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C L I E N T N E W S L E T T E R

PROPOSITION "12"

The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship. *Chambers v. Baltimore & Ohio Ry.*, 207 U.S. 142 (1907).

Although I don't normally get involved in political debates and attempt to spread my views to various clients, friends and colleagues, I feel compelled to send this email warning everyone I know of the potential horrors if Proposition 12 is passed next Saturday. As an attorney and a strong advocate of the Texas Constitution, I strongly urge all voters to vote "NO" to Proposition 12. And this is why your vote is so important ...

This Spring, the Texas Legislature passed a resolution that will shift the power to decide damages in ALL civil cases from judges and juries to politicians instead. That means the Legislature--elected politicians--would be given the authority to decide damages instead of courts, judges and juries. But Texas law says they can't change the Constitution without your permission, and on September 13, 2003, you'll have an opportunity to stop it by voting NO in a special election on this resolution, which is called Proposition 12.

Did you know that by scheduling the election on September 13th rather than November 4th, the traditional date, the Legislature has all but guaranteed a low voter turnout, thus increasing the chance that Proposition 12 will pass. September 13 is a Saturday (also the beginning of football season), and it will be difficult to convince people that they have a vital stake in what is being presented in this election. That is why Texas needs your vote, help and support.

Disguising Texas Proposition 12 as "tort reform", the big insurance companies and other corporate interests are spending millions to pass this Texas constitutional amendment and strip the Open Courts provision of the Texas Constitution's Bill of Rights, which has been in place since 1845. But the best "tort reform" would be to change Texas laws to force HMO's, hospitals, health care providers and insurance companies to be more accountable for their actions. The Texas Constitution's Bill of Rights guarantees each Texas citizen access to Texas courts. Politicians and lobbyists for HMO's and insurance companies shouldn't interfere with that.

This isn't just about the Texas Constitution. It's also about shifting the balance of power in the Texas state government. By changing the Texas Constitution to accommodate the wishes of politicians and lobbyists, the Legislature is diluting the system of checks and balances that were designed to protect ordinary Texas citizens like you and me.

Everyone has heard about the McDonald's coffee case. This case is why the Texas Legislature thinks that caps are needed, however, most people don't know the real facts involved in the case. Interested? Read the following link: <http://www.lectlaw.com/files/cur78.htm>.

There are so many examples in our news of cases which would be severely and tragically effected by this Amendment. Lately, you have heard about bus drivers who have had accidents due to intoxication or falling asleep at the wheel. Companies knew or should have known that these employees were dangerous and that the company should be responsible for their employees' actions. If you pass Proposition 12, the most that families or the victims of these tragic accidents could recover for their lost or permanently scarred children would be \$250,000.00.

You have probably also heard of the double mastectomy tragedy. A woman was given a bilateral mastectomy and was told forty-eight hours later that there had been a mix up and that she did not have cancer at all. She and someone else's name had been switched on the slides and pathology reports. If this happened in Texas after Proposition 12 passes, the most she could recover for a careless mistake would be \$250,000.00 regardless of the permanent disfigurement and mental anguish she would have to endure for the rest of her life.

Proposition 12's most offensive provision is hidden by three words, allowing the Legislature to impose caps on health-related cases "and other actions." Proposition 12 masquerades as a medical malpractice reform but the words "and other actions" allow the Legislature to restrict what judges and juries can do to hold any wrongdoer responsible for his actions: drunk drivers, polluters, manufacturers of dangerous drugs, negligent makers of unsafe tires, exploding gas tanks or corporate criminals who have robbed their corporations and destroyed the life savings of their pensioners and employees.

This wording reaches far beyond the stated intent. Clearly Proposition 12 is not medical malpractice reform but an amendment designed by special interests who have reasons for desiring to restrict access to courts and juries.

Although I have personally never had issue with our Governor, it is appalling to us that our own governor, Rick Perry, is bald-faced lying to the citizens of Texas about this proposed amendment. Gov. Perry is supporting the medical and insurance lobby by telling Texans that this amendment is about "curing the medical malpractice insurance crisis" and "stopping frivolous lawsuits." Nothing could be further from the truth. There is ALREADY a law going into effect September 1, 2003, that places caps on damages in all medical malpractice suits. Gov. Perry knows this because he signed the law capping damages on medical malpractice cases! Proposition 12, while craftily worded to SOUND like it concerns medical malpractice, is really about giving the legislature authority to cap ALL DAMAGES in ALL CIVIL SUITS (automobile accidents, slip and fall, products liability--all civil suits!). Everyone knows the governor is beholden to the insurance industry, but this time he is straight-faced lying to the citizens of Texas. Proposition 12 will

help nobody but the insurance industry.

I am reliably advised that no other State has ever enacted into law a voter-approved constitutional amendment that would so fundamentally alter the role of our courts. I am not alone. A number of eminent scholars and former judges have determined to join in the attempt to persuade voters to defeat this effort.

The fact is, all businesses have good and bad times, but we shouldn't change our Constitution just to help one special interest. If the premise for the legislation is to address a medical malpractice crisis, the best tort reform should change Texas laws to force the small percentage of repeatedly negligent health care providers to be more accountable for their actions.

Legislators are indeed lawmakers, and the best laws should protect doctors and Texas patients before they are injured, by making sure that the small minority of repeatedly negligent health care providers are put out of business.

Home and car owners have seen this same type of crisis before. Proposition 12 is just another example of a special interest industry seeking to protect their profits. On Saturday, Sept. 13, we the people are the last check and balance in Texas government. Stand like a rock against the special interests' proposed re-write of our Texas Constitution and vote "Against" Proposition 12.

If you want more information, please review the following link which contains the text of Proposition 12:

<http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=78&SESS=R&CHAMBER=H&BILLTYPE=JR&BILLSUFFIX=00003&VERSION=5&TYPE=B>

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