

# THE REAL TLR

A Project of Texans for Individual Rights

## **The Real TLR: A Look at the Legislative Activities of Texans for Lawsuit Reform**

**July 30, 2007**



## **About Texans for Individual Rights (TXIR)**

Founded in 2007, Texans for Individual Rights is a conservative public policy organization dedicated to promoting the principles of limited government and personal accountability. Our key issues include protecting the integrity of the civil justice system, private property rights, and opposing corporate welfare.

Longtime conservative activist Mark McCaig serves as President of Texans for Individual Rights, overseeing the organization's day-to-day operations. Prior to co-founding TXIR, Mark served on the staff of a United States Congressman.

A graduate of Texas A&M University with a BBA in Marketing, Mark began his involvement in the conservative movement as a teenager in Houston, Texas. While a student at Texas A&M, Mark served in a number of leadership positions in several organizations, including the Young Conservatives of Texas, Texas Republican Alliance, and the Texas Federation of College Republicans. His grassroots experience also includes volunteer work on many political campaigns at the local, state, and federal levels. An active Republican, Mark has been elected as a delegate to both the 2004 and 2006 Republican Party of Texas state conventions.

Mark is also a published writer, whose op-ed pieces have appeared in several papers across the state. He was also a regular columnist for "The Battalion", the daily student newspaper at Texas A&M University and former editor-and-chief of "Texaminer", a conservative newspaper at Texas A&M.

TXIR publications are distributed across Texas to legislators, grassroots activists, and members of the media. For more information about TXIR, please visit [www.txir.org](http://www.txir.org). For questions or comments about this report, please contact Texans for Individual Rights President Mark McCaig at [mccaig@txir.org](mailto:mccaig@txir.org).

## **Part I: Introduction**

### **What is Texans for Lawsuit Reform (TLR)?**

“Texans for Lawsuit Reform” is one of the most influential special interest lobby groups active in Texas Politics. TLR defines itself as a “volunteer-led organization working to restore fairness and balance to our civil justice system through political action; legal, academic, and market research; and grassroots initiatives.”<sup>1</sup>

TLR derives much of their power and influence from the sheer amount of money they donate to candidates and officeholders. Campaign finance reports filed with the Texans for Lawsuit Reform political action committee show expenditures of over \$3.5 million during 2006.<sup>2</sup>

In addition to a very active political operation, Texans for Lawsuit Reform also had one of the largest lobbying teams during the 80<sup>th</sup> legislature. Lobby disclosure reports state that TLR’s lobbying team included 18 paid lobbyists who were received between \$485,000 and \$985,000 for their services. TLR President and liquor store owner Richard Trabulsi and his wife, Diane, were also registered as unpaid lobbyists for TLR.<sup>3</sup>

### **What TLR Says They Strive For**

TLR’s website paints their legislative agenda as one that promotes “a civil justice system that discourages non-meritorious lawsuits or outrageous claims for damages” and “a litigation system purged of intimidation, allowing plaintiffs to be fairly compensated and defendants to get a fair day in court.”<sup>4</sup>

### **Why is a Report Like This Necessary?**

Unfortunately, what TLR says and what TLR does when it comes to advocating for or against legislation are often two different things. While they claim to support a balanced civil justice system that allows injured parties to be adequately compensated for their damages, in reality they have done nothing to prevent truly frivolous lawsuits while at the same time making it increasingly difficult for an injured person to exercise their constitutional right to access the civil justice system.

Though they claim support from broad range of thousands of ordinary Texans, TLR’s agenda clearly promotes special interests over the public good. This report takes an in-depth look at the legislation supported and opposed by Texans for Lawsuit Reform during the 80<sup>th</sup> session of the Texas Legislature and the motives behind their lobbying efforts. The purpose of this report is not to discuss every bill supported or opposed by TLR, but rather to highlight their position on issues most important to the public.

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<sup>1</sup> <http://www.tortreform.com/>

<sup>2</sup> <http://www.ethics.state.tx.us/php/filer.php?acct=00028135gpac>

<sup>3</sup> <http://www.ethics.state.tx.us/teed/conlob2007d.htm>

<sup>4</sup> <http://www.tortreform.com/about>

## **Part II: TLR's Legislative Advocacy**

### **Protecting Homebuilders**

In 2003, the Texas Legislature passed HB 730, which created a new governmental agency called the Texas Residential Construction Commission (TRCC). This legislation was passed under the guise of providing additional oversight of the homebuilding industry and providing additional protections for consumers who purchase defective homes.

However, this legislation, which was supported by the vast majority of the homebuilding industry, had the opposite effect. Homeowners seeking to resolve disputes with their builder were first required to work through the TRCC (which has no power to compel builders to fix defects in homes they build) and the bureaucratic maze created by the legislature before they could take their builder to court.

During the 80<sup>th</sup> legislative session, several bills were filed to reform the TRCC, reduce the bureaucratic requirements homeowners must follow to settle a dispute with a homebuilder, and to homebuilders who build defective home to be held responsible for their actions.

On March 19<sup>th</sup>, the House State Affairs Committee heard testimony on several bills designed to protect homeowners and make the TRCC more responsive to the needs of the public. During this hearing, TLR testified against four bills- HB 295, HB 1686, HB 2008, and HB 2721, that would have, to varying degrees, allowed the TRCC to hold unscrupulous homebuilders accountable and made it easier for homeowners to settle their disputes. While the legislature did pass a bill, HB 1038, that addressed some of the concerns consumer rights groups had about the TRCC, this legislation did not go as far as the bills that TLR testified against.

TLR's support of the homebuilding industry at the expense of Texas homeowners is not a coincidence. Homebuilders Bob Perry and Dick Weekley are some of the largest donors to the TLR political action committee. Furthermore, Weekley is a Co-Founder, Chairman, and CEO of TLR.

### **Corporate Welfare for Oil, Gas, and Chemical Companies**

TLR was a strong supporter of HB 1927, filed by Rep. Warren Chisum. This bill would have made the manufacturer or seller of a fuel, fuel additive, or blending component immune from being held responsible for any injury resulting from the product unless the product did not comply with state or federal standards or regulations and that the failure to comply was the cause of the injury. TLR testified for HB 1927 during a House Civil Practices Committee hearing on March 14<sup>th</sup>, and registered a position for the bill during a committee hearing on April 4<sup>th</sup>.

Legislation such as this is troublesome for several reasons. First, it allows negligent companies to be held harmless when their product injures a person. In many cases, when a negligent party is immune from being held responsible for their wrongdoing, the medical bills of the injured party are borne by the taxpayer through programs such as Medicaid. These expenses should be borne by the responsible party and not the public.

This bill also injects federal policy in to state tort actions. Under this bill, federal laws involving fuel and fuel additives would play a large role in whether or not an injured Texan would be able to bring a cause of action in a Texas court. Additionally, this type of legislation encourages the federal government to take an even larger (and costly) role in the regulation of business.

HB 1927 passed out of the House Civil Practices Committee on a vote of 6-0 and was placed on the House calendar for a floor vote. Despite postponing this bill 8 times in order to gather support, the sponsors of the bill could not get the votes needed for passage and allowed the bill to die before it could be brought up for debate and a vote.

### **Requiring Texas Consumers to Sign Away Their Legal Rights**

During his “State of the Judiciary” address delivered before the Texas Legislature on February 20<sup>th</sup>, Texas Supreme Court Chief Justice Wallace Jefferson discussed the repercussions of the growing trend of disputes being heard in arbitration instead of the courts.<sup>5</sup> Chief Justice Jefferson touched upon many very valid criticisms of arbitration, including a possibility of inconsistent rulings on cases involving similar issues or questions of law, the inability of parties involved in arbitration to appeal a faulty ruling, and the potential for private arbitration to affect public rights.

Many of the disputes being settled in arbitration are taking place in that setting, instead of the courts, as a result of mandatory arbitration clauses in consumer contracts. While arbitration should be available as a means to resolve disputes, it should only be used if all parties involved have equal leverage in negotiating the contract that includes the mandatory arbitration clause. Contracts executed between an individual consumer and a large business entity are often of a “take it or leave it” nature, where the consumer has little or no power to change or negotiate provisions of the contract being presented to them by the business entity. Mandatory arbitration clauses have become commonplace in such contracts.

TLR opposed two bills that were filed this session to alleviate this problem and uphold a consumer’s right to access the courts. HB 3265, filed by Rep. Craig Eliand, would have prohibited insurance carriers from requiring mandatory arbitration clauses that relate to the insurance coverage in their policies. This bill received a hearing in the House Insurance committee on April 16<sup>th</sup>, during which TLR testified against it. The bill never made it out of committee.

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<sup>5</sup> [http://www.supreme.courts.state.tx.us/pdf/2007\\_STATE\\_OF\\_JUDICIARY.pdf](http://www.supreme.courts.state.tx.us/pdf/2007_STATE_OF_JUDICIARY.pdf)

Rep. Stephen Frost filed a broader bill, which included language identical to the provisions of HB 3265. Frost's bill, HB 3091, would have voided and rendered unenforceable consumer arbitration clauses in contracts unless federal law required enforcement of such a clause, prohibited contracts from including clauses requiring a settlement or agreement of a dispute be kept confidential before the dispute arose, require arbitration companies to publish detailed statistics regarding nature and outcome of the disputes the arbitration company administers, and forbids an arbitration company from administering an arbitration proceeding if they have a conflict of interest in the dispute being heard.

Texans for Lawsuit Reform registered an opinion against HB 3091 when it was heard in the House Civil Practices committee on April 18<sup>th</sup>. Like HB 3265, this bill never made it out of committee.

### **Protecting Alcohol Dealers at the Expense of Victims of Drunk Driving**

In November, 2004, the Texas Supreme Court on a 5-4 decision, upheld a lower court ruling in the case of *F.F.P. Operating Partners, L.P. v. Duenez*, awarding \$35 million to a family injured in an automobile accident caused by a drunk driver. The accident occurred after an obviously intoxicated man who had already consumed a case and a half of beer purchased even more beer from a convenience store owned by F.F.P. Operating Partners. After leaving the store, the drunken patron drove onto a nearby highway and hit a car carrying the Duenez family head on. This accident left 9 year old Ashley Duenez with severe brain damage that requires significant medical care for the rest of her life.

Shortly after this verdict was rendered, three of the Justices who ruled in favor of the Duenez family left the court and were replaced by three justices strongly supported by Texans for Lawsuit Reform. The convenience store owner soon filed a motion for the court to rehear the case, and TLR filed an amicus brief with the court in support of this motion. On April 8, 2005, the Texas Supreme granted the motion for rehearing. It is worth noting that the President of TLR, Richard Trabulsi, is the owner of a small chain of liquor stores<sup>6</sup> and had a direct business interest in the outcome of this case.

After hearing the *Duenez* case for a second time, despite the fact that no relevant law had been changed and all the facts of the case remained the same, the court reversed its two year old ruling in the case on November 3, 2006 with a 7-2 ruling in favor of the convenience store owner. This ruling effectively nullified the Texas Dram Shop Act, which was designed to protect the public from drunk drivers by discouraging alcohol merchants from selling to obviously intoxicated customers.

HB 3029, filed by Rep. Stephen Frost, would have undone most of the damage caused by the court in their revised ruling in the *Duenez* case by clarifying the law to hold alcohol sellers (with the exception of restaurants that do not have a bar and derive less than half of their business from alcohol sales and businesses that hold a retail dealer's off-premise

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<sup>6</sup> <http://www.richardsliquors.com/pages/expert.php>

license) responsible for damages caused by patrons they serve while obviously intoxicated.

Texans for Lawsuit Reform registered their opposition to this bill when it was heard by the Civil Practices committee on April 4<sup>th</sup> (at the time of the hearing, the bill did not yet contain the exceptions for certain restaurants and off-premise license holders). Despite their opposition, the revised bill passed out of the committee with strong bi-partisan support on a 7-0 vote. The bill later died in the Calendars committee.

## **Marginalizing Local Courts and Locally Elected Judges**

Judicial selection and court reorganization were two of the major issues on Texans for Lawsuit Reform's legislative agenda during the 80<sup>th</sup> session. Before the session, TLR circulated a proposed bill that would have replaced the current system of judicial elections with an appointment based system and uncontested "retention elections" where voters would vote on whether or not to retain an incumbent judge. While the TLR bill was not filed, Sen. Bob Duncan and Rep. Myra Crownover filed similar bills that would have taken the way the right of Texas voters to elect their judges. While neither of these bills received a hearing this session, TLR is likely to continue to pursue the issue of judicial selection.

A bill supported by TLR on the issue of court reorganization, SB 1204, was filed by Sen. Duncan. The original version of this bill would have completely overhauled the structure of Texas courts. This legislation contained several controversial provisions that were met with widespread opposition.

One section of SB 1204 created the "Judicial Panel on Complex Cases", a five member panel of appeals court or regional presiding judges appointed by the Chief Justice of the Texas Supreme Court. This panel would be charged with determining whether or not a case was "complex" and, if so, had the power to remove the local (and elected) trial judge and replace him with a judge chosen by the panel. The replacement judge chosen by the panel could include a retired judge or a judge who had been defeated for reelection and would not be accountable to the public. The criteria for determining "complexity" (and allowing for the removal of an elected judge) are extremely broad and could apply to just about any civil case.

The Senate State Affairs held three committee hearings where representatives for Texans for Lawsuit Reform provided testimony in support of the bill. At the first hearing for the bill, opponents included attorneys on both sides of the bar as well as judges who were concerned with the implications of such drastic structural changes to Texas courts. Concerns were also raised about such changes being made without first consulting all stakeholders involved, including judges and attorney organizations. Eventually, the most controversial provisions of the bill were removed (including the sections involving "complex" cases) and a scaled down version that was supported by both TLR and the Texas Trial Lawyers Association passed the Senate. The revised bill was sent to the House, where it was killed on a point of order due to a technical defect.

## **Part III: Conclusion**

### **Actions Speak Louder Than Words**

Texans for Lawsuit Reform's public statements about their legislative agenda are carefully crafted to avoid any mention of specific policy objectives, relying on loaded words and attacks on boogeymen such as "trial lawyers" and "frivolous lawsuits." Their website does not even contain a copy of their 2007 legislative agenda. A TLR statement on their website providing the public with a post-session report of their efforts<sup>7</sup> mentions only a fraction of the issues that they were active on.

This statement is also deceptive in that what little it does say about the legislation they supported or opposed often leaves out key facts about the legislation. For example, the section on TLR's efforts on "court modernization" leaves out the fact that the original bill they supported would have given an appointed entity the power to remove local trial judges from "complex" cases, only to replace them with another judge who may very well have been defeated at the ballot box.

TLR's public relations strategy is based on keeping the public as uninformed as possible about the actual substance of their most controversial legislative proposals. While it is easy to promote bills that will "streamline" the "cumbersome" Texas judiciary to make it more "user-friendly and efficient", it is not nearly as easy to justify legislation that take cases out of the hands of local courts and elected judges and into the hands of appointed officials.

A truly fair and balanced justice system requires wrongdoers, not the taxpayer, to pay for the damages they cause an injured person. It must allow ordinary citizens to exercise their constitutional right to access the courts and have their dispute heard by a citizen jury, even if their dispute is with a wealthy or politically powerful party. If Texans for Lawsuit Reform truly had the best interests of all Texans at hand, they would not have to hide their legislative program behind spin and secrecy.

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<sup>7</sup> <http://www.tortreform.com/texas-legislature-80>