

# THE LEGAL EXAMINER

## Americans' rights under attack

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Have you ever read the Seventh Amendment to the Constitution? It says “the right of trial by jury shall be preserved.” (emphasis added). Wouldn't it be great if our elected officials were as concerned with preserving consumers' Constitutional right to a trial by jury in suits at common law as they are with preserving the right to bear arms?

Why is it that one Amendment to the Constitution is treated by Congress as sacrosanct while the other is ignored? It's because the Second Amendment has a powerful lobby behind it and the Seventh Amendment does not. Cronyism rules.

As you read this, consumer access to the civil justice system is under assault from a Congress that is chomping at the bit to pass bills written for it by lobbyists for the insurance, health care, and manufacturing industries. Without any empirical evidence of lawsuit abuse, state court juries not being able to handle their Seventh Amendment roles, medical malpractice lawsuits causing a rise in health care costs or the multi district litigation (MDL) not being the most efficient and cost-effective way to handle thousands of claims concerning the same defective drug or medical device, the House is sneaking through the anti-civil justice legislation designed to keep the little guy out of the courtroom against big business. If these anti-civil justice bills become law, the courthouse doors will be locked for ordinary citizens but not for big business.

Here is one example – HR 1215, the “Protecting Access to to Care Act,” which has the effect of stripping Americans of the ability to bring certain health care claims when they are injured or killed by medical malpractice, dangerous drugs, dangerous medical devices, or negligent nursing homes. This is ironic since two facts have been widely reported. First, [medical errors](#) are now the third leading cause of death in the United States. Second, past “[tort reform](#)” legislation has not resulted in reducing healthcare costs. A study by the conservative Cato Institute found that when states adopted caps on non-economic or total damages; when Congress and some states passed a wave of tort reform in the 1980s; and during the third reform wave from 2002 – 2005, there was no evidence of a post – adoption drop in healthcare spending.

This assault on the Seventh Amendment under the guise of tort reform is a farce – it attacks exactly the wrong problem. The American public did not vote this past November to have their rights taken away. On the contrary, they thought they were voting to have their rights protected from powerful interests. There is no health care cost crisis – that is a trumped up, fake allegation. The only crisis in health care is the fact that medical negligence is the third leading cause of death in this country. But for the health care industries' powerful lobbies, we'd be treating this like an epidemic. Instead, we're attacking the victims.