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CHAMBER OF HORRORS

*The Hijacking of the 2004 Elections
by the U.S. Chamber of Commerce*

*By Emily Gottlieb**

INTRODUCTION

In the early 1990s, a principal focus of the so-called “tort reform” movement shifted to the election process. Initially, the big businesses that were running “tort reform” groups focused on the election of pro-industry, anti-consumer state judges. Their tactics included running issue ads, distributing biased evaluations of judges’ records and producing bogus studies that attempted to identify trial lawyer contributions to judges, which some astute journalists found deliberately inflated numbers by using overly broad definitions of “trial lawyers.”¹

In 1994, officials from the American Tort Reform Association (ATRA) told the group’s annual legislative conference in Washington, D.C. that since substantial “tort reforms” were passed in Texas, Mississippi, North Dakota, Arizona and Michigan in 1993, their next step would be to work on judicial elections.² By 1998, this effort had become a major activity for ATRA. Clearly concerned by the number of “tort reforms” being struck down by state courts, ATRA General Counsel Victor Schwartz said that since amending constitutions and enacting federal legislation were not viable options for them, their only option was to influence judicial elections.³

Now, a decade later, we can see how far the “tort reform” movement has come in their election efforts.

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In addition to direct assaults on judges they do not like, they are now not only amending state constitutions, but also ousting federal lawmakers and electing those whom they prefer. It's safe to say that the business interests that support ATRA and its allies have gone far beyond judicial elections and are now attempting to commandeer elections at every level of government.

In 1998, the U.S. Chamber of Commerce created what it calls its "Institute for Legal Reform" (ILR) to pursue the Chamber's agenda of protecting corporations from liability, weakening the civil justice system and blocking the courthouse doors to sick and injured Americans. The ILR has become a major funnel for major industry money moving into election campaigns.

The ILR started its efforts to influence elections, like other "tort reform" groups, with judicial races and the deplorable practice of funding negative attack ads against judges. For example, in 2000, the Chamber, through its affiliate Citizens for a Strong Ohio, flooded the airwaves with attack ads against Supreme Court Justice Alice Robie Resnick, who in 1999 declared Ohio's draconian "tort reform" law unconstitutional. The Chamber argued that these were "issue ads" allowing it to conceal its corporate contributors. But the Ohio Elections Commission disagreed, subpoenaing the group in the course of an investigation as to whether the Chamber used illegal corporate money and seeking to find out who financed these attack ads against Justice Resnick. The group is now challenging the Commission and a lower court decision upholding it.⁴

In 2004, Citizens for a Strong Ohio said it raised close to \$3 million to support GOP candidates for judgeships in Ohio. Of the \$3 million, the Chamber's Institute for Legal Reform contributed \$1 million; the American Insurance Association, \$375,000; Nationwide Insurance, \$200,000; and Procter & Gamble, \$160,000. Republicans won four Ohio Supreme Court races in 2004. They now hold six of seven seats on the state Supreme Court.⁵

The Ohio Supreme Court was hardly the Chamber's only focus in 2004. In fact, last year, the Chamber spent large amounts of money to influence elections at every level of government. In a letter dated December 6, 2004, U.S. Chamber of Commerce President and CEO Tom Donohue reported to the Chamber's Board of Directors about the Chamber's success in the 2004 elections. Under a subheading entitled, "What the Elections Mean for Business," Donohue wrote:

During the Chamber board meeting on November 10, I reported that the elections of 2004 represented a landmark achievement for the Chamber's political program and the voter education efforts of our Institute for Legal Reform (ILR).

To briefly recap, the Chamber put 215 people on the ground in 31 states; sent 3.7 million pieces of mail and more than 30 million e-mails; made 5.6 million phone calls; and enlisted hundreds of associations and companies in our web-based "VoteForBusiness.com" program to educate and mobilize voters.

Combining these activities with ILR's voter education efforts in 16 state Supreme Court and Attorney General contests, as well as our targeted campaign to make so-called "tort reform" a factor in the presidential race, the Chamber invested up to \$30 million in the November 2nd elections.

What was the return on this investment?

In House and Senate races, the Chamber endorsed 269 candidates and 249 of them won. But the real story is what happened in the select number of close, very tough races that we targeted. In the House, we targeted 28 races and were successful in 20. We targeted nine Senate contests and were successful in seven – including John Thune’s win over Tom Daschle.

...

As for the presidential race, the Chamber did not endorse in the election, but executed a voter education and get-out-the-vote effort, as well as provided significant support to the November Fund because we believed that the prospect of having a trial lawyer a heartbeat away from the presidency would influence our legal, judicial, and regulatory environment for years to come.

The November Fund targeted four states in particular – West Virginia, Iowa, New Mexico and yes, Ohio. Obviously many factors influence the outcome of a presidential election. I would only note that all four states targeted by the November Fund ended up in the Bush column.

The Chamber also ran an education and get-out-the-vote campaign in states – Wisconsin, West Virginia, New Hampshire, New Mexico, Florida, Iowa, Nevada, and Ohio – that targeted independent women ages 18 to 49 with children. The message attempted to tie John Edwards to the trial bar and focused on their collective opposition to solving the national medical malpractice crisis. We placed full-page ads in the major newspapers in the targeted states, sent nearly one million pieces of mail, made two million phone calls, and sent over 3.4 million e-mails to these women voters stressing the importance of the medical malpractice issue as an election issue. Of these eight states, only New Hampshire and Wisconsin went for the Kerry-Edwards ticket.⁶

Of the \$30 million spent by the Chamber in the November 2004 elections, \$1 million was spent just to revamp the Chamber’s election website, VoteForBusiness.com, which was created to generate votes for pro-business candidates who supported the Chamber’s agenda. The free site offered voter registration, absentee ballot forms and an early voting service, as well as federal and state candidate information and scorecards.⁷ “We want people to vote, but we want them to vote for the right people,” explained U.S. Chamber of Commerce Vice President Bill Miller.⁸

It should be noted that the Chamber is by no means the only corporate force trying to influence elections today. The same corporate interests that back the Chamber have also sunk many millions of dollars into scores of other conservative, industry-sponsored PACs and other organizations. But the Chamber’s focus on elections is growing significantly as it funnels more and more money into election campaigns from some of America’s most disliked industries.

The following is an analysis of some of the Chamber’s more significant efforts in 2004.

FEDERAL ELECTIONS

PRESIDENTIAL RACE

In July 2004, the *Wall Street Journal's* Alan Murray wrote about his interview with Chamber President Tom Donohue,

If John Edwards is chosen as John Kerry's running mate, the chamber will abandon its traditional stance of neutrality in the presidential race and work feverishly to defeat the Democratic ticket.... These businessmen barely know Sen. Edwards.... [It's not] completely rational. Mr. Edwards's political and policy views are more moderate – and more in line with business – than those of Gov. Dean, Rep. Gephardt or even Sen. Kerry. But Mr. Edwards is a trial lawyer. His campaign for the presidency was financed by trial lawyers. And there is nothing that makes America's CEOs see red these days like America's trial lawyers.... “This is not a personal issue and it is not a party issue,” says Mr. Donohue. “It is not about getting Bush or Kerry elected. It is about something so fundamental to what we do here at the chamber that we can't walk away from it.”⁹

In August 2004, the Chamber formed the November Fund (“Fund”), a 527 organization created to attack Edwards. The Fund's campaign, called “The Truth About Trial Lawyers,” blamed emergency room closures, doctor shortages and other health care crises on trial lawyers. The Fund — co-chaired by Craig Fuller, former chief-of-staff to then-Vice President George H.W. Bush and former Philip Morris senior vice president, and Bill Brock, former senator and past chairman of the Republican National Committee — pledged to spend \$10 million on ads and media campaigns in critical swing states.¹⁰ Although the Fund was supposedly going to attract a variety of corporate funders, according to the Center for Responsive Politics, all but \$148,000 of the Fund's \$3.1 million in contributions came directly from the Chamber.¹¹

Donohue later explained, “As for the presidential race, the Chamber did not endorse in the election, but executed a voter education and get-out-the-vote effort, as well as provided significant support to the November Fund because we believed that the prospect of having a trial lawyer a heartbeat away from the presidency would influence our legal, judicial, and regulatory environment for years to come.”¹² According to Donohue, the Fund targeted four key states – West Virginia, Iowa, New Mexico and Ohio.¹³

The Chamber also conducted an “education” and get-out-the-vote effort in Wisconsin, West Virginia, New Hampshire, New Mexico, Florida, Iowa, Nevada, and Ohio that targeted women ages 18 to 49 with children. The Chamber placed newspaper ads, sent millions of e-mails and mailings, and made millions of phone calls focused on medical malpractice issues.¹⁴ All but New Hampshire and Wisconsin voted for the Republican ticket.

CONGRESS

The Chamber endorsed 269 House and Senate candidates and 249 of them won. According to Chamber President Tom Donohue, the Chamber specifically targeted several “very tough races”

and, in those, they were successful in 7 of 9 Senate races, including John Thune's win over Tom Daschle, and 20 of 28 House races.¹⁵

During the 2004 election cycle, stories highlighting the Chamber's endorsement of U.S. House and Senate candidates appeared in countless local newspapers around the country.¹⁶ In October 2004, the *Salt Lake Tribune* reported that the Chamber officially endorsed only eight Democrats in Congress.¹⁷ According to the Center for Responsive Politics, the Chamber contributed over \$173,000 in PAC money to federal House and Senate candidates, 76 percent of which went to Republicans.¹⁸

Key U.S. Senate Races¹⁹

Alaska. In November 2003, the Chamber spent nearly \$100,000 on a nine-day TV ad campaign that backed incumbent Lisa Murkowski (R).²⁰ The Chamber's Political Director, Bill Miller, said the ads are "not aimed at encouraging Alaskans to vote for Murkowski in next year's election.... We just want people to recognize what a good senator they have in Lisa Murkowski and the fact that we in the business community feel that she's been a great asset to the business community."²¹ Murkowski also received \$3,500 in Chamber PAC money. Murkowski was elected.

Florida. Former Housing and Urban Development Secretary Mel Martinez (R) received \$5,000 in Chamber PAC money, despite the fact that he had been a trial lawyer and former president of the Academy of Florida Trial Lawyers. However, during his 2004 Senate campaign, he advocated for a cap on non-economic damages in medical malpractice cases.²² Bill Miller, the Chamber's political director, defended the Martinez endorsement, saying he "shares our economic vision," backs curbing "frivolous" litigation and has the best chance among the Republicans to win the seat. Besides, added Miller, "I'm a lawyer. It doesn't make you a bad person."²³ Martinez also raised \$900,000 at a September 2004 D.C. fundraiser hosted by the Chamber.²⁴ And according to *USA Today*, at 4:30 a.m. on Election Day, Chamber staffers "fanned across the city to put up signs for Republican Senate candidate Mel Martinez."²⁵ Martinez won the election.

North Carolina. The Chamber spent more than \$500,000 promoting Representative Richard Burr (R).²⁶ It conducted mail and phone campaigns and relocated a staff member from Los Angeles to Raleigh to recruit support for Burr among business people and find more volunteers for the campaign.²⁷ The Chamber also gave Burr \$10,000 in PAC money. Burr pledged to support caps on non-economic damages in medical malpractice cases if elected.²⁸ Burr won the North Carolina Senate seat.

South Carolina. The Chamber ran a campaign strategy called "Team DeMint" on behalf of Republican candidate Rep. James DeMint, spending more than \$100,000 on TV ads before the state primary. Chamber President Tom Donohue went to South Carolina to promote the group's endorsement before the state primary.²⁹ "Jim DeMint sees the big picture – that we need to unleash the job creation potential of U.S. businesses by reining in big government, lifting heavy-handed regulation and ending lawsuit abuse," said Donohue.³⁰ "He's earned the U.S. Chamber's

endorsement because we believe he will support business, both large and small, on issues such as taxes, health care and legal and regulatory reform,” said Chamber vice president and political director Bill Miller.³¹ DeMint, who also received \$15,000 in Chamber PAC money, made “tort reform” an issue in the campaign, pledging to support caps on non-economic damages in medical malpractice cases if elected.³² DeMint won the election.

South Dakota. In February 2004, the Chamber announced that it would launch an aggressive, \$40 million campaign to defeat state and federal candidates who opposed their pro-industry agenda, starting with Senate Minority Leader Tom Daschle.³³ “Daschle has pursued an agenda that is seriously out of step with the needs of his constituents,” said Bill Miller, the Chamber’s political director. “At every opportunity, Tom Daschle has chosen to stand in the way of legislative reforms that would spur business investment, grow the economy, create jobs and improve access to healthcare.”³⁴

The Chamber then endorsed former Representative John Thune (R), gave him \$1,500 in PAC money and spent thousands of dollars on pro-Thune ads that criticized Daschle for his positions on taxes and civil lawsuits.³⁵

For example, in June 2004, the Chamber helped pay for a two-day newspaper ad campaign that targeted Daschle’s role in the progress of a corporate tax bill.³⁶ And in August 2004, the Chamber launched a two-week, \$400,000 TV and radio ad campaign across South Dakota attacking Daschle’s opposition to “tort reform.”³⁷ One 30-second TV ad blamed Daschle for not backing a federal medical malpractice bill that imposed a \$250,000 cap on non-economic damages for patients hurt by negligent doctors.³⁸ Other ads blasted Daschle for blocking the anti-consumer class action bill. “We’re convinced that he was the problem, and we’re telling anybody who will listen to us that it was not the Republican leadership [who killed the bill]; it was Daschle,” said Stanton Anderson, the Chamber’s executive vice president. “His demands were such that they could never be met.”³⁹ Thune was elected.

Other U.S. Senate Races

Arkansas. Incumbent Blanche Lincoln (D) was the only Senate Democrat endorsed by the Chamber, which contributed \$7,600 to Lincoln’s campaign.⁴⁰ Lincoln won re-election.⁴¹

Connecticut. The Chamber gave incumbent Chris Dodd (D) \$2,000 in PAC money.⁴² Dodd was re-elected.

Indiana. The Chamber’s PAC contributed \$1,000 to incumbent Evan Bayh (D).⁴³ Bayh won re-election.

Iowa. Incumbent Charles Grassley (R) received \$3,500 in Chamber PAC money. Grassley was re-elected.

Kentucky. Incumbent Jim Bunning (R) received \$1,000 in Chamber PAC money. Bunning was re-elected.

New Hampshire. The Chamber's PAC gave incumbent Judd Gregg (R) \$1,000. In the past, Gregg sponsored federal legislation capping damages in medical malpractice lawsuits.⁴⁴ Gregg won re-election.

Oregon. Incumbent Ron Wyden (D) received \$1,000 from the Chamber's PAC. Wyden won re-election.

Pennsylvania. The Chamber contributed \$5,000 in PAC money to incumbent Arlen Specter (R). Specter was re-elected.

Utah. Incumbent Orrin Hatch (R) received \$5,000 in Chamber PAC contributions. In 2003, Hatch sponsored federal legislation that established a trust fund to compensate asbestos victims, thereby protecting companies from future asbestos lawsuits.⁴⁵ And twice in 2004, Hatch sponsored bills that capped damages in medical malpractice cases.⁴⁶ Hatch won re-election.

Washington. The Chamber backed candidate George Nethercutt, Jr. (R), giving him \$6,000 in PAC money and mailing out an endorsement of him.⁴⁷ Nethercutt made federal medical malpractice "reform" a campaign issue, attacking incumbent Patty Murray for refusing to back a \$250,000 cap on non-economic damages in med mal cases.⁴⁸ Nethercutt lost the election.

Other Contributions

Incumbent Tom Carper (D-DE) received \$2,000 in PAC money though he is not up for re-election until 2006.⁴⁹ Carper was a co-sponsor of the bill supported by the Chamber that would make it more difficult for consumers to win class action lawsuits against corporations that commit fraud and other violations of consumer health, safety and environmental laws.⁵⁰ Moreover, during its Annual Legal Reform Summit in October 2004, the Chamber recognized Carper for his "leadership role in supporting legal reform legislation."⁵¹

Incumbent Ben Nelson (D-NE) received \$5,000 in Chamber PAC money though he is not up for re-election until 2006.⁵² And the Chamber contributed \$1,000 in PAC money to incumbent Bill Nelson (D-FL) though he also is not up for re-election until 2006.⁵³

U.S. House of Representative Races⁵⁴

Alabama. The Chamber gave incumbents Bud Cramer (D), Artur Davis (D) and Mike Rogers (R) \$1,000, \$500 and \$2,000 in PAC money, respectively. All three were re-elected.

Arizona. Incumbents Jim Kolbe (R) and Rick Renzi (R) each received \$1,000 in PAC money from the Chamber. Both candidates won re-election.

California. The Chamber's PAC contributed \$500 to Former Rep. Dan Lungren (R), \$500 to incumbent Howard "Buck" McKeon (R) and \$500 to primary candidate Lisa Quigley (D). Quigley lost her primary;⁵⁵ Lungren and McKeon were elected.

Colorado. Incumbent Bob Beauprez (R), incumbent Marilyn Musgrave (R) and candidate Gregory Edward Walcher (R) each received \$1,000 in Chamber PAC money. Walcher lost his race; Beauprez and Musgrave won re-election.

Connecticut. The Chamber gave incumbent Rob Simmons (R) \$2,500 in PAC money.⁵⁶ Simmons was re-elected.

Florida. Incumbents Allen Boyd (D), Ginny Brown-Waite (R), Lincoln Diaz-Balart (R) and Mark Foley (R) received \$2,500, \$2,000, \$500 and \$1,000, respectively, from the Chamber's PAC.⁵⁷ All four were re-elected.

Georgia. The Chamber's PAC gave incumbents Max Burns (R) and David Scott (D) \$2,500 each and contributed \$3,000 to candidate Calder Clay (R). Clay made medical malpractice caps an issue in his campaign, attacking his opponent, incumbent Jim Marshall (D), for voting against a federal bill that capped non-economic damages at \$250,000 and limited punitive damages.⁵⁸ Clay and Burns lost their respective elections; Scott, who ran unopposed, won re-election.

Idaho. Incumbent Mike Simpson (R) received \$2,500 in Chamber PAC money. Simpson was re-elected.

Illinois. The Chamber contributed \$1,050 to incumbent Phil Crane (R). Crane lost his re-election bid.

Indiana. Incumbents Steve Buyer (R) and Chris Chocola (R) were each given \$1,000 by the Chamber's PAC. "Tort reform" became an issue in the Chocola race when he sponsored legislation which, among other things, penalized either party in a federal lawsuit for rejecting a settlement offer and limited attorneys' fees. Chocola's position was attacked by his Democratic opponent, Joe Donnelly, who told Indiana's *South Bend Tribune* that Chocola wanted to deny middle-class and working-class families access to the American [civil] justice system, adding that Chocola's system flew in the face of more than 200 years of American justice and would only work for the rich. "I believe I have a very moderate and common sense position. That everybody has the right to be part of our legal system," Donnelly said.⁵⁹ Both Chocola and Buyer were re-elected.

Iowa. The Chamber's PAC contributed \$1,000 to incumbent Tom Latham (R). Latham won re-election.

Kentucky. Incumbent Ernie Fletcher (R) received \$2,000 in Chamber PAC money. After Fletcher vacated his House seat to become governor,⁶⁰ the Chamber backed state senator Alice Kerr (R) and contributed \$5,000 in PAC money to her special election campaign. The Chamber also spent \$100,000 on five mailings for Kerr and intended to launch pro-Kerr ads but was shut out from the airwaves under a rule that banned corporate-funded entities 30 days before an election.⁶¹ Kerr lost the race.

In late October 2004, operatives from the Chamber came to Northern Kentucky and pledged to spend \$20,000 calling business owners, sending campaign mailers and placing door hangers on homes on behalf of candidate Geoff Davis (R).⁶² The Chamber also gave Davis \$2,000 in PAC money. Davis won the election.

Incumbent Anne Northup (R) was given \$2,500 in Chamber PAC money, while incumbent Hal Rogers (R), who ran unopposed, received \$1,000. Both were re-elected.

Louisiana. The Chamber gave incumbent Rodney Alexander (R) \$500 in PAC contributions. Alexander won re-election.

Minnesota. Incumbents Mark Kennedy (R), John Kline (R) and Collin Peterson (D) received \$2,000, \$500 and \$1,000, respectively, from the Chamber's PAC. All three were re-elected.

Nevada. The Chamber's PAC contributed \$2,500 to incumbent Jon Porter. Porter won re-election.

New Hampshire. Incumbent Jeb Bradley (R) was given \$3,000 in Chamber PAC money. Bradley, co-sponsor of a House bill capping non-economic damages in medical malpractice cases, made "medical malpractice caps" a campaign issue.⁶³ Bradley was re-elected.

New Jersey. The Chamber contributed \$1,000 in PAC money to incumbent Robert Andrews (D). Andrews won his re-election bid.

New Mexico. Incumbent Heather Wilson (R) received \$4,000 from the Chamber's PAC. Wilson was re-elected.

New York. The Chamber's PAC contributed \$2,500 and \$2,000, respectively, to candidates William Manger (R) and Nancy A. Naples (R). Both candidates lost their races.

North Carolina. Incumbent Mike McIntyre (D) was given \$1,000 in Chamber PAC money. McIntyre won re-election.

Oklahoma. The Chamber's PAC gave candidate Dan Boren (D) \$5,000 and incumbent Tom Cole (R) \$1,250. Cole had once been a key consultant to the Chamber's Institute for Legal Reform and lobbied Congress on "tort reform" for the Chamber.⁶⁴ Both Boren and Cole were elected.

Pennsylvania. Candidates Melissa Brown (R) and Charles Dent (R) received \$2,500 and \$5,000, respectively, in Chamber PAC money; incumbents Jim Gerlach (R) and Bill Shuster were given \$1,500 and \$3,000, respectively. Shuster's failure to vote on a federal medical malpractice bill that capped non-economic damages at \$250,000 became a point of contention during his campaign.⁶⁵ Dent, Gerlach and Shuster won their election races; Brown was unsuccessful.

Tennessee. The Chamber's PAC gave incumbents Lincoln Davis (D) and John Tanner (D) \$2,500 and \$1,000, respectively. Both were re-elected.

Texas. Incumbents Henry Bonilla (R), Pete Sessions (R) and Charles Stenholm (D) each received \$1,000 in Chamber PAC money; candidates Louis Gohmert, Jr. (R) and Arlene Wohlgermuth (R) both received the same amount. Only Bonilla, Gohmert and Sessions won their elections.

Utah. The Chamber contributed \$2,000 in PAC money to incumbent Chris Cannon (R) and \$2,500 to incumbent Jim Matheson (D). Both were re-elected.

Washington. The Chamber backed candidate Cathy McMorris (R) in two mailings⁶⁶ McMorris won her election.

JUDICIAL ELECTIONS

Over the last decade, the Chamber has joined the growing movement by conservative, corporate think-tanks and foundations to influence the judiciary and what should be the non-politicized election of judges. Despite fundamental constitutional concerns, corporate front groups like the Chamber's Institute for Legal Reform (ILR) have broadened their efforts to strong-arm judges into voting their way and tried to defeat judges who don't. Part of the motivation stems from the fact that in some states, businesses that had succeeded in ensuring very weak consumer protection laws and regulations were being held accountable for wrongdoing by judges and juries who were meting out justice through verdicts and judgments. Another major reason is that state courts, such as Ohio's Supreme Court, have been striking down so-called "tort reforms" as a violation of constitutional rights – trial by jury, separation of power, access to a remedy and equal protection.⁶⁷

Influencing judicial elections continues to be a growing focus for the Chamber. *Forbes* magazine called the effort a "secret war on judges now being waged by the chamber."⁶⁸ In a 2003 article, *Forbes* reported:

[The Chamber] spent \$100 million since 2000 and will spend \$50 million or more this year. The prime objective: to vote out judges supported by trial lawyers, labor unions and the Democratic Party and install new judges sympathetic to insurance companies, multinational corporations and the Republican Party. The chamber also is taking aim at state attorneys general, trial lawyers and state legislators.

So far the chamber has won in 21 of 24 judicial elections in eight states – and prevailed in 11 attorney general races. It helped win 7 open seats in Illinois, Pennsylvania, Texas and elsewhere and helped reelect 11 pro-business jurists. And it ousted 3 incumbents – 2 in Alabama and 1 in Mississippi (Justice McRae). Sixty-three judges in 28 states are standing for reelection next year, and the chamber hopes to throw at least 10 of them out of office, aiming in particular at antibusiness courts in West Virginia, Texas, Mississippi and Ohio.⁶⁹

So how did they do in 2004? It is unclear how many judicial races the Chamber became involved in during the 2004 elections. For example, in May 2004, ILR spokesman Sean McBride claimed that so-called "voter education" campaigns would come to the 2004 state Supreme Court elections but refused to identify the states or say how much money would be spent, saying only that about 40 Supreme Court races were under review.⁷⁰ Five months later, McBride said there were more than 20 states, including Ohio, where the Chamber was involved in Supreme Court or attorney general races. "We go into places where we can make a

difference,” he said, refusing to elaborate. “It doesn’t help the purpose of our program to give too much information.”⁷¹

According to the *National Law Journal*, the Chamber conducted so-called “voter education” programs with partner groups or on its own in 15 supreme court races in a dozen states, including Illinois and West Virginia.⁷² *Roll Call* reported that the ILR was successful in 12 out of 13 Supreme Court elections.⁷³

In a post-election news release, the Chamber declared that pro-“tort reform” attorneys general and state judges, such as Illinois Judge Lloyd Karmeier, were elected in 15 out of 16 key races. According to the release, “pro-legal reform” candidates also prevailed in West Virginia, Mississippi, Ohio, Michigan, Pennsylvania, Washington, Texas, Alabama and Indiana.⁷⁴ Chamber President Tom Donohue told Chamber boardmembers in a December 2004 letter that the Chamber’s ILR “participated in voter education efforts in 16 important races across the country. ‘Pro-tort reform’ candidates prevailed in 15.”⁷⁵

The Chamber “won every race in which we were involved,” claimed Stanton D. Anderson, the Chamber’s executive vice president, chief legal officer and coordinator of the Chamber’s “tort reform” efforts. “We were very fortunate this time.” According to Anderson, getting a slate of “tort reform”-friendly judges on the bench “is an example of what the business community can do.”⁷⁶

Spending Overview

In 2003, the Chamber said it planned to spend \$50 million or more in Supreme Court races around the country, targeting areas where courts were not “business-friendly.”⁷⁷ Yet tracking how much the Chamber invests in judicial elections is extremely difficult. Without state donor disclosure laws, said Samantha Sanchez of the Institute for Money in State Politics, “it’s hard to pin this down to anything you can prove. It’s all anecdotal evidence. The Chamber can operate below the radar.”⁷⁸

It appears that the Chamber does not spend any money directly on state judicial elections but rather funnels funds into state chambers, independent groups or PACs, making it difficult to track down exact information on the Chamber’s involvement in judicial races.⁷⁹ And the Chamber’s spending on state judicial races has become more covert with each election cycle, explained Deborah Goldberg, Director of the Brennan Center’s Democracy Program at New York University School of Law. For example, “in 2000, the Chamber ran ‘expensive, provocative’ issue ads and was a prominent figure in several campaigns. Two years later, however, ‘the Chamber’s visual presence virtually disappeared, even though we saw more than twice as many television ads as the previous cycle,’ Goldberg said. ‘On the face of it, the Chamber withdrew, but then they claimed credit for their success in several races.’ Goldberg cited ‘wide speculation’ that the Chamber sets up front groups to fund these issue ads.”⁸⁰

Moreover, the Chamber’s ILR does not have to divulge how much money it spends on campaign-related activities, publicly identify donors or reveal much about anything it does. The

group is only required to file an annual report with the Internal Revenue Service six months after elections are over.⁸¹

Tactics – Advertising and Surveys

National. In March 2004, the Chamber released a “survey” of 1,400 corporate lawyers, including the in-house counsel for major corporations, about what they think of the U.S. “litigation environment.”⁸² The “survey” drew immediate criticism from the American Bar Association (ABA), among others. In an open letter to the Chamber, ABA President Dennis W. Archer condemned the Chamber for having “camouflaged a campaign against judges in fabricated figures and a phony opinion poll” and “waging war on the judges who protect the rights and safety of Americans.”⁸³

To promote the “survey’s” findings, the ILR ran a national print advertising campaign aimed at undermining public confidence in American judges and the legal system. The campaign featured full-page ads in national newspapers like the *New York Times*, the *Washington Times* and the *Wall Street Journal*, as well as regional ads in newspapers in the survey’s lowest ranking states, like Illinois (44), West Virginia (49) and Mississippi (50), all of which had upcoming Supreme Court elections in November.⁸⁴

In addition, the Chamber’s ILR reportedly sponsored so-called “voter-education” TV ads aimed at influencing Supreme Court elections in Alabama and other key states.⁸⁵

Illinois. In March 2004, the Chamber ran a newspaper ad campaign calling for “tort reform” after a Chamber poll ranked Illinois 44th in the nation for its legal system. The ad never mentioned that the respondents were all corporate defense lawyers. “Nobody celebrates being number 44,” the ad stated under a picture of a yelling, bare-chested college fan with a “#1” painted on his face. “Illinois needs legal reform now. Demand that your elected officials fix the flaws in the justice system. Require fairness from your judges.”⁸⁶

The Chamber also poured \$2.3 million into Circuit Court Judge Lloyd Karmeier’s (R) election campaign, mostly through the Illinois Republican Party and the Illinois Civil Justice League.⁸⁷ Karmeier was battling Democrat Gordon Maag to represent a southern Illinois district containing Madison County, an alleged hotbed of personal-injury and product-liability litigation.⁸⁸ “The Supreme Court race in Illinois is at the top of the list for the business community,” said Sean McBride, a spokesman for the Chamber’s Institute for Legal Reform.⁸⁹ “We intend to spend considerable resources there.”⁹⁰ Karmeier was elected in November 2004.

Ohio. In 2000, the Chamber, through its affiliate Citizens for a Strong Ohio, flooded the airwaves with attack ads against Supreme Court Justice Alice Robie Resnick, who in 1999 declared Ohio’s draconian “tort reform” law unconstitutional. The Chamber argued that these were “issue ads,” allowing it to conceal its corporate contributors. But the Ohio Elections Commission disagreed, subpoenaing the group in the course of an investigation into whether the Chamber used illegal corporate money and seeking to find out who financed these attack ads

against Justice Resnick. The group is now challenging the Commission and a lower-court decision upholding it.⁹¹

But in 2002, while still challenging the Ohio Elections Commission, Citizens for a Strong Ohio decided to reveal that it had received over half its money from the insurance industry, including American Insurance Institute (\$75,000), State Farm (\$60,000), Ohio Casualty Insurance (\$20,000), State Auto Insurance (\$25,000), Grange Insurance (\$20,000), Met Life (\$10,000), and Ohio National Insurance (\$5,000).⁹²

In 2004, Citizens for a Strong Ohio said it raised close to \$3 million to support GOP candidates for judgeships in Ohio. Of the \$3 million, the Chamber Institute for Legal Reform contributed \$1 million; the American Insurance Association, \$375,000; Nationwide Insurance, \$200,000; and Procter & Gamble, \$160,000. Republicans won four Supreme Court races in 2004. They now hold six of seven seats on the state Supreme Court.⁹³

West Virginia. In a July 21, 2003 featured article in *Forbes*, the Chamber revealed it would target Supreme Court Justice Warren McGraw in the 2004 Supreme Court elections, largely for his decisions on workers' compensation claims.⁹⁴ The Chamber and other corporate interests spent millions on attack ads against McGraw, who often tipped the balance in cases decided by a 3-2 vote.⁹⁵ McGraw lost the election.

ATTORNEY GENERAL RACES

There were 11 attorney general races in 2004. Incumbents ran for re-election in nine states: Indiana, Missouri, Montana, North Carolina, North Dakota, Oregon, Utah, Vermont and West Virginia. Candidates also vied for open seats in Pennsylvania and Washington State.⁹⁶

It is unclear how many Chamber-backed candidates prevailed in those contests. In a post-election press release, the Chamber declared that "pro-tort reform" state judges and attorneys general were elected in 15 out of 16 key races.⁹⁷

On October 14, 2004, less than a month before Election Day, the Chamber's Institute for Legal Reform released a report attacking state attorneys general for accepting campaign contributions from trial lawyers who were allegedly rewarded with state contracts as outside counsel. The report, *Cash In, Contracts Out*, written by conservative *Wall Street Journal* columnist John Fund, also claimed that some AGs were "circumventing Congress and federal regulatory agencies by filing lawsuits designed to regulate corporate behavior without the input of those policy-making institutions."⁹⁸

Pennsylvania. Candidate Tom Corbett (R) received \$480,000 from the Republican State Leadership Committee (RSLC), a national GOP fund-raising group whose members include the U.S. Chamber. That money financed the last round of pro-Corbett campaign ads before Election Day.⁹⁹ The RSLC then gave Corbett another \$90,000 in cash and paid off a \$25,000 campaign debt of his.¹⁰⁰ Corbett won the election.

Washington. In September 2004, right before Washington's Democratic primary, a group called the Voters Education Committee (VEC) ran a series of attack ads targeting former state

insurance commissioner Deborah Senn (D). The state's Public Disclosure Commission sought financial information about the VEC but was denied. It was only after the state filed a lawsuit that the Chamber was revealed as the VEC's sole contributor, spending \$1.5 million on the anti-Senn ad campaign.¹⁰¹ Senn won the primary.

In October 2004, the Republican State Leadership Committee, a national GOP fund-raising group whose members include the U.S. Chamber, ran a \$1.3 million ad campaign against Senn.¹⁰² Senn lost the attorney general race.

According to the *Associated Press*, the Chamber contributed a total of \$10,000 to the Democratic Attorneys General Association.¹⁰³

STATE "TORT REFORM" BALLOT INITIATIVES

In a post-election news release, the Chamber and its Institute for Legal Reform "welcomed the voting results on four tort reform initiatives on state ballots in California, Colorado and Nevada."¹⁰⁴

California. The Chamber's ILR supported and helped fund Proposition 64, spending \$500,000 to support its passage. The measure, among other things, limits the ability of anyone other than the state attorney general and local prosecutors to bring suit under the state's unfair-competition laws. Those laws protect Californians from pollution, invasions of privacy and consumer fraud. As a result of cases brought under those laws, supermarkets had to stop altering the expiration date on old meat and reselling it, HMOs had to stop misrepresenting their services to patients and bottled water companies had to stop selling water that hadn't been tested for dangerous levels of harmful chemicals and bacteria. In November 2004, Proposition 64 passed.¹⁰⁵

Colorado. The Chamber spent \$100,000 fighting Amendment 34, which sought to repeal a state law capping non-economic damages at \$250,000 in construction defect lawsuits over bad workmanship or injury. The amendment also limited the state legislature's ability to enact future damages caps in construction defect cases and eliminated the requirement that homeowners give builders the chance to fix any mistakes before bringing a lawsuit. Amendment 34 failed.¹⁰⁶

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