

STOPPING FRIVOLOUS LITIGATION AND PROTECTING SMALL BUSINESSES

by
Congressman Lamar Smith

Thousands of people file lawsuits every day for no good legal reason. Many of these lawsuits are frivolous and without merit. Targets of these lawsuits must pay to defend themselves or pay the cost of settling. Individuals and business owners now live in a climate of fear that they will find themselves in court when they have done nothing wrong.

Frivolous lawsuits harm our economy and threaten to bankrupt business owners. This is especially true of small business owners who do not have the money to fight prolonged lawsuits and often must settle to avoid additional legal expenses. The alarming spread of frivolous lawsuits has made a mockery of our legal system.

Absurd and meritless lawsuits illustrate the problem: In a New Jersey Little League game, a player lost sight of a fly ball because of the sun and was injured when the ball struck him in the eye. The coach was forced to hire a lawyer after the boy's parents sued. The coach settled the case for \$25,000.

A Pennsylvania man sued the Frito-Lay company claiming that Doritos chips were "inherently dangerous" after one stuck in his throat. Only after eight years of costly litigation did the Pennsylvania Supreme Court throw out the case, with one Justice writing that there is "a common sense notion that it is necessary to properly chew hard foodstuffs prior to swallowing."

In my hometown of San Antonio, a man crashed his car into the house of a couple he had argued with and knocked the house off its foundation. The couple sued the engineer who designed the foundation. Despite the fact that it met the city's legal requirements, a judge awarded the plaintiffs \$40,000.

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The Chief Executive Officer of San Antonio's Methodist Children's Hospital has seen his medical malpractice premiums increase from less than \$20,000 to \$85,000 in less than ten years. He's been sued three times. In one case, his only interaction with the person suing was that he stepped into her child's hospital room and asked how he was doing. Each jury cleared him of any wrongdoing and the total amount of time all three juries spent deliberating was less than one hour.

Doctors often forego high-risk procedures such as setting broken bones and delivering babies because of the litigation threat.

Companies place warning labels on their products that should be unnecessary. A baby stroller label reads: "Remove child before folding." A snow sled label reads: "Beware: sled may develop a high speed under certain snow conditions." A dishwasher label reads: "Do not allow children to play in the dishwasher." And an iron warns: "Never iron clothes while they are being worn."

Almost any party can bring any suit in practically any jurisdiction for any reason — without regard to the facts and without regard to the potentially harmful impact on the defendant. That's because plaintiffs and their attorneys have nothing to lose. This is legalized extortion. It is a lawsuit lottery.

Our current system makes it easy for individuals to file frivolous lawsuits without the risk of consequences. In 1993, Rule 11 of the Federal Rules of Civil Procedure ("Rule 11") was weakened in several ways. Prior to these changes, the Rule provided for mandatory sanctions when frivolous claims were filed in federal court. Despite widespread judicial support for a strong Rule 11, it was altered and now gives judges discretion as to whether they impose sanctions against frivolous claims rather than requiring such sanctions.

H.R. 4571, the Lawsuit Abuse Reduction Act (LARA), restores Rule 11 to its earlier wording. This legislation reinstates mandatory sanctions for Rule 11 violations. Any time a plaintiff files a meritless claim, or one that is solely intended to harass or delay, they may be required to pay the attorneys' fees of the defendant.

LARA also addresses the growing number of frivolous lawsuits being filed in state courts. It allows state court judges to utilize Rule 11's sanctions in state cases that affect interstate commerce. State judges will determine whether the case affects interstate commerce by threatening to bankrupt a multi-state industry, by risking the loss of out-of-state jobs, or by otherwise incurring costs to the interstate economy. If interstate commerce is implicated by a frivolous claim, the judge may impose sanctions as provided in Rule 11.

Another abuse in our legal system is forum-shopping. This occurs when unscrupulous attorneys file cases in locations that have no connection to the case or parties. They are filed simply because the court has judges who will award big verdicts. LARA aims to stop lawyers from taking their cases to these "jackpot jurisdictions" by providing that a personal injury claim may only be filed in the state and county (or federal district) where the person bringing the claim resides, where the injury occurred, or in the state and county where the defendant's principal place of business is located.

All law-abiding Americans will benefit if frivolous lawsuits are discouraged. Frivolous lawsuits drive up the cost of goods and services and have created a culture of fear of being sued. The Lawsuit Abuse Reduction Act can help restore confidence in America's justice system.