



# MADISON OP-ED SERIES

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### LAWSUITS OR LEGISLATION?

*Edwin H. Moore*

The next presidency of the United States is finally resolved. However, the election mess has brought to light one certainty: The use of the courts by those who cannot achieve their objectives through legislation has become problematic.

We have seen a steady escalation of legislation through litigation in recent years. Some lawyers and legal experts have slowly turned our nation's courtrooms into their own personal legislative chambers as they craft public policy using tools such as class action lawsuits. Lawsuit abuse did not start with this year's elections; it just took things to another level. While these activists were once content with simply manipulating the lawmaking process, they now are aiming to manipulate the process of our elections as well.

If the abuse of our legal system is nothing new, the recent attention to judicial manipulations is beginning to attract more coverage by the media, and voters are beginning to question the motives and tactics of some of the trial attorneys. Before the elections, The James

Madison Institute and the American Tort Reform Association conducted a survey of Florida voters on the perceived benefits and efficacy of class action lawsuits. A telephone survey of 806 registered voters was conducted last September by the Center for Survey Research and Analysis at the University of Connecticut, and the results were quite revealing:

\* While Florida voters initially have favorable opinions towards class action lawsuits, the more they learn about specific components, the more concerns they voice. Nearly two-thirds of Florida voters surveyed felt that class action lawsuits serve a greater benefit to the personal injury attorneys involved than to the aggrieved parties. Also, nearly two-thirds of Florida voters disapprove of the practice of lawyers representing people who are not actually their clients (via the class action lawsuit) and express concern over lawyers receiving compensation greater than any individual plaintiff in the class,

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an occurrence common in class action lawsuits.

- \* Florida voters expressed concern that class action lawsuits unnecessarily drive up the costs of goods and services, particularly the costs of health insurance, automobiles, and computer equipment.
- \* Overwhelmingly, voters in Florida believe that regulation and legislation offer the best protection against corporate negligence, as opposed to class action lawsuits. In other words, Florida voters want protection in the system but believe the class action lawsuit should not be the primary way to adjust public policy.

So it is no wonder that so many Floridians are fed up with the judicial maneuverings behind the 2000 elections. Voters intuitively feel that lawmaking responsibilities lie with Congress and state legislatures rather than the courts. Yet every time they turn on the television, voters see court actions and procedures trying to usurp their rightful legislative prerogatives.

When the next Congress convenes, one item on its agenda should be true tort reform and a thorough examination of the current

class action lawsuit process.

Our nation seems poised to reexamine the basic premise of separation of powers. This cannot be good news for those who seek to manipulate the system for their own ends.

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Edwin H. Moore is president and CEO of The James Madison Institute in Tallahassee, a Florida-based nonpartisan, nonprofit research and educational organization.

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