

ACCESS TO JUSTICE CAMPAIGN



PUBLIC JUSTICE

KEEPING THE
COURTHOUSE
DOORS OPEN
FOR ALL



SECURING ACCESS TO JUSTICE FOR ALL

“The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship.”

That’s what the U.S. Supreme Court said a century ago in *Chambers v. Baltimore & Ohio Railroad Company*, 207 U.S. 142 (1907). But now the “right conservative of all other rights” is under attack. We must preserve it – and the principles on which our nation is based.

While everyone’s focused on President Obama and the economic crisis, huge corporations – some benefiting from bailouts – are trying to immunize themselves from lawsuits and keep millions of their victims out of court. They’re expanding federal preemption, mandatory arbitration, class action bans and abuses, outrageous court secrecy, and attacks on the right to counsel and jury trial to limit and eliminate the “right conservative of all other rights” for their customers, employees, and investors.

The *Access to Justice Campaign* is dedicated to exposing, fighting, and defeating these efforts. It must succeed. Justice is impossible if access to justice is denied.

Public Justice was founded to enforce the “right conservative of all other rights.” We fight in the courts – for the poor and the powerless, the environment, consumers’ rights, workers’ rights, civil rights, civil liberties, and corporate and government accountability. We cannot allow “the right conservative of all other rights” to be eliminated for anyone.

Americans don’t pledge allegiance to liberty and justice “for some.” We must keep the courthouse doors open for all.



FIGHTING FEDERAL PREEMPTION

Federal preemption is what happens when federal law *wipes out* state law. Corporate wrongdoers argue that they can't be sued, even if they acted outrageously, because a federal statute, regulation, or action eliminates all lawsuits and state laws that could hold them accountable. They say they're immune from suit, are free to do harm, and their victims have no remedy at all.

OUR RECORD: Public Justice has been successfully fighting federal preemption for 25 years. Our Federal Preemption Project has preserved – and helped others preserve – access to justice throughout the federal and state courts. We've been Counsel of Record before the Supreme Court in four preemption cases and helped defeat preemption across the country in cases involving unsafe cars, trucks, boats, pesticides, drugs, medical devices, HMOs, banks, mortgage brokers, phone companies, and more.

ACCESS AT RISK: Corporate defendants have mounted a concentrated effort to expand federal preemption nationwide. The danger is real. In *Riegel v. Medtronic*, the Supreme Court held that federal regulation of medical devices, which Congress authorized thirty years ago to protect consumers, preempts and eradicates injured consumers' rights to sue the manufacturers of millions of devices for compensation. Unless Congress acts, those lawsuits are now barred.

Throughout America, companies are now seeking the same immunity by judicial fiat that the medical device manufacturers received. Almost every industry regulated by the federal government – which means almost every industry – is arguing that federal preemption bars suits against it.

BATTLING MANDATORY ARBITRATION

Mandatory arbitration is designed to eradicate the right to a day in court. Companies use or amend their consumer, employment, and investor form agreements to prohibit lawsuits against them and require their customers, employees, and shareholders to submit to arbitration heavily weighted in the companies' favor. There's often no knowledge or choice. Companies slip these provisions into fine print they know is not read. Workers "agree" by keeping their jobs.

OUR RECORD: Our Mandatory Arbitration Abuse Prevention Project is the acknowledged national leader in the battle against corporate efforts to use arbitration to eliminate court access. We won *Ting v. AT&T*, the biggest victory in the country against mandatory arbitration, and have had up to three lawyers working full-time on the project, battling and helping others to battle in cases nationwide. We've even written the book on the subject, just publishing the updated, fifth edition of *Consumer Arbitration Agreements*, our legal manual on defeating mandatory arbitration.

ACCESS AT RISK: Mandatory arbitration provisions are spreading like wildfire. Banks, HMOs, car dealers, doctors, and insurers now use them, as do credit card, mortgage, phone, and computer companies. The courts will soon decide whether these provisions can be used to make customers, employees, and shareholders contractually "waive" all their rights.



STOPPING CLASS ACTION BANS AND ABUSE

Corporate wrongdoers are trying to ban, limit, and abuse class actions to prohibit access to justice. They're amending their form contracts to ban consumers, workers, and investors from bringing class actions anywhere – in the courts or arbitration. And they're trying to use no-opt-out, coupon, and outrageous class action settlements to cap their liability and deprive their victims of any day in court.

OUR RECORD: Public Justice is the only public interest organization in the country that both aggressively prosecutes a wide range of class actions and has a special project to preserve class actions and prevent their abuse. We have won the leading decisions in America striking down class action bans, including federal appeals court decisions and state high court victories in California, New Jersey, New Mexico, and Washington. For over a decade, we've been objecting to – and defeating – proposed class action settlements that would make the corporate defendant happy, but deprive the class members of access to justice.

ACCESS AT RISK: Our Class Action Preservation Project has never been more essential. Corporate efforts to ban and abuse class actions are growing daily. More and more companies are adding class action bans to their form agreements. At the same time, corporate defendants are trying to change the law to make it harder to litigate class actions, while proposing class action settlements that would provide their victims little or no relief, release all their claims, and eliminate their right to a day in court.

PREVENTING EXCESSIVE SECRECY

Excessive secrecy is a key weapon in the attack on access to justice. The reason is simple. Those abusing power know that, as Justice Brandeis said, "Sunlight is the best of disinfectants." If people don't know about injustice, they may not care whether the courts can be used to correct it. If people don't know what's taking place in the courts, they can't tell whether justice is being done. And if people can't learn that others' rights were violated, they may not know their rights were violated, too.

OUR RECORD: Public Justice has been exposing and preventing excessive secrecy for over 20 years. Project ACCESS, our special project against unnecessary court secrecy, has unsealed evidence of dangers to the public health and safety, helped injury victims and others oppose overbroad protective orders, and educated the public about the dangers of litigation in secret. We even discovered, disclosed, and defeated an unpublicized amendment to the Federal Rules of Civil Procedure that would have allowed judges to seal documents whenever the parties agreed – even if there was no justification for secrecy at all.

ACCESS AT RISK: Efforts to expand secrecy and limit public access have increased dramatically. Corporations routinely insist that evidence of wrongdoing be kept secret. The federal government says "national security privileges" bar lawsuits that could disclose evidence of illegal corporate and government actions. New amendments to the Federal Rules of Civil Procedure could let companies sued for wrongdoing keep relevant e-mails and other electronic records secret forever.



PRESERVING THE RIGHTS TO COUNSEL AND JURY TRIAL

The attack on access to justice is so wide-ranging that even the rights to counsel and a jury trial are threatened. The Constitution protects the right to counsel for the poor in criminal cases and the Legal Services Corporation was created to protect the right to counsel for the poor in civil cases. The right to a jury trial is explicitly protected by the Seventh Amendment and by State Constitutions. Both rights, however, are now endangered.

OUR RECORD: Public Justice has already helped repel new assaults on the right to counsel and jury trial. As *amici curiae*, we helped persuade the U.S. Supreme Court to reject an attack on the constitutionality of using Interest on Lawyers' Trust Accounts (IOLTA) to fund legal services, the California Supreme Court that the right to a jury trial cannot be waived before a dispute arises, and the Iowa Supreme Court that there's no "complex case" exception to the right to a jury trial.

ACCESS AT RISK: The attack on the right to counsel is just beginning. Opponents of legal services for the poor are challenging IOLTA funding as unconstitutional on other grounds. Budget cutbacks in many states are eviscerating the right to counsel for the poor. Meanwhile, corporations are including waivers of the right to jury trial in their form agreements. *The Wall Street Journal* highlighted this in an article headlined, "Waiving Your Right to a Jury Trial: After Years of Requiring Arbitration, Companies Return to the Court System – But with Conditions." The Constitution bars those conditions.

UPHOLDING THE CONSTITUTION

Preserving access to justice, at its core, means upholding the Constitution, separation of powers, and the courts' role in our nation. President Bush claimed he had unlimited power to declare U.S. citizens and foreign nationals "enemy combatants," wipe out their *habeas corpus* rights, and imprison them indefinitely without court review. The Supreme Court held otherwise four times in four years. It said, "The Executive is bound to comply with the Rule of Law." President Obama has pledged his dedication to the rule of law, but some with power still don't accept the courts' role.

OUR RECORD: Public Justice is dedicated to upholding the Constitution and preserving the courts' crucial role. We joined *amici curiae* briefs urging the Supreme Court to ensure access to justice in all four key "enemy combatant" cases. We also won a critical victory preserving victims' rights, and the role of the courts, when the Maryland Legislature passed legislation retroactively eliminating HMO members' rights and validating the HMOs' double-billing. At our urging, Maryland's highest court held the legislation unconstitutional.

ACCESS AT RISK: The attack on access to justice – and the courts' role in our system – is continuing. The Obama Administration is still deciding whether to pursue some of the Bush Administration's positions. Meanwhile, corporate wrongdoers are trying to do to their victims what President Bush tried to do to "enemy combatants" – eliminate their access to the courts. Proposed legislation would extinguish millions' right to a day in court, including asbestos victims, medical malpractice victims, and many more.



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