



Taxation by Litigation Threatens Every American Business

by Lawrence W. Reed

Summary

Abusing the legal system as a means to collect cash is a manifestation of greed run amok. The Clinton administration's plan to sue tobacco companies is the latest example, and one that every citizen should take as a warning.

Main text word count: 744

Even though no reputable scientific study has ever shown that Dow Corning's breast implants cause disease, the litigation lottery forced the company into bankruptcy in 1995. Science took a back seat to the greed of trial lawyers and plaintiffs looking for deep pockets.

Abusing the legal system for political, social or selfish ends is fast becoming America's favorite pastime. Billions of dollars, millions of jobs, and the survival of legitimate businesses are at stake. And if the Clinton administration's latest lawsuit farce proceeds, Katie bar the door: Government itself will become the biggest abuser of them all—with the potential to threaten dozens of industries from fast food to automobiles.

Lawsuit abuse will end up costing one Michigan company, the Dow Corning Corporation of Midland, billions of dollars. Even though no reputable scientific study has ever shown that the company's breast implants cause disease, the litigation lottery forced Dow Corning into bankruptcy in 1995. Science took a back seat to the greed of trial lawyers and plaintiffs looking for deep pockets.

Gun manufacturers are now facing a similar plight, as a growing number of cities file suit against them for manufacturing a product that kills. Never mind that just about any product can kill if that's the intent of its user. City officials claim they are simply trying to recover public health and safety expenses that are associated with gun crimes. One authoritative study estimates that the costs to society of firearms violence is *one-fifth* the savings that accrue from the crimes that firearms ownership prevents, but there's no guarantee that gun makers won't have to cough up millions anyway.

Now comes the Clinton administration to raise the stakes in the national Blame Game. The Justice Department is preparing a lawsuit against tobacco companies for the stated purpose of recovering Medicare and Medicaid costs attributable to smoking. Picking on an unpopular industry with a charge that sounds superficially defensible may be politically shrewd, but the evidence suggests this is nothing more than a grab for cash with sweeping implications for every American business.

It's no secret that the administration would like to put the tobacco industry out of business or rake in lots of revenue trying. Its efforts to impose massive new taxes on cigarettes, however, went up in bipartisan smoke last year in Congress. The administration apparently

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sees the legal system as a way to do an end-run around the legislative process, even though Attorney General Janet Reno has testified that “the federal government does not have an independent cause of action” to sue tobacco firms for health care cost reimbursement.

This is the same government, incidentally, that for decades until 1974 gave free cigarettes to military personnel—even after ordering warning labels on cigarette packages in 1966. The Clinton administration that is contemplating a new lawsuit against tobacco companies is the same administration that has denied veterans’ requests for coverage of diseases thought to be related to smoking. Indeed, President Clinton’s Secretary for Veterans Affairs called it a “borderline absurdity” to compensate veterans for their “personal choice to engage in conduct damaging to their health.”

What makes the threat of a new lawsuit even more ludicrous is that after factoring in health care costs, the federal government actually *makes money* on every pack of cigarettes sold. That’s because the heavy excise taxes smokers pay add up to more than the health care costs associated with their smoking. Moreover, because they don’t live as long as non-smokers, those who smoke contribute far more in Social Security taxes than they get back in benefits. The Congressional Research Service concluded last year that “all in all, smoking has apparently brought financial gain to both the federal and state governments.”

Clearly, the Clinton administration seeks to further corrupt the legal system in order to get the cash it has not been able to secure through higher taxes via the democratic process. If it succeeds in its vendetta against tobacco, who might be next?

The Surgeon General and the FDA warn against high fat diets; should the Justice Department sue the fast food industry, bakeries, or the makers of Ben & Jerry’s Ice Cream? Why not sue GM, Ford and DaimlerChrysler to recover the medical costs caused by auto accidents? How about the makers of fertilizer: shouldn’t they be forced to provide compensation for any medical costs incurred in the 1995 Oklahoma City bombing?

Whether the subject is breast implants, guns, tobacco or any other product, abusing the legal system is not a harmless lark. It is an exercise in intellectual corruption, an evasion of responsibility, an attack on the democratic process, and a manifestation of greed run amok that every consumer and businessman in America ignore at their peril.

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