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## Junk Science

### *In Our Courts:*

**In many cases, judges have ignored legal principles in order to allow action against manufacturers of unpopular products, in particular firearms and tobacco.** In some cases, states have been given “super-plaintiff” status, allowing them the right to recover greater damages from a manufacturer than an individual is able to. This essentially eliminates 1) a company’s or an industry’s tort defenses and 2) the necessary burden of proof from plaintiffs that the defendant did indeed cause the claimed injury.

**Allowing states to use a statistical correlation—“junk science”—between an activity and state expenditure for alleviation of an injury to the public has successfully done away with two key elements of tort law.** In the tobacco lawsuits for example, “[s]tates did not have to prove that a particular manufacturer’s product caused a particular citizen’s injury; courts allowed statistics to solve government’s causation problem.”\*

**During the 1980s and 1990s, product liability cases flooded the justice system** resulting, in many cases, in the withdrawal of truly beneficial products, “such as the anti-morning sickness drug Benedectin from the marketplace and caused companies such as Dow Corning, the manufacturer of breast implants, to file for bankruptcy.”\*\* The reason for this onslaught of liability cases was the introduction in the 1980s of “junk science” into courtroom proceedings.

**Sensing the need for action, the United States Supreme Court in 1993 affirmed the role of the justice as a gatekeeper of scientific evidence,** in order to assure that allegedly scientific testimony was reliable and accurate (*Daubert v. Merrell Dow Pharmaceuticals*, 1992). In 1999, the Court extended this ruling to apply to all expert testimony. At the state level however, there is work remaining to be done. Some states have not yet adopted these standards, resulting in many cases in private attorneys forcing their cases into state courts, rather than federal courts (also see ALEC’s Class Action Reform policy topic page).

### *Notes:*

\*\*“Achieving Civil Justice,” in *Disorder in the Court: A Guide for State Legislators*; Victor Schwartz and Leah Lorber.

\*\**ibid.*

### **Publications**

By the [Civil Justice Task Force](#):

- ▶ [Disorder in the Court: A Guide for State Legislators \(PDF Format\)](#).

### **Model Legislation**

By the [Civil Justice Task Force](#):

- ▶ (email [Kristin Armshaw](#), Task Force Director)

▶ Common Sense and Scientific and Technological Evidence Act. This common sense legislation ensures that expert testimony will have the same development stages as a presentation at a professional meeting. For example, if scientific testimony were prepared for the court, the same testimony would be required to have the same stringent standards for accuracy, as would a scientific presentation to a panel of the expert witness’ peers in the science community. This legislation addresses the concern over the use of statistical correlation to stand in for scientific evidence.

### *In Our Environmental Policy:*

**Increasingly, “junk science” has dictated the direction in which environmental policy is headed.** Current regulations, restrictions, and government intervention are so pervasive that if no action is taken to counter this trend, economic progress and prosperity face near paralysis. The danger to our economic progress that the “precautionary principle” presents far outweighs the perceived potential dangers to our environment.

### **Publications**

By the [Natural Resources Task Force](#):

- ▶ [Environmental Health Survey: Is Junk Science Guiding Today’s Policy?](#)
- ▶ [ICCS Conference Tackles the Precautionary Principle](#), in *The Heartland Institute’s Environment and Climate News*.

### **Model Legislation**

By the [Natural Resources Task Force](#):

▶ (email [Daniel Simmons](#), Task Force Director)

▶ Verifiable Science Act. This legislation guarantees citizens the right to have access to any scientific data used in the development of public policy, in order to ensure that the scientific evidence being cited is not only verifiable, but also sound.

▶ Environmental Literacy Act. This legislation establishes a state council for oversight of environmental education, with a standards and review process, in order to ensure that any environmental education is based in sound scientific findings.

▶ State Implementation of Clean Water Act TMDL Requirements Act. This act requires the use of sound science in making regulatory decisions, and suggests that states should focus limited resources on those waters where active management will result in the most significant—and cost-effective—improvements in water quality.

#### *In Our Classrooms:*

**Students are increasingly exposed to classroom and textbook material designed to influence their point of view about certain topics.** Furthermore, many classes in political action theory promote political action activity. These two facts, when presented together, present a threat to education and to the greater society as an entire generation of students matures into advocates of causes in which they may have been inadvertently coerced into believing, and for which they may feel coerced into fighting.

**Students have the right to be educated from textbooks and curricula based on sound scientific evidence**, and textbooks should be written in language appropriate for education that is understandable, factual, and based on sound scientifically replicable data.

#### **Model Legislation**

By the [Education Task Force](#):

▶ (email [Matt Warner](#), Task Force Director)

▶ Resolution on Non-Verified Science Curriculum Funding. This legislation establishes that the state legislature will no longer fund curricula or textbooks that present “science” that promotes and advocates for or against only one side of an issue.

#### *In the Workplace:*

**Some states and the federal government are experimenting with regulations** which they believe will reduce back, arm, neck and other musculoskeletal strains and aches, often referred to as “repetitive stress injuries” (RSI's).

**There is no consensus in the medical and scientific communities on the causes of or remedies for RSI's** and one's likelihood of suffering an RSI may be linked to any one of or combination of factors, including the improper use of equipment, a person's general fitness, vitamin in-take, job satisfaction or level of stress at home.

**The only medical and scientific consensus that exists when it comes to ergonomics is that more research is needed.** Therefore, any ergonomic regulations would be based on unsound science.

**Ergonomic regulations would mandate costly experimental engineering controls in the workplace with no assurance they would prevent any injuries.** Ergonomic regulations would result in increased costs to small and large employers documented to be in the billions of dollars with no guaranteed benefits to employees.

By the [Commerce, Insurance and Economic Development Task Force](#):

▶ (email [Michael Keegan](#), Task Force Director)

▶ Resolution Opposing Ergonomics Regulations Based on Unsound Science. This resolution outlines the dangers of letting junk science enter workplace regulation: costs to employers and employees, without any proven benefits.

#### **Model Legislation**

By the [Health and Human Services Task Force](#):

▶ (email [Christie Raniszewski Herrera](#), Task Force Director)

▶ Drug Liability Act. This Act establishes in statutory form certain clear limitations with the respect to the imposition of liability in actions for damages alleged to have been caused by certain drugs.

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