study, *Lifesavers: CJ&D’s Guide To Lawsuits That Protect Us All*, lists over 80 similar cases.

The story of the Dalkon Shield Intrauterine Device (IUD) is a good example. The Dalkon Shield is a birth control device that caused pelvic infections, septic abortions, infertility and death in millions of women. Only after 11 punitive damages awards over a number of years, totaling in excess of \$24.8 million, did A.H. Robins Co., Inc., the manufacturer, finally agree to urge doctors and women to

remove the Dalkon Shield and offer to pay for the removal.

Conservative theorist Richard Posner has written that the tort system’s economic function is deterrence of noncost-justified accidents and that tort law creates economic incentives for “allocation of resources to safety.” Clearly, our legal system is the last line of defense against corporate abuse. Given the outcome of the 2002 mid-term elections, all Americans should be concerned that their rights will be trampled by a radical pro-business, anti-consumer Congress dominated by hypocritical conservatives, who have little sympathy for those injured by wrongdoers while pushing for laws that relieve corporations from responsibility for their actions.
