



# LAWSUIT ABUSE

Citizens Against Lawsuit Abuse



## GET READY AMERICA:

### The Costs of Litigation, Insurance & Defensive Medicine Will Be Passed On

*We need nationwide legislation to deter frivolous malpractice suits*

By Congressman Lamar Smith

As legal commentator Stuart Taylor has written, “Playgrounds all over the

country have been stripped of monkey bars, jungle gyms, high slides & swings, seesaws and other old-fashioned equipment once popularized by President John F. Kennedy’s physical-fitness campaign. The reason: thousands of lawsuits by people who hurt themselves at playgrounds ... Now kids sit at home and get fat – and their parents sue McDonald’s.”

To name just a few, federal lawsuits have been brought against U.S. weather forecasters for wrong predictions.

Parents have sued over a school’s decision to drop their teenagers from the drum major squad.

And a couple sued Frito Lay, claiming Dorito chips were “inherently dangerous.”

That Doritos case was finally dismissed, but only after eight years of costly litigation, when a federal judge finally pointed out “the common sense notion that it is necessary to properly chew hard foodstuffs prior to swallowing.”

The Congressional Budget Office found that capping certain forms of lawsuit damages would result in \$54 billion in savings. That could be used to provide health insurance for the uninsured without raising taxes on those who already have insurance policies.

Also according to the CBO, under a Republican health care tort reform bill called the HEALTH Act, “premiums for medical malpractice insurance ultimately would be an average of 25% to 30% below what they would be under current law.”

We’ve seen how the Democrats’ health care bills, which passed the House and Senate, failed to contain any of the tort reforms the Congressional Budget Office concluded would reduce health care costs.

Even worse, the Democrats’ health care bill not only fails to contain any of the tort reforms the CBO concluded would save health care costs, but it also contains a provision that explicitly allows trial lawyers to “opt-out” of any alternative liability system. That means that if their frivolous lawsuits are limited by an alternative system, they can simply “opt-out” of the

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## ARBITRATION WORKS FOR CONSUMERS

Urging legislators to resist efforts that would undermine the use of arbitration in Texas, CALA representatives from across the state made their case in testimony provided to the Texas House Committee on the Judiciary and Civil Jurisprudence. As part of its interim activity, the committee has been charged with studying and making recommendations

regarding the use of arbitration in Texas. This interim study comes on the heels of an unsuccessful effort during the 2009 legislative session by state Sen. Royce West of Dallas to effectively eliminate arbitration in consumer cases, employment matters, franchisor/franchisee disputes, and in many other instances.

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## “Get Ready America”

alternative system and file in court, just like they always have.

The reason Democrats refuse to consider medical lawsuit reform remains purely political, as was revealed by former Democratic National Committee Chairman Howard Dean. Responding to a question at a town hall about why tort reform was not included in the Democrats health-care overhaul, Dean candidly admitted:

“... the reason why tort reform is not in the bill is because the people who wrote it did not want to take on the trial lawyers in addition to everybody else they were taking on, and that is the plain and simple truth.”

A recent survey found that 83% of Americans believe that reforming the legal system needs to be a part of any health care reform plan.

In Texas, we’ve embraced needed reforms. The result? More than 14,000 doctors set up new practices in the state. That means Texans pay less to have better health care and more options.

The success of state-enacted tort reforms is why we need to enact nationwide legislation to deter frivolous malpractice suits while still assuring adequate compensation for those injured by negligence. Republicans in Congress have pushed for these reforms, but Democrats, and their trial lawyer supporters, have blocked our efforts.

During the last two Congresses in which the Republicans were in the majority, I managed the time on the House floor debate of the HEALTH Act, which was modeled on the very same health care reforms that CBO concluded will yield at least \$54 billion in health cost savings. I was also the author of the Lawsuit Abuse Reduction Act, which would amend Federal Rule 11 to require that lawyers who file frivolous lawsuits face mandatory sanctions for bringing unjustified lawsuits.

While both the HEALTH Act and the Lawsuit Abuse Reduction Act passed the House, they were stalled in the Senate by Democratic opposition. And now that the Democrats are in the majority, there is little prospect those bills will appear anywhere on the Congressional legislative agenda.

Still, I know we won’t give up, and that is reassuring. Reforming the legal system that is abused by some lawyers, and doesn’t serve the American people as well as it should, is a must.

Sooner or later, we will prevail. 

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As a Senior Member of the Texas Congressional Delegation, Congressman Smith represents the 21st Congressional District, including portions of Bexar and Travis counties and all of Comal, Real, Kerr, Bandera, Kendall and Blanco counties.

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## “Arbitration Works for Consumers”

“If personal injury lawyers and their advocates in Texas have their way, employers and consumers here may have fewer alternatives to costly and time-consuming litigation,” said Chip Hough, a small business person and past board chairman of Bay Area CALA in Corpus Christi. “Personal injury lawyers don’t like arbitration because it provides solutions to disputes without lengthy and expensive litigation. Employers and consumers, on the other hand,

embrace arbitration for the very same reasons.”

Opponents of arbitration claim the system harms consumers. But a 2008 study shows **that under arbitration consumers win, win faster, and win more often**. The study also found that arbitrated disputes cost less than litigation.

CALA representatives said the current system works for consumers and is critical for employers. 

# In Other News

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## Texas Gulf Coast, Rio Grande Valley on 2009/2010 National Judicial Hellhole Report 'Watch List'

In the 2009/2010 *Judicial Hellholes*® report by the American Tort Reform Association, several Texas regions again earned negative reviews, though Lone Star State lawmakers earned praise for holding the line against efforts to roll back legal reforms.

Jefferson County, Nueces County and the Rio Grande Valley were on the 'Watch List'. According to the report, the jurisdictions "bear watching for suspicious or negative developments in litigation or histories of abuse. Watch List jurisdictions fall on the cusp – they may fall into the Hellholes abyss or rise to the promise of Equal Justice Under Law."

Of the Texas Gulf Coast and Valley, the report stated: "The area's reputation has improved in recent years, but it is still known for being skewed toward plaintiffs.

A full copy of the report can be found at [www.atra.org](http://www.atra.org).

## Lawyers Waste No Time Milking Tragedy

The recent Toyota crisis has spurred the emergence of money-hungry personal injury lawyers trolling for potential clients. Looking to increase awareness, Roger Borgelt, Central Texas CALA chairman, authored an op-ed criticizing this trend. In the op-ed, Roger states, "Our courts should be used to provide timely justice for those with legitimate claims. We should be appalled by lawyers who milk tragedy for spoils...The speed with which some personal injury lawyers started trolling for business in the aftermath of the tragic deaths associated with the Toyota recall is a cringe-worthy example."

## CALAs Highlight Personal Injury Lawyer Scam

Texas CALAs in late March urged the Texas House Committee on Judiciary and Civil Jurisprudence to recognize a proposed change in Texas law, commonly known as "paid vs. incurred" as nothing more than a personal injury lawyer windfall that will increase costs for all Texans. At its core, the change would allow personal injury lawyers to recover damages for expenses that never happened. The Committee is considering the issue as part of its interim charges.

Personal injury lawyers were able to get the measure passed in 2007 but Texas Governor Rick Perry vetoed the bill.

**"We should be appalled by lawyers who milk tragedy for spoils..."**

**For more information about  
Citizens Against Lawsuit Abuse  
groups in your area, contact:**

- Bay Area CALA at (361) 883-1865  
or visit [www.bacala.net](http://www.bacala.net)
- CALA of Central Texas at (512) 481-1000  
or visit [www.calactx.com](http://www.calactx.com)
- East Texans Against Lawsuit Abuse (ETALA)  
at (903) 234-8300  
or visit [www.legalwatchdog.org](http://www.legalwatchdog.org)
- Houston CALA at (713) 267-2302  
or visit [www.calahouston.org](http://www.calahouston.org)
- Rio Grande Valley CALA at (956) 968-4594  
or visit [www.citizensagainstlawsuitabuse.com](http://www.citizensagainstlawsuitabuse.com)
- or visit us at [www.tala.com](http://www.tala.com)

**“Texas needs laws  
that promote  
common sense  
and fairness in  
our courts, not  
laws that create  
new avenues to  
line the pockets  
of personal injury  
lawyers.”**

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## **“CALAs Highlight Personal Injury Lawyer Scam”**

“Governor Perry was wise to veto this misguided measure in 2007,” said Michelle Martin with the Houston CALA. “We hope to show others as well that this proposal is not about protecting consumers, it’s about creating a financial windfall for a handful of aggressive personal injury lawyers.”

“Allowing personal injury lawyers to sue for costs that were never incurred by their client doesn’t help consumers and it doesn’t help injured Texans – it simply enriches their legal counsel,” said Diane Davis with East Texans Against Lawsuit Abuse. “Texas consumers would bear the brunt of this sham via increased insurance premiums.”

“Texas needs laws that promote common sense and fairness in our courts, not laws that create new avenues to line the pockets of personal injury lawyers,” added Veronica Villegas, with the Rio Grande Valley CALA. “We hope members of the Texas House Committee on Judiciary and Civil Jurisprudence see ‘paid vs. incurred’ for the scam that it is.” 

