



TORT LAWS ON TRIAL

LAWSUIT LIABILITY MEASURES, 2004

By

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During the 2003-2004 election cycle, 32 committees in seven states raised \$101.3 million to support or oppose lawsuit liability ballot measures. In five states — Florida, Nevada, Oregon, Texas and Wyoming — the battles focused on medical malpractice laws. Committees in these states raised \$72.6 million to support or oppose the initiatives.

In Colorado, homebuilders and plaintiffs’ attorneys squared off over an initiative to roll back legislative changes to restrict lawsuits against the construction industry. These committees raised more than \$4.9 million. California committees raised \$23.7 million for a fight over who should be able to sue a company under the state’s unfair competition laws.

More than 40 businesses and individuals contributed \$9.8 million to committees in multiple states. Insurance companies contributed 50 percent of all money given across state lines. State Farm and the U.S. Chamber of Commerce were the leading contributors giving in more than one state.

STATE	BALLOT MEASURES	TOTAL
California	Proposition 64	\$23,701,933
Colorado	Amendment 34	\$4,940,657
Florida	Amendments 3, 7, 8	\$32,875,477
Nevada	Questions 3, 4, 5	\$10,903,689
Oregon	Measure 35	\$9,136,483
Texas	Proposition 12	\$18,038,762
Wyoming	Amendments C & D	\$1,721,208
TOTAL		\$101,318,209

MEDICAL MALPRACTICE BALLOT MEASURES

For the health-care community, changing tort laws at the state level was a nationwide strategy. In 2004, Dr. John Nelson — then president of the American Medical Association (AMA) — stated: “It seems to us that the thing to do is go straight to the people who want and need this reform. Federal legislation would be easier, but a state-by-state approach is just as effective.”¹ During the 2005 legislative session, 32 states passed laws relating to medical liability statutes.² Six states, including Texas, passed comprehensive tort reform measures in 2004 and 2005.³

In all five states that voted on ballot measures involving lawsuit liability laws for medical cases, the measures pitted doctors and other healthcare providers against trial attorneys. In Nevada, where one measure combined insurance reform and lawsuit liability, insurance companies from across the nation contributed generously.

Medical associations ranging from the national AMA to county-level groups gave \$3.34 million to committees supporting changes to medical malpractice laws in the 2004 election cycle. The Florida Medical Association led the pack, contributing more than \$2 million to ballot measures in Florida. The American Medical Association contributed \$500,000, giving \$100,000 in each of the five states with medical malpractice measures on the ballot.

¹ “Malpractice Showdown Up to Voters of Four States,” *The Associated Press*, Sept. 27, 2004.

² “Medical Malpractice Tort Reform,” *National Conference on State Legislatures* [on-line]; available from <http://www.ncsl.org/standcomm/sclaw/medmaloverview.htm>; Internet; accessed Feb. 21, 2006.

³ Kris Axtman, “Jury’s Vioxx Award: Not So Texas-sized After All,” *The Christian Science Monitor* [on-line]; Aug. 25, 2005, available from <http://www.csmonitor.com/2005/0825/p03s01-uspo.html>; Internet; accessed Feb. 7, 2006.

For their part, plaintiffs’ lawyers claimed to be outgunned by the deep pockets of doctors, hospitals and insurance companies. A spokesman for the Association of Trial Lawyers of America contended that “the insurance industry, the drug industry, the hospital and nursing home industry have far more money than people injured by medical malpractice and their lawyers.”⁴

However, lawyers contributed \$33.8 million to ballot committees in the five states, or 58 percent more than the \$21.4 million the health-care sector contributed. All but \$6,550 of the \$33.8 million went to committees opposing limits, supporting limit repeals, or supporting measures that would retaliate for liability limits. The health sector includes doctors, hospitals and drug companies. Even when contributions from the insurance industry — mostly to committees in Nevada — are factored in, lawyers still contributed 24 percent more money.

The \$33.8 million given by lawyers and lobbyists also does not include money from any lawyers in Nevada. A committee associated with the Nevada Trial Lawyers raised almost \$1.5 million, all from a nonprofit organization that did not disclose its donors. So the amount given by lawyers likely was higher than the figure in the study.

Lawyers in Florida put the most money into ballot-measure campaigns, giving \$22.3 million, or about two-thirds of all the contributions by lawyers. Attorneys in Texas gave \$9 million to oppose that state’s 2003 amendment limiting noneconomic damage awards in medical malpractice lawsuits.

TOP-CONTRIBUTING SECTORS TO MEDICAL LIABILITY MEASURES, 2004

SECTOR	TOTAL
Lawyers and Lobbyists	\$33,815,556
Health	\$21,466,571
Finance, Insurance and Real Estate	\$5,962,178
General Business	\$3,412,992
Ideology/Single Issue	\$1,662,401
TOTAL	\$66,319,698

The nonprofit committee in Nevada that appeared to be affiliated with the Nevada Trial Lawyers Association — People for a Better Nevada — gave almost \$1.5 million of the \$1.6 million given by single-issue or ideological organizations. The rest of the money came from three Texas groups and one Oregon group.

Although insurance companies — part of the finance, insurance and real estate sector — often are accused of financing efforts to place caps on damages, the insurance industry contributed slightly more than \$5.7 million, or just less than 8 percent of the total given in the five states with medical malpractice ballot measures. Committees in Nevada collected 94 percent, or \$5.4 million, of this money. Nevada had one ballot measure that would increase regulation of insurance companies, as well as overturn medical malpractice liability measures. Committees in Texas received the next-largest amount from the insurance industry, gathering just less than \$180,000.

The general business sector gave \$3.4 million to committees in four states: Texas, Florida, Nevada and Oregon. Texas committees collected 71 percent of the cash, or \$2.4 million. Florida

⁴ “Malpractice Showdown Up to Voters of Four States,” *The Associated Press*, Sept. 27, 2004.

committees received \$702,800. Two of the top contributors in this sector were Texans for Lawsuit Reform and the Texas Civil Justice League. Both lobby for lawsuit liability reform at all levels of Texas government. In 2004, Texans for Lawsuit Reform was the top giver to candidates in Texas, contributing more than \$1.7 million to candidates running for state offices.

GIVING ACROSS STATE LINES

The liability measures drew many of the same contributors, who spread their money across the five states as they supported the initiative strategies complimentary to their interests.

For example, \$6 million of the more than \$10.9 million raised by Nevada committees for lawsuit measures, or 56 percent, came from out-of-state companies and individuals. In Colorado, almost 35 percent — \$1.7 million — of the committees' money came from out-of-state sources. California companies raised almost 23 percent, or \$5.4 million, from out-of-state contributors. Wyoming committees received 10 percent of their total from out-of-state organizations. Florida, Oregon and Texas committees all raised 6 percent or less of their money from out of state.

Although most of the money given to ballot committees came from within each state, 43 organizations and three individuals contributed \$9.8 million to committees in multiple states. Twenty-two insurance companies or associations gave \$5.25 million, or 53 percent of the funds.

One of these insurance companies, State Farm, gave more than \$1 million to five committees in three states, making it the leading contributor giving across state lines. One committee in California received \$200,000, three committees in Nevada shared \$842,600, and one Texas committee received \$50,000.

The U.S. Chamber of Commerce spread \$945,000 around four states, making it the second-largest contributor in multiple states. A California committee received the majority of the cash, \$495,000. Committees in Colorado, Nevada and Texas received \$150,000, \$100,000 and \$200,000 respectively.

California was the most popular destination of cash from these contributors; twenty-nine of the 46 multistate contributors gave to committees in that state. Nevada was not far behind, with its committees receiving money from 28 contributors. Twenty-one of the 22 insurance companies on the list of multistate contributors gave money in Nevada to fight the ballot measure designed to increase regulations on the companies.

Three individuals gave to committees in multiple states. James Sturdevant, a plaintiffs' attorney from San Francisco, gave \$267,500 to committees in Oregon and California. William A. Gaylord, a Portland, Ore., trial attorney, gave \$24,500 to committees in Texas, Wyoming and Oregon. Gaylord was part of a team of lawyers who won an \$80 million verdict against cigarette manufacturer Philip Morris for the family of a man who died from smoking-related lung cancer.⁵ Sharon Arkin, a plaintiffs' attorney with the California law firm Robinson, Calcagnie & Robinson, gave \$6,000 to committees in California and Wyoming. Her firm is the statewide plaintiffs' liaison

⁵ *Gaylord Eyerman Bradley, PC*, [on-line]; available from <http://www.gaylordeyerman.com/about.html> and <http://www.gaylordeyerman.com/gaylord.html>; Internet; accessed Feb. 17, 2006.

counsel for the diet drug litigation in which American Home Products (now Wyeth) faces claims by consumers nationwide who used a potentially harmful combination of diet drugs.⁶

The cross-state involvement wasn't always limited to campaign contributions, either.

Two committees, one in Wyoming and one in Oregon, ran the same ad exhorting voters to oppose caps on damages.⁷ The ad — named “Becky” — was produced for Citizens for Real Insurance Reform in Wyoming by All Points Communications, Inc., a New Hampshire-based political communications firm.⁸ The Oregon committee running the same ad, Coalition for Real Insurance Reform, listed on finance-disclosure forms a payment of \$10,000 on Oct. 14, 2004, to All Points Communications for preparation and production of advertising.⁹ The committees also had three contributors in common, including the Association of Trial Lawyers of America (ATLA), William A. Gaylord and the Maine Trial Lawyers Association. ATLA gave \$10,000 in Wyoming and \$30,000 in Oregon. Gaylord, currently the senior ATLA governor in Oregon,¹⁰ gave \$22,500 in Oregon and \$1,000 in Wyoming. The Maine Trial Lawyers Association gave \$1,000 in each state.

MAJOR CONTRIBUTORS ACROSS STATE LINES, 2004

CONTRIBUTOR	STATES	TOTAL
State Farm	CA/NV/TX	\$1,092,642
U.S. Chamber of Commerce	CA/CO/NV/TX	\$945,000
Farmers Insurance	CA/NV	\$807,791
Hospital Corp. of America/HCA	NV/TX	\$783,333
Allstate Insurance	CA/NV	\$524,413
Kaiser Permanente	CA/OR	\$502,500
American Medical Association/AMA	FL/NV/OR/TX/WY	\$500,000
Pfizer	CA/FL/NV/OR/WY	\$447,100
Blue Cross/Blue Shield Companies	CA/NV/OR	\$415,975
Travelers	CA/NV	\$348,125
Philip Morris	CA/TX	\$279,065
Sturdevant, James	CA/OR	\$267,500
United Services Automobile Association/USAA	CA/NV/TX	\$266,670
Zurich American Insurance	CO/NV/TX	\$256,212
Tenet Healthcare Corp.	FL/TX	\$217,154
Countrywide Home Loans	CA/CO/NV	\$206,817
Progressive Casualty Insurance	CA/NV	\$200,802
American International Group/AIG	CA/CO/NV	\$170,000
American Family Insurance	CO/NV	\$162,588

⁶ “Sharon J. Arkin,” *Robinson Calcagnie & Robinson* [on-line]; available from http://www.robinson-pilaw.com/bios/Sharon_Arkin.htm; Internet; accessed Feb. 23, 2006.

⁷ James Mayer, “Adwatch: Measure 35,” *The Oregonian*, Oct. 24, 2004, sec. D, p. 7.

⁸ “Our Work,” *All Points Communications, Inc.* [on-line]; available from <http://www.allpoints.com/work2.htm>; Internet; accessed Feb. 24, 2006, and “2005 Inaugural Pollic Awards: The Winners,” *American Association of Political Consultants* [on-line]; available from <http://www.theaapc.org/content/pollicawards/pastwinners/pastwinners2005.pdf>; Internet; accessed Feb. 24, 2006.

⁹ “Coalition for Real Insurance Reform 2nd Pre-Election Report,” *Oregon Secretary of State* [on-line]; available from http://egov.sos.state.or.us/elec_images/c&e_search.html; Internet; accessed Feb. 24, 2006.

¹⁰ *Gaylord Eyerman Bradley, PC*, [on-line]; available from <http://www.gaylordeyerman.com/about.html>; Internet; accessed Feb. 17, 2006.

CONTRIBUTOR	STATES	TOTAL
Wal-Mart	CA/TX	\$150,000
Continental Casualty Co.	CO/NV/OR	\$143,761
Association of Trial Lawyers of America/ATLA	FL/OR/WY	\$140,000
Johnson & Johnson	CA/WY	\$126,000
Nationwide Mutual Insurance	CA/NV	\$111,000
Citigroup	CA/TX	\$110,000
21st Century Insurance	CA/NV	\$105,185
Firemans Fund Insurance Companies	CA/NV	\$100,074
Wells Fargo	CA/CO/NV	\$65,250
American Insurance Association/AIA	NV/TX	\$60,000
Liberty Mutual Insurance	CO/NV	\$56,338
Ace American Insurance Co.	CA/NV	\$54,568
The Doctors Co.	CA/NV/OR/TX/WY	\$33,000
American Academy of Orthopaedic Surgeons	FL/WY	\$30,000
American College of Obstetricians & Gynecologists	NV/OR	\$30,000
Georgia-Pacific	CA/TX	\$30,000
Lockheed Martin	CA/TX	\$30,000
Wyeth Pharmaceuticals	CA/OR	\$25,125
Gaylord, William A.	OR/TX/WY	\$24,500
Medtronic	FL/TX	\$19,957
Pacificare	CA/NV	\$15,500
Metropolitan Life Insurance/Metlife	CA/NV	\$15,000
Boise Cascade Corp.	CO/OR	\$8,000
HealthSouth	NV/OR	\$7,000
Arkin, Sharon	CA/WY	\$6,000
Maine Trial Lawyers Association	OR/WY	\$2,000
TOTAL		\$9,891,944

MEDICAL MALPRACTICE MEASURES

Florida

Although the 2003 Florida Legislature passed a bill limiting noneconomic damages in medical malpractice cases,¹¹ doctors and their perpetual adversaries, trial lawyers, both used the initiative process in 2004 to push through additional measures to regulate lawsuits.

The medical community sponsored Amendment 3, to place in the state constitution limits on lawyers' fees in medical malpractice cases. Lawyers may only receive 30 percent of the first \$250,000 of an award and 10 percent of the remaining amount of the award.¹²

Trial lawyers backed Amendment 7, to allow patients to request records of "adverse incidents" from doctors or health-care facilities, and Amendment 8, to bar doctors who have committed three or more incidents of medical malpractice from practicing in Florida

¹¹ Mary Ellen Klas, "Duel Continues on Eve of Malpractice Law," *Palm Beach Post*, Sept. 13, 2003, sec. A, p. 1.

¹² *Ibid.*

After a pitched battle in which political committees raised more than \$32.8 million — most of which was spent on supporting or opposing Amendment 3¹³ — all three amendments passed. The amount raised for the fight was reportedly more than any recent gubernatorial or U.S. Senate race in Florida.¹⁴

CONTRIBUTIONS TO THE FLORIDA LIABILITY MEASURES, 2004

COMMITTEE	POSITION	TOTAL
Floridians for Patient Protection	For 7 & 8/Against 3	\$24,644,886
Citizens for a Fair Share	For 3/Against 7 & 8	\$8,100,861
Citizens for Tort Reform	For 3	\$129,730
TOTAL		\$32,875,477

Floridians for Patient Protection, a committee largely backed by trial lawyers, sponsored and promoted Amendments 7 and 8 in addition to fighting against Amendment 3. It also raised far more than any other committee, gathering in \$24.6 million. That amount represents 75 percent of the \$32.8 million raised by all three committees active in the ballot fight. Lawyers contributed 91 percent, or \$22.3 million, to Floridians for Patient Protection. The Academy of Florida Trial Lawyers gave almost \$935,000 in loans and direct contributions. Much of the money was paid back.

Citizens for a Fair Share, the committee sponsoring Amendment 3, raised \$8.1 million. Its close ties with the Florida Medical Association were apparent in a number of ways:

- The chairman of Citizens for a Fair Share was the executive director of the Florida Medical Association (FMA), Sandra Mortham.¹⁵
- The FMA and its affiliate for physicians' spouses — the Florida Medical Association Alliance — gave Citizens for a Fair Share about \$2.16 million in direct and in-kind contributions. In addition, the FMA made a \$1 million loan to the committee that was later repaid. Other health care professionals gave more than \$5 million to the committee.
- Citizens for Tort Reform, a committee established by the Florida Medical Association to seek a constitutional amendment in 2004 to cap noneconomic damages,¹⁶ raised \$129,730 in 2003. When it closed in late 2003, Citizens for Tort Reform forwarded the balance of its account — \$439,630 — to Citizens for a Fair Share.¹⁷

¹³ Lisa Greene, "Voters Call a Draw in Doctor-Lawyer Fight," *St. Petersburg Times*, Nov. 3, 2004, sec. B, p. 7.

¹⁴ Joni James, "Amendments Fight Garners Record Cash," *St. Petersburg Times*, Oct. 20, 2004, sec. D, p. 1.

¹⁵ *Ibid.*

¹⁶ Sandra Mortham, "FMA Tort Reform Initiative," *Duval County Medical Society* [on-line]; available from <http://www.dcmsonline.org/jax-medicine/2002journals/novdec2002/fmainitiative.htm>; Internet; accessed Jan. 26, 2006.

¹⁷ "The Florida Medical Association House of Delegates Votes to Seek Constitutional Amendment to Limit Contingency Fees," *Florida Obstetric and Gynecologic Society* [on-line]; available from <http://flobgyn.org/leg/2112.php>; Internet; accessed Feb. 7, 2006.

TOP CONTRIBUTORS TO THE FLORIDA LIABILITY MEASURES, 2004

CONTRIBUTOR	STATE	INDUSTRY	PRO/CON	TOTAL
Florida Medical Association	FL	Health Professionals	Pro 3/Con 7 & 8	\$2,004,166
Searcy Denney Scarola Barnhart & Shipley	FL	Lawyers & Lobbyists	Pro 7 & 8/Con 3	\$1,051,450
Brown Terrell Hogan Ellis McClamma & Yegelwel	FL	Lawyers & Lobbyists	Pro 7 & 8/Con 3	\$947,280
Grossman & Roth	FL	Lawyers & Lobbyists	Pro 7 & 8/Con 3	\$700,000
Pajcic & Pajcic	FL	Lawyers & Lobbyists	Pro 7 & 8/Con 3	\$635,000
Maher Guiley Maher	FL	Lawyers & Lobbyists	Pro 7 & 8/Con 3	\$625,000
Krupnick Campbell Malone Buser Slama Hancock Liberman & McKee	FL	Lawyers & Lobbyists	Pro 7 & 8/Con 3	\$550,000
Citizens for Tort Reform	FL	Business Associations	Pro 3	\$439,630
Harrell & Johnson	FL	Lawyers & Lobbyists	Pro 7 & 8/Con 3	\$420,000
CFS	FL	Unknown	Pro 7 & 8/Con 3	\$370,000
			TOTAL	\$7,742,526

Nevada

Marked by several court battles, accusations of bait-and-switch tactics, complaints about financial disclosure, and protests by doctors in the streets, Nevada's 2004 ballot-measure campaigns were contentious and expensive by any measure.

Dissatisfied with the results of the Nevada Legislature's 2002 special session to rein in medical malpractice insurance costs, doctors filed an initiative to limit attorneys' fees in malpractice cases. Opponents fired back with measures of their own. In the end, three ballot measures involving lawsuits ended up on the 2004 ballot:

- Question 3, entitled Keep Our Doctors in Nevada, to further limit the amount of noneconomic damages a patient could seek, as well as limit the fees an attorney could charge patients who brought suit against health-care providers.
- Question 4, the Insurance Rate Reduction and Reform Act. This far-reaching initiative would have required insurance companies to roll back auto insurance rates, subjected the industry to consumer protection and antitrust laws, and required the governor to appoint an Insurance Commissioner. It also included a clause stating any statute in effect in December 2006 that limited noneconomic damages would be void unless malpractice judgments and medical malpractice liability rates for medical providers dropped at least 10 percent each year since the caps were passed.¹⁸
- Question 5, the Stop Frivolous Lawsuits and Protect Your Legal Rights Act. It would have amended the Constitution to penalize any lawyer involved in "vexatious and frivolous" lawsuits and to void any changes made to Nevada law between 2004 and 2006 if those changes reduced

¹⁸ Sean Whaley, "Duplicity Alleged of Ballot Measures," *Las Vegas Review-Journal*, June 8, 2004, sec. A, p. 1.

the amount of damages a person can recover for negligent or wrongful conduct.

Questions 4 and 5 were filed by People for a Better Nevada, a committee with ties to the Nevada Trial Lawyers Association.¹⁹

Question 3, containing limits on lawsuits, won voter approval. Questions 4 and 5 both failed.

Five committees raised more than \$10.9 million for the ballot campaigns. A sixth committee formed by the American College of Surgeons Professional Association spent just over \$15,000 on newspaper advertising but did not raise funds during the election cycle.²⁰

CONTRIBUTIONS TO THE NEVADA LIABILITY MEASURES, 2004

COMMITTEE	POSITION	TOTAL
Nevadans Against Frivolous Lawsuits	Against Questions 4 & 5	\$5,726,692
Keep Our Doctors in Nevada	For Question 3	\$3,639,952
Yes on Questions 4 and 5	For Questions 4 & 5	\$1,481,744
Nevada State Medical Association	Against Question 4	\$37,300
Alrus Consulting	Against Question 4	\$18,000
	TOTAL	\$10,903,688

The top fund-raiser was Nevadans Against Frivolous Lawsuits, a committee formed to fight Questions 4 and 5. Members of the committee include the state medical association, the Associated General Contractors and the Las Vegas Chamber of Commerce.²¹ The finance, insurance and real estate sector contributed almost \$5.3 million, or 93 percent of the total the committee raised. The health sector contributed \$192,750, while the U.S. Chamber of Commerce contributed \$100,000.

Keep Our Doctors in Nevada, which supported successful Question 3, raised more than \$3.6 million, mostly from hospitals and doctors. Hospitals and nursing homes gave more than \$2 million to the committee, or 55 percent of its total. Health professionals, including doctors and nurses, contributed another 30 percent, or \$1 million, to the successful campaign

The Yes on Questions 4 and 5 committee raised all its money from one source: a nonprofit organization named People for a Better Nevada, which had done the work to get the proposals on the ballot. The committee raised almost \$1.5 million, but all the contributions were in-kind contributions of services. These services included payments for legal and consulting help, media buys, mailings, and help from a signature-gathering firm.

¹⁹ Ed Vogel, "Backers Not Named for Ballot Efforts," *Las Vegas Review-Journal*, Sept. 2, 2004, sec. B, p. 4, and Sean Whaley, "Trial Lawyers Group Backs Two Contentious Initiatives," *Las Vegas Review-Journal*, June 10, 2004, sec. B, p. 1.

²⁰ American College of Surgeons Professional Association Annual Filing, *Nevada Secretary of State* [on-line]; available from <http://sos.state.nv.us/Contributions.asp?nd=D%3A%5C000Contributions%5Fand%5FExpenses%5Fand%5FFinancial%5FDisclosures%5C0002004%5FRports%5C000Ballot%5FAdvocacy%5FGroup%5C000American%5FCollege%5Fof%5FSurgeons%5FProfessional%5FAssociation>; Internet; accessed March 20, 2006.

²¹ Juliet V. Casey, "Group Launches Campaign to Stop Lawyer-Backed Measures," *Las Vegas Review-Journal*, Sept. 14, 2004, sec. B, p. 3.

People for a Better Nevada has close ties with the Nevada Trial Lawyers Associations. The secretary for Yes on Questions 4 and 5, Gail Tuzzolo, is a consultant for People for a Better Nevada,²² while Beverly Salhanick — the contact person for both People for a Better Nevada and the Yes on Questions 4 and 5 committees — is also the treasurer of the Nevada Trial Lawyers Association.

The Nevada State Medical Association committee raised \$37,300. Keep Our Doctors in Nevada gave \$33,300, and three insurance companies contributed the remainder of the cash.

Alrus Consulting raised \$18,000 to fight Questions 4 and 5. The Nevada State Medical Association contributed \$8,000; the Retailers Association of Nevada gave \$1,000. The remainder came from insurance companies. Alrus Consulting is operated by Scott Craigie,²³ a spokesman and consultant for Keep Our Doctors in Nevada. Craigie and his partner at Alrus Consulting count the Nevada State Medical Association among their clients.²⁴

TOP CONTRIBUTORS TO THE NEVADA LIABILITY MEASURES, 2004

CONTRIBUTOR	STATE	INDUSTRY	PRO/CON	TOTAL
People For A Better Nevada	NV	Single-Issue Groups	Pro Questions 4 & 5	\$1,481,744
Property Casualty Insurers	IL	Insurance	Con Questions 4 & 5	\$872,000
State Farm	IL	Insurance	Con Questions 4 & 5	\$842,642
Farmers Insurance	CA	Insurance	Con Questions 4 & 5	\$707,791
Hospital Corp. of America/HCA	TN	Hospitals/Nursing Homes	Pro Question 3	\$483,333
Catholic Healthcare West	NV/AZ	Hospitals/ Nursing Homes	Pro Question 3/ Con Questions 4 & 5	\$480,000
Allstate Insurance	IL/AZ	Insurance	Con Questions 4 & 5	\$424,413
Sunrise Hospital & Medical Cntr	NV	Hospitals/Nursing Homes	Pro Question 3	\$375,000
Travelers	DE	Insurance	Con Questions 4 & 5	\$298,125
Zurich American Insurance	IL	Insurance	Con Questions 4 & 5	\$238,712
			TOTAL	\$6,203,760

²² Juliet V. Casey, "Group Launches Campaign to Stop Lawyer-Backed Measures," *Las Vegas Review-Journal*, Sept. 14, 2004, sec. B, p. 3, and Ed Vogel, "Backers Not Named for Ballot Efforts," *Las Vegas Review-Journal*, Sept. 2, 2004, sec. B, p. 4.

²³ Kirsten Searer, "Big Battle Brews Over Ballot Questions 4, 5," *Las Vegas Sun*, Sept. 14, 2004 [on-line]; available from <http://www.lasvegassun.com/sunbin/stories/text/2004/sep/14/517508105.html>; Internet; accessed Jan. 31, 2006.

²⁴ "Dr. Evin's Challenge," *Clark County Medical Society County Line* [on-line]; Newsletter 65, June 2005, available from <http://www.clarkcountymedical.org/County%20Line%202005/County%20Line%20June%202005.htm>; Internet; accessed Feb. 21, 2006.

Oregon

Supporters and opponents of Oregon’s Measure 35 — to cap noneconomic damages in medical malpractice lawsuits at \$500,000 — set a fund-raising record in Oregon when they racked up more than \$9.1 million for the 2004 election.²⁵ The two committees supporting the measure collected 81 percent of the total, or \$7.4 million; the two committees opposing the measure raised only \$1.73 million. The measure ultimately failed, although the margin was small.

The campaign was marked by a series of controversial advertisements from both sides, as well as high-profile individuals declaring support for or opposition to the measure.

Former Oregon Gov. John Kitzhaber, a Democrat, wrote a letter in support of limiting noneconomic damages but then complained when the letter was used without his permission by Oregonians for Quality, Affordable and Reliable Healthcare in a mailing to urge voters to pass the measure.²⁶ That same voters’ guide came under fire from Oregon Secretary of State Bill Bradley, a Democrat, for mimicking the style of the state’s own voters’ pamphlet.²⁷

Opponents of Measure 35 included Erin Brockovich, the legal assistant to a plaintiffs’ attorney who was made famous by actress Julia Roberts in a movie of the same name. Brockovich appeared in an ad urging voters to reject the measure.²⁸

The campaign against Measure 35 — spearheaded by Citizens for Real Insurance Reform — changed the wording of another television spot after the Oregon Association of Broadcasters issued a warning to stations about the truthfulness of the ad.²⁹

CONTRIBUTIONS TO THE OREGON LIABILITY MEASURE, 2004

COMMITTEE	POSITION	TOTAL
Oregonians for Quality, Affordable and Reliable Health Care	For	\$6,141,571
Coalition for Real Insurance Reform	Against	\$1,713,671
Hospitals for Liability Fairness PAC	For	\$1,264,184
PAC 483	Against	\$17,057
	TOTAL	\$9,136,483

²⁵ Ley Garnett, “Medical Liability Measure Will Shatter Spending Record,” *Oregon Public Broadcasting News*, Sept. 27, 2004 [on-line]; available from http://www.publicbroadcasting.net/opb/news.newsmain?action=article&ARTICLE_ID=689374; Internet; accessed Jan. 25, 2006.

²⁶ James Mayer, “Kitzhaber Rails at Use of His Letter in Measure 35 Mock Voters’ Guide,” *The Oregonian*, Oct. 21, 2004, sec. D, p. 4.

²⁷ Brent Hunsburger, “Secretary of State Takes Exception to Voters’ Pamphlet Look-Alike,” *The Oregonian*, Oct. 18, 2004, sec. D, p. 3.

²⁸ James Mayer, “Adwatch: No on Measure 35, Medical Malpractice,” *The Oregonian*, Sept. 24, 2004, sec. D, p. 5.

²⁹ James Mayer, “Measure 35 Opponents Alter TV Ad,” *The Oregonian*, Oct. 15, 2004, sec. D, p. 5, and P-I Staff and News Services, “Political Ad Prompts Broadcasters’ Warning,” *Seattle Post-Intelligencer*, Oct. 18, 2004, sec. B, p. 3.

Oregonians for Quality, Affordable and Reliable Health Care, a committee sponsored by the Oregon Medical Association and the Oregon Association of Hospitals and Health Systems,³⁰ raised the most among the four committees active on the measure. The committee directors — three doctors — were also listed with the Oregon Secretary of State’s office as the sponsors of the measure. Oregonians for Quality, Affordable and Reliable Health Care raised \$6.14 million, or 83 percent of the money raised to support the measure and more than two-thirds of the total raised for or against Measure 35.

Of the \$6.14 million raised by Oregonians for Quality, Affordable and Reliable Health Care, \$1.75 million came from a petition committee called Oregonians for Quality, Affordable and Reliable Health Care #1. The committee formed to put a measure on the ballot limiting lawyers’ contingency fees in malpractice lawsuits. A petition committee files to support a potential ballot measure during the signature collection and approval process. Once a petition qualifies for the ballot, a committee can change its statement of organization to reflect its support for the new measure; or, as in this case, since the petition failed to make it to the ballot, the committee can give away its cash and close its account.

Not surprisingly, 30 percent — or \$1.85 million — of the money given to Oregonians for Quality, Affordable and Reliable Health Care came from hospitals and nursing homes. About \$1.25 million of the hospital money came from Hospitals for Liability Fairness, another committee formed to support the measure. Doctors and other health-care professionals gave the committee \$1.7 million.

Money given by the health-care industry and the petition committee constituted 92 percent of the total for Oregonians for Quality, Affordable and Reliable Health Care and 62 percent of the total raised by all four committees.

In contrast, the insurance industry gave only \$134,182 to Oregonians for Quality, Affordable and Reliable Health Care.

The Coalition for Real Insurance Reform, the main opponent of Measure 35, raised \$1.7 million. Lawyers donated 95 percent of the money, or \$1.63 million. This included \$136,500 from associations representing trial lawyers, including the Association of Trial Lawyers of America, the Oregon Trial Lawyers Association and associations from Arizona, Idaho, Kentucky, Maine, Michigan and Nebraska.

The Hospitals for Liability Fairness PAC raised \$1.26 million, most of which it later donated to Oregonians for Quality, Affordable and Reliable Health Care. Because the money raised by the Hospitals for Liability Fairness PAC is similar in amount to what it gave to Oregonians for Quality, Affordable and Reliable Health Care, the money may be in disclosure reports twice, once as received by the PAC and again as given to Oregonians for Quality, Affordable and Reliable Health Care. Hospitals, nursing homes and other organizations providing health services contributed nearly all of the PAC’s money.

PAC 483 is a ballot measure committee formed by the Laborers’ International Union of North America, Local 483. It raised \$17,057 for its campaign in opposition to four ballot measures, including Measure 35. All of its money came from City of Portland workers and contributions below the state’s threshold amount for reporting the names of contributors.

³⁰ “Major Milestone Achieved in Medical Liability Reform Efforts,” *Oregon Medical Association*, July 6, 2004 [online]; available from <http://www.theoma.org/News.asp?NewsID=83>; Internet; accessed March 20, 2006.

TOP CONTRIBUTORS TO THE OREGON LIABILITY MEASURE, 2004

CONTRIBUTOR	STATE	INDUSTRY	PRO/CON	TOTAL
Oregonians for Quality Affordable & Reliable Health Care Committee #1	OR	Single-Issue Group	Pro	\$1,746,547
Hospitals for Liability Fairness	OR	Hospitals/Nursing Homes	Pro	\$1,253,384
PeaceHealth	OR	Hospitals/Nursing Homes	Pro	\$377,482
Mid-Valley IPA Inc.	OR	Health Professionals	Pro	\$300,000
Providence Health System	OR	Hospitals/Nursing Homes	Pro	\$250,000
Kaiser Foundation Health Plan of the Northwest	OR	Health Services	Pro	\$215,000
Legacy Health System	OR	Hospitals/Nursing Homes	Pro	\$215,000
Salem Hospital Regional Health Services	OR	Hospitals/Nursing Homes	Pro	\$175,000
Pfizer	NY	Pharmaceuticals	Pro	\$150,000
Rogers, Richard M.	OR	Lawyers & Lobbyists	Con	\$150,000
TOTAL				\$4,832,413

Texas

The lengthy Texas Constitution became even longer in September 2003 when voters approved 22 amendments to the document. Among these changes was Proposition 12, which allows the Texas Legislature to limit noneconomic damages in medical malpractice suits, as well as in other types of lawsuits.

Under Proposition 12, any attempt to limit damages must be passed by a three-fifths majority of each house of the legislature. Proponents of the limits placed Proposition 12 on the ballot to protect the limits enacted for medical malpractice lawsuits during the 2003 legislative session. House Bill 4 limited damages to \$250,000 per medical provider or hospital, with a maximum pay out of \$750,000. The Texas Supreme Court had struck down as unconstitutional previous laws limiting noneconomic damages.

The amendment passed narrowly, garnering 51 percent of the vote.

As in other states, high-profile proponents and opponents of the measure were visible on the campaign trail. Two former Republican Texas Supreme Court justices — Deborah Hankinson and James A. Baker — opposed the measure, saying it would upset the balance between the legislative and judicial branches of state government.³¹ On the other side, Republican Gov. Rick Perry traveled statewide warning that failure to pass the amendment would leave Texans with fewer doctors and less access to health care.³²

Nine committees raised more than \$18 million for the Proposition 12 campaign. Four committees opposing the measure raised 54 percent of this total, or \$9.7 million. Five committees supporting it raised almost \$8.3 million. Although each side's major committee claimed to be up against a well-financed foe who could outraise it,³³ neither of the main committees for or against the amendment

³¹ Janet Elliot, "Lopsided Fund-raising Reported in Campaign Over Lawsuit Limits in Texas," *Houston Chronicle*, July 17, 2003.

³² Lisa Falkenberg, "Perry Tours State to Promote Amendment Limiting Lawsuit Awards," *Associated Press*, Aug. 20, 2003.

³³ Janet Elliott, "Lopsided Fund-raising Reported in Campaign Over Lawsuit Limits in Texas," *Houston Chronicle*, July 17, 2003.

had any problems raising cash. In fact, they raised similar amounts. Save Texas Courts, opposing the amendment, raised almost \$7.6 million; Yes on 12 brought in nearly \$7.2 million.

Lawyers were the top contributors to Texas committees, giving \$8.9 million of the \$18 million raised by Proposition 12 committees. Doctors and other health professionals contributed \$2 million, while hospitals and nursing homes gave another \$2 million. Business associations such as the U.S. Chamber of Commerce, the Texas Alliance for Patient Access, and Texans for Lawsuit Reform gave nearly \$2 million to various committees.

CONTRIBUTIONS TO THE TEXAS LIABILITY MEASURE, 2003

COMMITTEE	POSITION	TOTAL
Save Texas Courts	Against	\$7,595,130
Yes on 12	For	\$7,192,220
Texans for Patients' Rights	Against	\$1,807,808
Physicians Caring for Texas	For	\$936,578
Keep Your Rights	Against	\$209,960
Texans Against Proposition 12	Against	\$127,699
Nueces County Medical Society	For	\$69,045
HeartPlace PAC	For	\$68,025
Gregg County Citizens for Proposition 12	For	\$32,297
TOTAL		\$18,038,762

Save Texas Courts gathered most of its cash from lawyers. Almost 94 percent, or \$7.1 million, came from this group of contributors. General business sources chipped in another \$103,750.

Yes on 12 drew 79 percent of its money from the health and the general business sectors. Hospitals, nursing homes, doctors and other health-care providers gave \$3.36 million to the committee, while general business sources gave \$2.34 million. Companies ranging from R.J. Reynolds Tobacco, Philip Morris, AOL Time Warner, Exxon Mobil, Wal-mart and Halliburton all donated money to Yes on 12.

Many of these companies had an interest in helping Proposition 12 pass because it would allow the Texas Legislature to enact further caps on other types of damages in of civil lawsuits. Also, the *Houston Chronicle* noted that three telecommunications companies donating to the Yes on 12 campaign — AOL Time Warner, SBC Communications and AT&T — were embroiled in a battle over who should be allowed to provide Internet telephone services. Such services are regulated by the Texas Public Utility Commission to which Gov. Perry, the high-profile advocate for Yes on 12, appoints members.³⁴ Together, these three companies gave almost \$370,000 in direct and in-kind contributions to Yes on 12.

Although the opposition accused insurance companies of pouring money into the campaign to pass Proposition 12,³⁵ the finance, insurance and real estate sector only gave \$212,700 to the Yes on 12 committee and \$135,800 to other committees involved in the initiative election. However, the Texas Alliance for Patient Access (TAPA), a coalition of health-care providers and insurance

³⁴ John Williams, "Telecom Companies Awaiting Texas PUC Ruling Back Malpractice Caps Effort," *Houston Chronicle*, Sept. 11, 2003.

³⁵ Janet Elliott, "Lopsided Fund-raising Reported in Campaign Over Lawsuit Limits in Texas," *Houston Chronicle*, July 17, 2003.

companies whose goal is “to improve access to health care by passing meaningful and sustainable medical liability reforms,”³⁶ gave \$1.2 million. TAPA was the largest contributor to Yes on 12, giving 17 percent of the committee’s total funds.

Texans for Patients’ Rights, which opposed the proposition, raised \$1.8 million; nearly all of this amount, \$1.7 million, came from lawyers. The Texas Trial Lawyers Association (TTLA) contributed \$1.14 million, or 63 percent of the committee’s total.

Physicians Caring for Texas, a political action committee of the Texas Medical Association that supported the proposition, collected \$936,500. The bulk of the money came from doctors and other health professionals. The committee contributed \$600,000 to Yes on 12, making Physicians Caring for Texas one of Yes on 12’s top contributors. Because the money raised by Physicians Caring for Texas is similar in amount to what it gave to Yes on 12, the money may be in disclosure reports twice, once as received by Physicians Caring for Texas and again as given to Yes on 12

Five smaller committees also raised money for or against Proposition 12. Two committees opposed to the proposition raised \$337,658; three committees supporting it raised \$169,367. Lawyers gave \$157,250 to these committees, while the health sector contributed \$137,765. Single-issue and ideological groups gave \$126,650. All of this money came from two Texas nonprofit organizations: TexasWatch, a state consumer group, gave \$107,550 to Texans Against Proposition 12, and Texans for Public Justice, which tracks state campaign finances, gave \$19,100 to the same committee.

TOP CONTRIBUTORS TO THE TEXAS LIABILITY MEASURE, 2004

CONTRIBUTOR	STATE	INDUSTRY	PRO/CON	TOTAL
Texas Alliance For Patient Access	TX	Business Associations	Pro	\$1,225,000
Texas Trial Lawyers Association	TX	Lawyers & Lobbyists	Con	\$1,146,833
Texas Hospital Association	TX	Hospitals/Nursing Homes	Pro	\$781,000
Physicians Caring for Texas	TX	Health Professionals	Pro	\$600,000
Texas Medical Association	TX	Health Professionals	Pro	\$350,500
Jamail, Joseph D.	TX	Lawyers & Lobbyists	Con	\$350,000
Provost & Umphrey	TX	Lawyers & Lobbyists	Con	\$350,000
Baron & Budd	TX	Lawyers & Lobbyists	Con	\$325,000
Hospital Corp. of America/HCA	TN	Hospitals/Nursing Homes	Pro	\$300,000
Texans for Lawsuit Reform	TX	Business Associations	Pro	\$300,000
Waters & Kraus	TX	Lawyers & Lobbyists	Con	\$300,000
			TOTAL	\$6,028,333

Wyoming

Wyoming voters considered two lawsuit liability amendments in 2004 in what would prove a contentious and costly campaign. Amendment C allows the Legislature to require dispute resolution or a medical panel review of cases before a person can file a lawsuit against a health-care provider. Amendment D would have allowed the Legislature to enact laws limiting the amount of noneconomic damages a person could be awarded in a suit against a health-care

³⁶ “About TAPA,” *Texas Alliance for Patient Access* [on-line]; available from www.tapa.info/HTML/About.html; Internet; accessed Feb. 8, 2006.

provider. Both measures were referred to voters by the Legislature, which held a special session in 2004 to consider the problem of high medical malpractice premiums for Wyoming doctors.

Amendment C passed narrowly, gathering 50.5 percent of the total votes cast. It received only 1,282 votes more than the necessary threshold for passage. Amendment D failed when it gathered only 47.8 percent of the total votes cast.

The four committees involved with the amendments raised more than \$1.7 million, with the money almost evenly split between groups supporting and opposing the measures. Three committees supporting the amendments raised nearly \$849,000, while one committee opposing the amendments raised about \$872,250.

CONTRIBUTIONS TO THE WYOMING LIABILITY MEASURES, 2004

COMMITTEE	POSITION	TOTAL
Citizens for Real Insurance Reform	Against	\$872,257
Partnership to Protect Affordable Healthcare	For	\$779,593
Physicians United to Save Healthcare Wyoming	For	\$65,450
CCMS PAC	For	\$3,908
	TOTAL	\$1,721,208

Lawyers gave more than \$830,000 — or 48 percent — of the money given to the ballot committees and channeled all their contributions to Citizens for Real Insurance Reform, the only committee opposing the measures. The lawyers' contributions made up 95 percent of that committee's total.

Doctors and other health professionals gave 34 percent, or \$588,000, to the committees. Although the money was split among the three committees supporting the measures, the bulk of the money — \$582,400 — went to Partnership to Protect Affordable Healthcare. The chairman of that committee, Dr. Robert Monger,³⁷ is also president of the Wyoming Medical Society. The Medical Society gave \$147,700 — or 25 percent — of the money given by the doctors.

Physicians United to Save Healthcare (PUSH) gave the Partnership to Protect Affordable Healthcare \$30,000. PUSH raised \$65,450 to support the amendments. It is possible that this money was reported twice: once as received by PUSH and once as given to the Partnership to Protect Affordable Healthcare.

Contributors from outside of Wyoming gave slightly more than 10 percent of the money raised by the four committees, at \$179,700. Six of the contributors gave a total of \$159,000 to the Partnership to Protect Affordable Healthcare, to support the amendments:

- The American Medical Association gave \$100,000, or 56 percent, of the out-of-state contributions.
- The Pfizer pharmaceutical company gave \$30,000.

³⁷ Ilene Olson, "Battle Over Medical Review, Malpractice Amendments in Wyoming Cost Big Money," *Wyoming Tribune Eagle*, Nov. 26, 2004 [newspaper on-line]; available from http://network.isyndicate.com/headlinefetcher/yb_article.phtml?a=41a7b93d.65cf.11.1&c=ktrbn.realestate.ft&d=20041126; Internet; cached version accessed Jan. 23, 2006.

- The American Association of Orthopaedic Surgeons gave \$20,000.
- The Doctors Co, a doctor-owned liability insurer, gave \$5,000.
- Pharmaceutical Research & Manufacturers of America (PHARMA) gave \$3,000.
- Johnson & Johnson gave \$1,000.

The Association of Trial Lawyers of America gave \$10,000 to Citizens for Real Insurance Reform to fight the measures. Of the remaining out-of-state money, \$10,490 went to oppose the measures, while \$6,250 went to support them.

TOP CONTRIBUTORS TO THE WYOMING LIABILITY MEASURES, 2004

CONTRIBUTOR	STATE	INDUSTRY	PRO/CON	TOTAL
Wyoming Trial Lawyers Association	WY	Lawyers & Lobbyists	Con	\$559,391
Wyoming Medical Society	WY	Health Professionals	Pro	\$147,700
Wyoming Hospital Association	WY	Hospitals	Pro	\$110,000
American Medical Association	IL	Health Professionals	Pro	\$100,000
Southeast Wyoming Preferred Physicians	WY	Health Professionals	Pro	\$75,000
Balzer Carman Murdock	WY	Lawyers & Lobbyists	Con	\$50,000
Schuster, Robert P.	WY	Lawyers & Lobbyists	Con	\$50,000
Shively Taheri & Rochelle	WY	Lawyers & Lobbyists	Con	\$50,000
Pfizer	NY	Pharmaceuticals	Pro	\$30,000
Physicians United to Save Healthcare Wyoming/PUSH	WY	Health Professionals	Pro	\$30,000
			TOTAL	\$1,202,091

LIABILITY ON OTHER FRONTS

California

Proposition 64, one of many measures on California's 2004 ballot, altered the state's Unfair Competition Law. The proposition, which passed with 59 percent of the vote, gives only public prosecutors and people who have suffered actual damages the right to sue businesses under this law.³⁸ Before the proposition, individuals or organizations could sue businesses to enforce laws on behalf of the public, even if they had not been harmed by that business.

A California Chamber of Commerce-led committee, Californians to Stop Shakedown Lawsuits, sponsored the initiative and raised money to support it during the campaign season.³⁹ The chamber gave \$495,000 to this committee, which raised more than \$14.6 million for its effort. In fact, the two committees supporting Proposition 64 raised 86 percent of the \$23.7 million raised by all

³⁸ Steve Johnson, "Businesses Hail Limiting Private Suits," *San Jose Mercury News*, Nov. 4, 2004, sec. C, p. 1.

³⁹ "Initiative Campaign to Stop Shakedown Lawsuits Underway," *California Chamber of Commerce* [on-line]; Jan. 6, 2003, available from <http://www.calchamber.com/CC/Headlines/Archive/Economy/InitiativeCampaignToStopShakedownLawsuitsUnderway.htm>; Internet; accessed Feb. 22, 2006.

committees active for or against the proposition. Californians to Stop Shakedown Lawsuits raised almost 72 percent of this total.

Only one committee formed to oppose Proposition 64: Public Health Warning. Sponsored by the Foundation for Taxpayer and Consumer Rights, a consumer group, it raised \$3.2 million.

CONTRIBUTIONS TO THE CALIFORNIA LIABILITY MEASURE, 2004

COMMITTEE	POSITION	TOTAL
Yes on 64/Californians to Stop Shakedown Lawsuits	For	\$14,666,795
California Motor Car Dealers Association Fund to Stop Shakedown Lawsuits/Yes on 64	For	\$5,828,747
Public Health Warning/No on 64	Against	\$3,206,391
	TOTAL	\$23,701,933

Overall, the transportation sector gave more than \$12.4 million to the two committees supporting Proposition 64. Californians to Stop Shakedown Lawsuits received \$7 million, and the California Motor Car Dealers Association committee received \$5.4 million.

Two auto industry contributors gave more than 28 percent of the total given to all three committees. The California Motor Car Dealers Association gave almost \$5.26 million to two committees: \$8,839 to its own committee, the Fund to Stop Shakedown Lawsuits, and the rest to the Chamber-led Californians to Stop Shakedown Lawsuits. The Alliance of Automobile Manufacturers, a Washington, D.C.-based national trade association for automobile and light truck manufacturers,⁴⁰ gave \$1.5 million to Californians to Stop Shakedown Lawsuits.

Other generous contributors to the pro-Proposition 64 campaigns were Intel, which gave \$445,000; Blue Cross of California, which gave \$365,000; the Kaiser Foundation Health Plan, which gave \$287,500; and the California Association of Realtors, which gave \$240,500.

For the campaign against Proposition 64, lawyers were the largest contributing sector, giving more than \$3 million of the \$3.2 million raised by Public Health Warning. The single largest contributor was the Consumer Attorneys of California, giving \$763,700. James Sturdevant, a San Francisco plaintiffs’ attorney, gave \$265,000. The only other organization to give more than \$200,000 was the Consumer Attorneys of Los Angeles, contributing \$250,000.

Labor organizations gave more than \$157,000 to the campaign against Proposition 64; the California State Council of Service Employees/SEIU contributed \$100,000 of this total.

⁴⁰ “About the Alliance,” *The Alliance of Automobile Manufacturers* [on-line]; available from <http://www.autoalliance.org/about/>; Internet; accessed Feb. 28, 2006.

TOP CONTRIBUTORS TO THE CALIFORNIA LIABILITY MEASURE, 2004

CONTRIBUTOR	STATE	INDUSTRY	PRO/CON	TOTAL
California Motor Car Dealers Association	CA	Automotive	Pro	\$5,259,911
Alliance of Automobile Manufacturers	DC	Automotive	Pro	\$1,500,000
Consumer Attorneys	CA	Lawyers & Lobbyists	Con	\$763,700
Greater LA New Car Dealers Association	CA	Automotive	Pro	\$500,000
U.S. Chamber of Commerce	DC	Business Associations	Pro	\$495,000
Intel	OR/CA	Computer Equipment/ Services	Pro	\$445,000
Blue Cross of California	CA	Insurance	Pro	\$365,000
Kaiser Foundation Health Plan	CA	Health Services	Pro	\$287,500
Sturdevant, James	CA	Lawyers & Lobbyists	Con	\$265,000
New Car Dealers Association	CA	Automotive	Pro	\$250,000
Consumer Attorneys Association of LA	CA	Lawyers & Lobbyists	Con	\$250,000
			TOTAL	\$10,381,111

Colorado

Amendment 34, the first of several controversial amendments to qualify for Colorado's 2004 ballot, would have repealed a state law enacted in 2003 that limited damages a property owner could receive from construction companies that are found responsible for construction defects. The law also required owners wishing to sue a construction company for shoddy construction to give builders an opportunity to repair the defect before filing the suit. The proposed amendment was filed with the Secretary of State's office only two days after Gov. Bill Owens signed the bill into law in 2003.⁴¹

Four committees raised more than \$4.9 million to support or oppose Amendment 34. But only two made the amendment their sole focus: Coloradans for Responsible Reform, which opposed it, and the Committee to Take Back Our Property Rights, which supported it. Coloradans for Responsible Reform raised 81 percent of the money, with \$3.99 million. The Committee to Take Back Our Property Rights raised 15 percent of the total, or more than \$734,000.

After a campaign financed by major home-building interests and law firms, Amendment 34 was defeated at the polls.

CONTRIBUTIONS TO THE COLORADO LIABILITY MEASURE, 2004

COMMITTEE	POSITION	TOTAL
Coloradans for Responsible Reform 2004	Against	\$3,995,502
Committee to Take Back Our Property Rights	For	\$734,469
Realtors Issue Political Action Committee	Against	\$202,837
Builders Supporting Home Ownership-Construction Defects	Against	\$7,850
		TOTAL
		\$4,940,658

⁴¹ Mary Doehrman, "Amendment to House Bill 1161 Sparks Controversy Among Homebuilders," *Colorado Springs Business Journal*, Sept. 10, 2004, p. 1.

The Committee to Take Back Our Property Rights, the group that sponsored and promoted Amendment 34, was essentially run by two law firms: Vanatta, Sullan, Sandgrund & Sullan and McKenzie, Rhody & Hearn. Both firms specialize in construction defect litigation.⁴² These two firms and two lawyers associated with the companies — Scott Sullan and Cass McKenzie — gave \$728,567 of the committee’s \$734,469 total. That accounts for 99 percent of the money given by all lawyers and of the money given to the committee. Essentially, the committee raised only \$6,000 from contributors other than Sullan, McKenzie or their firms.

Coloradans for Responsible Reform received 56 percent of its campaign money, or \$2.2 million, from home-building companies. Another 19 percent, or \$763,600, came from general contractors. Altogether, almost 76 percent of the committee’s cash came from individuals or businesses involved with construction. The largest single contributor to the committee was the National Association of Home Builders, a trade association for home builders. Two large national homebuilding companies that build in Colorado — Beazer Homes of Georgia and Centex Homes of Texas — each gave \$250,000.

The Realtors Issue PAC of the Colorado Association of Realtors raised \$202,837 to oppose Amendment 34. Realtors and others in the real estate industry gave almost \$29,000. The PAC also collected \$71,350 in unitemized contributions. Another committee opposing the amendment, Builders Supporting Home Ownership-Construction Defects, raised \$7,850.

TOP CONTRIBUTORS TO THE COLORADO LIABILITY MEASURE, 2004

CONTRIBUTOR	STATE	INDUSTRY	PRO/CON	TOTAL
National Association of Home Builders	DC	General Contractors	Con	\$450,000
Vanatta Sullan Sandgrund & Sullan	CO	Lawyers & Lobbyists	Pro	\$400,970
McKenzie Rhody & Hearn	CO	Lawyers & Lobbyists	Pro	\$297,138
Beazer Homes	CO/GA	Home Builders	Con	\$250,000
Centex Homes	TX	Home Builders	Con	\$250,000
Oakwood Homes	CO	Home Builders	Con	\$175,000
Lennar Corp.	FL	Home Builders	Con	\$150,000
MDC Holdings Inc.	CO	Real Estate	Con	\$150,000
Melody Homes Inc.	CO	Home Builders	Con	\$150,000
U.S. Chamber of Commerce	DC	Business Associations	Con	\$150,000
		TOTAL		\$2,423,108

⁴² Erin Johansen, “Amendment 34 Attracting Little Notice Among Issues,” *Denver Business Journal*, Sept. 17, 2004 [on-line]; available from <http://www.bizjournals.com/denver/stories/2004/09/20/story7.html>; Internet; accessed Jan. 24, 2006.