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A Call For Action

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The 2008 Election And Beyond: A Call For Action

As of the writing of this article, ten days have passed since the Bush administration publicly recognized the economic crisis facing our nation. During this brief period of time, there has been no shortage of finger-pointing. The White House, Congress, regulators, lobbyists, greedy CEOs, and predatory lenders have all been targeted as causing the near collapse of our financial markets and the resulting need for a \$700 billion bailout.

Conspicuously absent from this list of those being blamed, however, is corporate America's typical bogeyman for economic woes – trial lawyers. Don't expect that to last. Perhaps the only safe investment at this time is a bet that the tort reformers will do everything they can to seize upon this crisis in order to further erode our civil justice system.

Despite the fact that deregulation and the lack of meaningful oversight significantly contributed to the current mess, when the debate in Washington pivots from how to prevent a financial freefall to how best to grow the economy, expect the tort reformers to claim the only way businesses can thrive will be with *less regulation* and *less litigation*.

Indeed, the Bush administration already made a bold attempt to restrict access to our court system in its initial bailout proposal, which contained this shocking provision granting the Treasury Secretary unfettered power:

Section 8. Review.

Decisions by the Secretary pursuant to the authority of this Act are non-reviewable and committed to agency discretion, and may not be reviewed by any court of law or any administrative agency.

It sure is easier to deal with a crisis by wiping out the entire judiciary in a single sentence, isn't it?

To those interested in preserving our civil justice system, the presidential election could not hold any greater importance. In his acceptance speech during the Republican Convention, John McCain went out of his way to lump trial lawyers with Big Tobacco, Big Pharma, and crooks of all kind: "I've fought corruption, and it didn't matter if the culprits were Democrats or Republicans. . . I've fought lobbyists who stole from Indian Tribes. I fought crooked deals in the Pentagon. I fought tobacco companies and trial lawyers, drug companies and union bosses."

The next president will be able to dramatically shape the federal judiciary. United States Supreme Court Justice John Paul Stevens is 88 years old; Justice Ruth Bader

Ginsburg is 75. An already conservative majority could become a super-majority for an entire generation. 44 vacancies currently exist on the various federal courts, including one on the Ninth Circuit Court of Appeals and one on the Northern District Court. An additional 15 vacancies will arise during the first 6 months of next year as judges reach senior status. John McCain has promised to appoint as judges only those who are self-proclaimed “conservative strict constructionists” in the mold of Justices Antonin Scalia and Clarence Thomas.

Beyond the 2008 presidential election, however, it is critically important for our members to redouble efforts to ensure the preservation of our civil justice system and the rights of those who have been injured or abused. There are two concrete ways our members can do so.

First, join the Consumer Attorneys of California and participate in one of its Legislative Support Teams. CAOC works tirelessly to preserve and protect the constitutional right to trial by jury and its legislative directors and members review hundreds of bills introduced in Sacramento each year for their effect on our civil justice system.

Although many bills are easily identified as anti-consumer and defeated in committee, some proposed bills that would negatively impact consumers are more difficult to spot. And this is where CAOC members can be particularly helpful, both in identifying them and shaping amendments to preserve consumer rights. Take for example recent well-intentioned HMO legislation. It sought to strengthen California law prohibiting health insurers from improperly rescinding coverage by requiring them to obtain approval from the Department of Managed Healthcare before actually terminating the coverage. Sounds good. But the proposed legislation left in doubt a policyholder’s ability to thereafter pursue relief in court. Moreover, it raised the specter of insulating insurers from bad faith liability no matter the merits of the rescission. Insurers would surely argue their conduct could not be unreasonable if their decision had been officially “approved” by the Department, no matter how overburdened the Department was or how carefully it had actually reviewed the matter. As SFTLA knows too well, the Department was of absolutely no help when its own HMO, Health Net, sought to cancel its policy and the health coverage for hundreds of our members. The only way SFTLA was able to keep the coverage in force and require Health Net to abide by the terms of the policy it issued was to go to court and obtain an injunction. In light of this, CAOC and its Legislative Support Team was instrumental in obtaining critical amendments to the proposed HMO legislation. Access to our courts has been preserved; the rights of aggrieved policyholders have been protected.

CAOC’s Legislative Support Teams are an important link between our members and the state legislators. These teams have a continual outreach with the Assembly members and Senators in their districts, building not only professional but personal relationships as well. For more information on CAOC’s Legislative Support Teams, contact CAOC at 916-442-6902.

Second, join SFTLA's newly created Communications Committee. The barrage of misinformation bandied about as "fact" in the media concerning the civil justice system in general and trial lawyers in particular will only increase in the wake of our economic crisis. While other organizations, like the American Association for Justice and CAOC, have been attempting to set the record straight on these attacks, our local association can have a positive and more direct impact in our own community. It can do so by undertaking a concerted campaign to raise awareness of the importance of our civil justice system, such as educating the public on the fundamental importance of the constitutional right to a jury trial, as well as bringing to light what our members do every single day – help those in need. Again this past year, SFTLA and its members have volunteered legal services to the poor, raised thousands of dollars for education scholarships, and spearheaded charity drives to help the homeless. Over the course of the next year, the Communications Committee hopes to take concrete steps toward raising public awareness by developing a positive relationship with the press, speaking at our elementary and high schools, and developing a more public presence in the community. To help SFTLA in these endeavors, contact SFTLA's Executive Director, Juliette Bleecker, at 415-956-6402.