

Political Lawsuit Abuse

A gang of activist politicians and their lawyer allies continue to prod the White House and the U.S. Department of Justice to pursue an abusive lawsuit against the tobacco industry. Plaintiffs' attorneys proclaim that anything short of a scorched-earth litigation policy by DOJ must be the result of political influence. Yet one thing has been conveniently overlooked: Those crying politics the loudest today are the same ones who used political influence themselves to force the Justice Department to bring this weak case in the first place.

The case has been a loser from the very start. President Clinton's Department of Justice didn't want the lawsuit until overbearing political players foisted it on the Department. Attorney General Janet Reno testified against the tobacco lawsuit before it was brought, saying it lacked a legal foundation. A federal judge dismissed the suit's most significant claims five years ago. A panel of federal appeals judges threw out Justice's attempt to seek \$280 billion in disgorgement from the industry (representing all past profits, plus interest). The full appeals court refused to reconsider that ruling.

Sore Losers Crying "Politics"



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What's left of the suit hinges on the improbable claim that cigarette companies committed "fraud" by hoodwinking the public about the risks of smoking. Forty years of federally-mandated warnings on every pack and advertisement make this notion farcical.

Still, there are hypocrites who contend that DOJ's misgivings about pressing on with this weak case are mere politics. At the time the suit was filed in 1999, however, news accounts documented efforts by Mississippi plaintiffs' attorney Richard Scruggs and his friends to induce the Clinton administration into ignoring recommendations of career Justice Department attorneys. Those career attorneys recognized that the suit had no statutory basis.

All this just to advance ideological agendas, feed political egos, and enrich a few plaintiffs' lawyers. The proponents of the lawsuit are sore losers, plain and simple.

They're also sore *winners*. Under the threat of state court litigation, plaintiffs' lawyers and state attorneys' general have already forced the companies into a 1998 settlement agreement imposing new regulations and extracting \$246 billion in payments.

It's a wonder that the suit and its disgorgement claims have hung around as long as they have. While the tort-reforming Bush administration has been advocating for a more reasonable balance between the rights of plaintiffs and defendants in our tort system, this carry-over lawsuit is perpetuating the find-a-deep-pocket-and-sue-a-disfavored-industry approach, so beloved by the plaintiffs' bar.

How much longer do a few demagogue politicians expect the Department of Justice to embarrass itself professionally with a bad lawsuit just to keep disappointed plaintiffs' lawyers and activists happy?



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In All Fairness is produced through WLF's Civic Communications Program.