July 10, 2003: Sometime during July, right-wing extremists in Congress expect to achieve another major milestone in their radical revamping of the U.S. court system. If they attain their goal, successful environmental class-action lawsuits will become as rare as Dodo birds.

Class action lawsuits are the only effective remedy when large numbers of people are harmed but each person sustains relatively small damages, making individual lawsuits inefficient or impossible.

An example would be the current lawsuit being pursued by 6000 residents of Louisiana who say that a Mobil Oil refinery discharged 3.4 million gallons of untreated industrial wastes that contaminated their drinking water. No individual plaintiff could take on Mobil alone, but the total damage may be large, so a class action is the right vehicle for pursuing a remedy.

Class action suits are an essential component of a balanced legal system that is supposed to provide a check on the misdeeds of the powerful, such as oil corporations, by raising the threat of substantial financial penalties.

With large numbers of right-wing extremists now sitting in Congress, corporations see an opportunity to derail class actions. So the elected representatives of the insurance, medical, chemical, oil, and automobile corporations are pushing a new law intended to stifle class actions. The proposed Class Action Fairness Act has already passed the U.S. House of Representatives (H.R. 2115) and is expected to come up for a U.S. Senate vote (S. 274) during July.

If the proposed law passes, it will severely restrict, if not totally derail, class-action lawsuits on behalf of the environment, workers, consumers, and civil rights plaintiffs such as people of color, people with disabilities, and women.

Few in the environmental community have been paying attention as this bill has made its way through the legislative process. Corporations, on the other hand, know exactly what's at stake and they have poured money and resources into this fight.

At last count, corporations had 475 paid lobbyists working to push this bill through the Senate -- nearly five corporate lobbyists for each U.S. senator. The insurance industry alone has 139 lobbyists promoting the bill. Health maintenance organizations have 59 lobbyists pressing their case; banks and consumer credit corporations have 39; automobile corporations have 32; the chemical industry has 20 and the oil corporations have another 19. If this proposed law didn't matter, would corporations field such an army?


You can also learn about the proposed law from the U.S. Chamber of Commerce at http://www.uschamber.com/Search/SearchResults.asp?ct=USCC&q1=class+action+fairness+act.

If you decided you wanted to weigh in on this issue, you could call both of your U.S. senators and give them an earful. (To find your senators and their phone numbers, go to http://www.senate.gov/.) Proponents of the bill reportedly have at least 55 senate votes in the bag already, so the only way to stop this juggernaut would be a filibuster. (Extremists in Congress are working to revive the filibuster rule, too.)

Essentially the proposed law moves all class action lawsuits out of state courts and into federal courts, which are already clogged and fraught with delays, and where the rules and precedents and procedures -- all for the purpose of making the federal court system is now grossly pro-corporate, often to an extreme degree. This is no accident.

Making the courts friendly to corporations has been high on the agenda of the right wing for 30 years. The reason is simple: there are only about 900 federal judges. They are appointed by the President, not elected. The Senate must approve their appointment but by "gentleman's agreement" it is rare for the Senate to veto a judicial appointment.

Federal judges serve for life, so once they are appointed they become unstoppable. They also have almost complete freedom to make any legal interpretation that suits their ideology. The only real check on their rulings is the threat of reversal (an embarrassment, nothing more) by one of the nation's 13 federal circuit courts of appeal. But judges on the appeals courts are often chosen from the ranks of the more extreme federal judges, so they are all pretty much cut from the same ideological cloth. It's a closed system with stupendous power to change an entire culture. When an extremist right-wing agenda cannot be enacted through legislation, it can be engineered through the courts.

This explains why right-wing ideologues set out in the mid-1970s to pack the federal courts with their own kind, then to "educate" the judges about economics and ideology by inviting them to all-expense-paid "workshops" held at vacation resorts,[1] and then to engineer changes in precedents and procedures -- all for the purpose of making federal courts sympathetic to corporations and the rich.

Previously, no one had ever set out to take over the entire federal court system. The plan was breathtaking in its reach and it was generously funded by the banking and oil fortunes of the Mellon-Seafies of Pittsburgh, the manufacturing wealth of Lynde and Harry Bradley of Milwaukee, the energy
revenues of the Koch family of Kansas, the chemical fortune of John M. Olin of New York, the Vicks patent medicine empire of Smith Richardson of North Carolina, and the brewing fortune of the Coors family of Colorado. Over two decades, the plan unfolded with huge success.

Now that the courts are dominated by right-wing judges, the extremists in Congress want the "Class Action Fairness Act" to require all class-action suits to be heard by "their" judges, not by state court judges who are often elected and therefore less likely to espouse extreme legal theories.

Though no one likes to mention it, there's also a simple electoral goal behind The Class Action Fairness Act. The Democratic Party has three identifiable sources of major funding: organized labor, Hollywood, and plaintiffs' lawyers who handle most of the nation's class-action lawsuits. Derailing class actions would add substantially to the Republicans' financial advantage at election time.

The original plan to bend the courts to corporate/ideological purposes was hatched in 1971 by a southern lawyer named Lewis F. Powell, Jr., who drafted a document called "Confidential Memorandum: Attack on the American Free Enterprise System."[2] The U.S. Chamber of Commerce circulated the Powell memo to all its members.

Powell argued in 1971 that the U.S. economic system was under sustained attack and might not survive if its critics were allowed to continue unopposed. He identified four areas where he thought corporations and the rich needed to fight back aggressively and regain control: higher education, the media, Congress, and the courts. Two months after circulating his memo, Powell was appointed to the U.S. Supreme Court by Richard Nixon.

Ultimately the Chamber of Commerce decided not to lead the charge that Powell tried to incite. But when others read the Powell memo they ignited a right-wing revolution.[3] Adolph Coors -- the beer magnate -- acknowledged that the Powell manifesto convinced him to put the first $250,000 into what would become the Heritage Foundation, an important think-tank for extremist views to this day. Modeled on the Heritage Foundation, the U.S. Chamber of Commerce circulated the Powell memo to all its members.

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By the time Ronald Reagan came to power in 1980, the right wing was intent on taking over the courts. As the Washington Post observed, "...selection of conservative judges was a cornerstone of the Reagan administration."[5] In 1991 the Post noted that George Bush the Elder "is cementing Ronald Reagan's conservative transformation of the federal courts in the biggest turnover of federal judges since the New Deal of Franklin Roosevelt..."[5]

When Bill Clinton appointed moderate judges -- 60% of them women and people of color -- the Senate Judiciary Committee under the control of extremist Orrin Hatch simply refused to schedule confirmation hearings, thus barring many Clinton appointees from ever taking office. This perfectly-legal maneuver created a raft of opportunities for ideological judicial appointments by Bush the Lesser. Those appointments are now in the works.

Not surprisingly, corporations have formed a special lobby group called the Committee for Justice to raise millions of dollars to strongarm Congress on behalf of Mr. Bush's judicial picks.[6] The Committee is dominated by lawyers representing firms like Citigroup, Microsoft and R.J. Reynolds Tobacco, all of which are facing class-action lawsuits. They, more than anyone else, understand the importance of installing right-minded federal judges who can be counted on to render right-minded decisions in class-action suits.

"They have constructed a well-paid activist apparatus of ideas merchants and marketeers -- scholars, writers, journalists, publishers, and critics -- to sell policies whose intent was to ratchet wealth upward...."

"They shifted the nation rightward; tilted the distribution of the nation's assets away from the middle class and the poor, the elderly, and the young; they red-penciled laws and legal precedents at the heart of American justice. They aimed to corporatize Medicare and Social Security. They marketed class values while accusing their opponents of "class warfare." They loosened or repealed the rights and protections of organized labor and the poor, voters, and minorities. They slashed the taxes of corporations and the rich, and rolled back the economic gains of the rest. They came to dominate or heavily influence centers of scholarship, law, and politics, education, and governance -- or put new ones in their place. Their litigation teams nearly overthrew an elected President. And, to maintain power, proclaimed Constitutionalists on the right, to this day, wage a concerted counter-revolution against such Constitutional guarantees as free speech and separation of church and state...."

"This has amounted to the greatest organized power grab in American political history. Astonishingly, it goes largely unreported on television, radio, and most newspapers...."[4]


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