

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

CENTER FOR JUSTICE &
DEMOCRACY
NEWS

Dear Friends,

As we head into what promises to be a very challenging 2011, we'd like to take this opportunity to thank our many friends and supporters who make our work possible.

CJ&D was formed with a simple goal in mind: to redefine the political debate over this issue, steering it away from lawyers and lawyer-bashing, and towards issues of corporate accountability and individual rights. Keeping our goal simple, however, does not mean that reaching it is easy. This task involves intensive, ongoing and complex work.

And in 2011, we are geared up for a fight! If we are successful, we will not only have raised public awareness about the dangers of tort restrictions but also instilled in the public and the media a new respect for this country's civil justice system.

As Margaret Meade famously said, "Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."

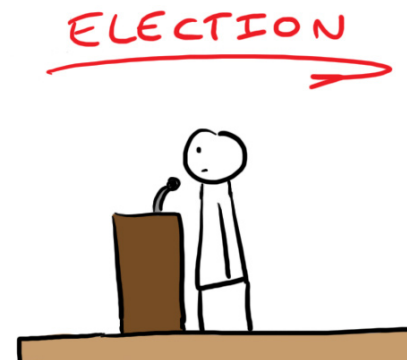
Sincerely,
Joanne Doroshov
Executive Director

IN THIS ISSUE: FOCUS ON ELECTIONS 2010

FEDERAL AND STATE LEGISLATURES FLIP NATIONWIDE

Defenders of the civil justice system face a stark reality after the 2010 elections. The GOP, which has traditionally supported so-called "tort reforms," now holds a 242-193 majority in the U.S. House of Representatives. Republicans also picked up five seats in the U.S. Senate, making consideration of business-backed restrictions on consumer lawsuits more likely than ever.

The most prominent "tort reform" legislation expected on the new House's agenda are limits on medical malpractice lawsuits. Incoming House Judiciary Chairman Lamar Smith (R-Tex.) said as much in a December 9, 2010 web post, listing med mal "lawsuit-abuse reform" among his "Priorities for the New Congress." Reps. Fred Upton (R-Mich.) and Joe Pitts (R-Pa.), future Chairs of the House Energy and Commerce Committee and its



Health Subcommittee, respectively, advocated a similar agenda in their December 1, 2010 *Hill* blog post, arguing that House GOP "investigations" will demonstrate the need to repeal and replace federal health care law with "common sense reforms," including "tort reform." Likely proposals are caps on non-economic damages at \$250,000, statute of limitations restrictions and proposals to restrict contingency fees.

(continued on page 2)

CORPORATE MONEY AND THE ELECTIONS

On January 21, 2010, the U.S. Supreme Court sounded the death knell for democratic elections in this country. In *Citizens United v. Federal Election Commission*, the Court cleared the way for corporations to spend unlimited money to elect and defeat candidates.

And that's exactly what happened in the 2010 mid-term elections. Companies took advantage of the new rules, pouring millions of dollars into special interest groups, which then spent the money on election races across the country, often without disclosing funding sources.

Chief among such groups, the U.S. Chamber of Commerce, the nation's richest corporate lobby organization, which spent nearly \$33 million during the 2010 election cycle to elect candidates who seek to protect companies from liability and weaken the civil justice system. According to the Center for Responsive Politics, the U.S. Chamber was the top non-party spender and ranked 4th overall in spending among special interest groups, outspent by only three political party committees.

Who gave the Chamber all that corporate cash? The public will never know since the

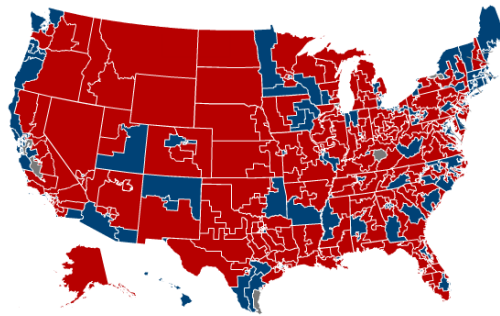
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State Races

Election results at the state level are also expected to lead to more limits on victims' access to the courts. With Republicans taking over 690 state legislative seats, 16 governorships and across-the-board power in the legislatures and governor's offices of at least 20 states, clearly new doors have opened for state-level "tort reform." And newly elected state officials have wasted no time attacking the civil justice system. For example, less than a week after winning Oklahoma's Attorney General race, Scott Pruitt, who accepted thousands of dollars in campaign donations from poultry industry employees, announced that he would consider stopping the state's lawsuit against the poultry industry for causing "widespread pollution" even though the state "has spent millions of dollars arguing the case, and it is awaiting a judge's ruling," according to a November 8, 2010 article by the *Associated Press*.

In a November 8, 2010 front-page article, the *New York Times* reported that Wisconsin Governor-elect, Scott

Walker "said he planned to remove all 'litigation, regulation, excessive cost' barriers to businesses (declaring Wisconsin, on election night, 'open for business!')...." In other words, there would be no accountability for corporate wrongdoing in Wisconsin whatsoever.



In an interview aired during the *Wall Street Journal's* November 16, 2010 "Journal Editorial Report," re-elected Texas Governor Rick Perry said, "Tort reform may be on the agenda. Again, I will suggest to you it will, to the tune of loser pays. ...[W]e think that will clear up a lot of the over suing that still we see in Texas, the frivolous lawsuits,

the kind of the shotgun approach, if you will. And I can assure you, we're going to have a very good discussion on it."

And appearing before the Florida Council of 100 on November 18, 2010, Governor-elect Rick Scott told the business group, "We also need serious tort reform." The fact that Scott campaigned on a pro-business platform (e.g., providing immunity to doctors who treat Medicaid patients, changing Florida's "bad faith" laws involving insurance claims, tightening the state's expert witness standards) and included the executive director of the Florida Justice Reform Institute, a "tort reform" group, on his regulatory reform transition team, coupled with a Republican sweep of the state legislature, does not bode well for Floridians who suffer injury in the future.

In light of state and federal 2010 election results, one thing is clear: Guardians of the civil justice system will have their work cut out for them.

FAREWELL TO TWO CHAMPIONS OF THE CIVIL JUSTICE SYSTEM

Senator Russ Feingold (D-Wis.). As a three-term senator, Feingold repeatedly stood up to corporate America on behalf of the public. Among Feingold's more noteworthy actions: his co-sponsorship of the Arbitration Fairness Act, which would prevent Americans from being forced to sign contracts that waive their right to trial as a condition of employment or needed goods and services; his co-sponsorship of the Lilly Ledbetter Fair Pay Act, which established a reasonable timeframe for workers filing pay discrimination claims; his vehement opposition to retroactive immunity for telecom companies that participated in President George W. Bush's warrantless wiretapping program; and his co-sponsorship of the Bipartisan Campaign Reform Act (a.k.a. the "McCain-Feingold Act"), which, among other things, banned unlimited "soft money" contributions in campaign financing and restricted corporate spending on pre-election advertising.

Senator Arlen Specter (D-Pa.). Late in his nearly 30-year Senate career, Specter became a vocal defender of the civil justice system. For example, in 2009, he sponsored legislation that would allow shareholders to file civil suits against "secondary actors" (e.g., investment bankers, corporate lawyers, accountants) who aid and abet securities fraud. The previous year Specter sponsored the Notice Pleading Restoration Act to reverse *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009), which imposed an unprecedented increase on what anyone bringing any kind of lawsuit must initially show in order to avoid having his/her case tossed. And in 2007, Specter co-authored legislation, later signed into law, allowing American victims of state-sponsored terrorism to sue countries that support and promote terrorism and seize hidden commercial assets for compensation if they prevailed in court.

CORPORATE MONEY AND THE ELECTIONS *continued...*

Chamber does not have to identify donors because of its tax status. What is known is that the Chamber “launched the most aggressive issue advocacy effort in our nearly 100 year history.” This was the message of an October 25, 2010 *ChamberPost* blog posting by the group’s Political Director Bill Miller, who told supporters, “We have invested tens of millions of dollars in creative TV spots in some of the most competitive and important congressional races nationwide to educate voters on how candidates voted on the issues that matter — ranking us among the top in media expenditures for independent organizations in America.” He added, “We are dropping over FIVE MILLION pieces of direct mail nationwide over the next ten days on the crucial issues facing our economy.”

Unfortunately, the Chamber was not the only force amassing and spending millions in corporate donations after *Citizens United*. According to a December 2010 report by the Office of NYC Public Advocate Bill de Blasio, American Crossroads — a 527 group conceived by operatives Karl Rove and Ed Gillespie and led by former U.S. Chamber Chief Legal Officer and

General Counsel Steven Law — “accepted contributions of unlimited size and disclosed large contributions from corporations that would not have been possible before the *Citizens United* decision.” Top corporate contributors, based on data analyzed by the Center for Responsive Politics, included Alliance Resource GP (\$2 million), TRT Holdings (\$1.3 million), Dixie Rice Agricultural Corp. (\$1 million), Southwest Louisiana Land (\$1 million), American Financial Group (\$400,000) and Weaver Popcorn Company (\$250,000).

Because of *Citizens United*, American Crossroads also opened a second money front, Crossroads GPS, a 501(c)(4) organization which could accept unlimited corporate donations while keeping its donors’ identities secret. De Blasio’s investigation found that “the two groups closely coordinated their spending, so anonymous contributions to Crossroads GPS bolstered the shared mission of both organizations.” Data from the Center for Responsive Politics show that American Crossroads and Crossroads GPS together spent over \$38.5 million on ads and other election-related activities,

with the groups ranking 7th and 8th, respectively, in outside spending by special interest groups.

As the above examples show, and the de Blasio report concluded, *Citizens United* “opened the door for increased corporate involvement in our elections. In the 2010 midterm elections, money flowed through that open door. The Court’s decision expanded opportunities for anonymous spending that mask the full extent of corporate participation in elections.” Given *Citizens United*’s impact on the fairness of recent elections and its anticipated impact on elections to come, Congress must slam shut this “open door” and pass a constitutional amendment to undo the Court’s ruling. If not, corporations will continue to destroy the very foundations of our electoral democracy.



ThePopTort Makes the ABA Journal’s Top 100 Legal Blogs in Country - Three years in a row!

With pithy commentary, occasional wit, and perhaps a little bit of pizzazz, these zaniest of zanies discuss why, at a time when corporate crime and abuse is at an all time high, it is actually a good thing to take Corporate America to court sometimes.

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NOTABLE RACES WHERE CORPORATE MONEY FAILED

California Insurance Commissioner.

Despite industry efforts, state Assemblyman Dave Jones (D-Sacramento) defeated fellow Assemblyman Mike Villines (R-Clovis), the industry's choice for Insurance Commissioner, "arguably the most powerful regulator in the state, overseeing the state Department of Insurance and monitoring the actions of the \$100-plus billion insurance industry in California," according to a November 3, 2010 *LA Times* blog post. Insurance companies, including Allstate, Anthem Blue Cross, Farmers, Liberty Mutual and Health Net, had funneled \$5.7 million through a PAC to run ads attacking Jones or promoting Villines. Why? Jones was a pro-consumer candidate who, among other things, pledged to hold insurers accountable, keep insurance rates affordable and combat "medical rescission" if elected commissioner.

Illinois Supreme Court.

Despite a vicious campaign spearheaded by the pro-business Illinois Civil Justice League, Chief Justice Thomas Kilbride prevailed in his bid for another 10-year term on the court. The judge's only sin: Siding with the court's majority in striking down an unconstitutional "cap" on compensation for medical malpractice victims.



Iowa Congressional Seat.

U.S. Rep. Bruce Braley (D-Iowa) fought off a huge onslaught of corporate money to win reelection in Iowa. Braley is one of Congress's strongest civil justice supporters, standing up for patients' rights during the health care debate despite blistering attacks from right-wing members of Congress.

Washington State Initiative.

Washington voters said no to I-1082, an insurance industry-sponsored measure that would have allowed private insurers into the remarkably efficient Washington State workers compensation non-profit public system and then ruin it with greater costs for employers, smaller benefits for injured workers and increased burdens on the state.

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