



Center for Justice & Democracy
90 Broad Street, Suite 401
New York, NY 10004
Tel: 212.267.2801
centerjd@centerjd.org
<http://centerjd.org>

MYTHBUSTER!

PUBLIC REJECTS EXTREME “TORT REFORM” AGENDA

Corporate lobbyists are fond of saying that restricting lawsuits – so-called “tort reform” – is a high priority of Americans. But the results of the mid-term 2006 elections, in addition to several polls, show the opposite is true. Americans show little interest in limiting their rights to go to court.

- **2006 Mid-term Elections:** Candidates who used civil justice issues and attacks on trial lawyers as part of their campaigns, or that had “tort reform” backing, did not fare well.
 - In Pennsylvania, former Senator Rick Santorum, a leading advocate in the U.S. Senate for so-called “tort reform,” was badly beaten by opponent Bob Casey, who opposed that agenda. Although many important issues were at play in that election, the U.S. Chamber of Commerce, one of the most wealthy and powerful proponents of corporate immunity and limiting legal rights, funded a TV ad praising Santorum for his pro-“tort reform” stance.¹
 - Several candidates for the U.S. House of Representatives, who used civil justice issues and trial lawyer attacks in their campaigns, lost. For example, Mike Whalen was beaten by Bruce Braley in Iowa, Joy Padgett was defeated by Zack Space in Ohio, and Clay Shaw lost to Ron Klein in Florida.²
 - In West Virginia, Massey Energy chief Don Blankenship reportedly spent over \$3.6 million of his own money supporting about 45 candidates, most of whom lost in a sweeping defeat of his endorsements. That was more than the amount spent by the entire state senate field of candidates.³ Blankenship sits on the national board of the U.S. Chamber of Commerce, has ties to a group called “West Virginia Citizens Against Lawsuit Abuse,” and has a history of repeatedly attacking trial lawyers and the civil justice system.⁴

- **2006 Judicial Elections:** While business groups were reportedly the largest sponsors of TV ads in the 2006 elections and, overall, significantly outspent trial lawyers, they were dealt a series of defeats.
 - In Illinois, Stephen McGlynn, the U.S. Chamber’s preferred candidate, raised about twice as much money as his opponent Bruce Stewart, much of which came from groups funded by outside organizations like the American Tort Reform Association and the American Justice Partnership (an arm of the National Association of Manufacturers (NAM)). Stewart won.⁵
 - In Alabama, incumbent Supreme Court Chief Justice Drayton Nabers was supported by the American Taxpayers Alliance, which has ties to the U.S. Chamber of Commerce.⁶ Despite spending close to \$1 million in the campaign, opponent Sue Bell Cobb won.
 - In Georgia, the so-called Safety and Prosperity Coalition, which received most of its funding from NAM’s American Justice Partnership, raised over \$1.67 million to defeat opponent Carol Hunstein, but Hunstein won.⁷
 - In Washington State, state business groups failed in their efforts to defeat judicial candidates, despite spending millions.⁸

- **2006 Ballot Referendums.** Efforts to erode the judicial system also showed up in ballot initiatives, some of which also failed.
 - In South Dakota, the so-called “Jail 4 Judges” proposal, a particularly extreme initiative that would have removed judicial immunity and set up a special “grand jury” with the ability to indict judges for decisions it didn’t like was soundly defeated by 90 percent of voters.⁹
 - In Colorado, an initiative to impose retroactive term limits on appellate judges failed.¹⁰
 - In Oregon, voters rejected a constitutional amendment designed to remove Portland-area judges by mandating districts for appellate courts.¹¹

- **Polls**
 - CNN exit polls in the 2006 midterm elections indicate that voters did not care about limiting legal rights when casting their ballots. When asked about what issues were extremely important to their vote, 42 percent said corruption and ethics; 40 percent said terrorism, 39 percent said the economy, 37 percent said Iraq, 36 percent said values, and 29 percent said illegal immigration.¹²
 - In Illinois, where doctors staged walkouts and protests over the medical malpractice issue, “a poll for the [St. Louis] Post-Dispatch and KMOV-TV (Channel 4) show that a strong majority of Illinois residents oppose the notion that ‘pain-and-suffering’ monetary awards in malpractice suits should be ‘capped’ at a set amount as a means of controlling insurance costs and stopping the exodus of doctors.”¹³
 - In Kentucky, a poll asked how important it was for the president and Congress to deal with four health-care issues: health insurance, prescription drugs for seniors, Medicare and lowering medical-malpractice premiums. “Lowering malpractice premiums was rated most important by the smallest group, 10 percent - even though that has been a big issue in parts of Kentucky where high premiums have caused a shortage of specialists such as obstetricians.”¹⁴

January 2007

NOTES

¹ “Repeated Attacks on the Civil Justice System Fail on Election Day,” American Association of Justice, Nov. 8, 2006.

² *Ibid.*

³ Lawrence Messina (*Associated Press*), “Blankenship’s Spending Rivalled House, Exceeded Senate Field,” *Herald-Dispatch.com*, Dec. 17, 2006, found at http://hosted.ap.org/dynamic/stories/W/WV_CAPITAL_FOCUS_WVOL-?SITE=WVHUN&SECTION=HOME&TEMPLATE=DEFAULT

⁴ <http://www.uschamber.com/about/board/all.htm>; Lawrence Messina, “Record Shows Blankenship Not Afraid to Sue,” *Associated Press*, Aug. 27, 2006.

⁵ [faircourts.org/contentViewer.asp?breadcrumb=7,55,930,931](http://www.faircourts.org/contentViewer.asp?breadcrumb=7,55,930,931); Brian Mackey, “Big Cash Surge in Appeals Court Race,” *Chicago Daily Law Bulletin*, Nov. 2, 2006

⁶ Eric Velasco, “PACS Fueling Costly Races for State High Court – Interest Groups Help Make Judicial Elections Nation’s Most Expensive,” *Birmingham News*, Oct. 6, 2006; See, e.g., <http://www.citizen.org/pressroom/release.cfm?ID=2305>, for connections between American Taxpayers Alliance and U.S. Chamber of Commerce.

⁷ Jill Young Miller, “Hanging Tough,” *The Atlanta Journal Constitution*, Dec. 17, 2006.

⁸ “Voter Rejection of Political Tampering with the Courts Doesn’t Quell Special Interest Effort in ’06 Judicial Elections,” Justice at Stake, found at [faircourts.org/content/Viewer.asp?breadcrumb=7,55,930](http://www.faircourts.org/content/Viewer.asp?breadcrumb=7,55,930)

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² “Corruption Named as Key Issue by Voters in Exit Polls,” edition.cnn.com/2006/POLITICS/11/07/election.exitpolls/

¹³ Kevin McDermott, “Most in state reject caps on awards in medical malpractice cases, poll finds,” *St. Louis Post-Dispatch*, September 20, 2004.

¹⁴ Patrick Howington, “Insuring more people is top health care worry,” *The Courier-Journal*, September 26, 2004.