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On The Necessity of Preserving Access to State Courts and Civil Justice: Rediscovering Federalism & Debunking "Fraudulent" Joinder

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With nothing less than the survival of the civil justice system hanging in the balance, tort reformers and tort law defenders have been locked in a conflict that spans the last four decades. Courts and legislatures at every level (federal, state, and local) are besieged by those who seek to limit or eliminate tort liability, limit or eliminate accountability for personal injury, and limit or eliminate the capacity of those wronged by misconduct of every type to have access to courts, juries, and justice. Defenders of the civil justice system, a loosely coalesced amalgam of consumer groups, attorneys, and academics, devote themselves to protecting that same system.

Those seeking the spoils of the tort reform wars (caps on punitive damages and non-economic loss, elimination of the capacity to pursue class actions at the state level, limitations on the use of evidence, elimination of strict liability, joint and several liability, and much, much more) would not only disagree with the above assessment, they would be offended. Tort reformers see theirs as a mission of essential change, reform, a quest for modernization of an outdated system that misallocates resources, suppresses innovation, weakens the U.S. economy and the U.S. position in international commerce, destroys jobs, and unduly privileges a very small number of consumers and their lawyers.

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