



# American Justice Partnership

Opinions/Editorials on the Case for Legal Reform

## Lawmakers Should Help Businesses Combat Litigation Costs

By John Sullivan  
President  
Civil Justice Association of California

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"I was ruined but twice in my life," a French philosopher wrote, "once when I lost a lawsuit and once when I won one."

That's truer now more than ever, especially for people trying to do business in California. Litigation is one of your biggest competitors. It's a cost you've got to fight all the time.

A state Supreme Court ruling recently took away one of your weapons in that fight. It ruled that California law prevents two people or companies from agreeing by contract to settle future legal disputes before a judge instead of a jury.

How does this hurt you? It takes away an option that lets parties to a lawsuit have a complicated business matter decided by a judge instead of by an untrained jury. It means longer trials, more time in court, and higher attorney fees.

The constitutional right to a jury trial deserves solid protection, however people should have the right to make an informed agreement to opt for a judge-only trial.

Until our court's ruling, Georgia was the only state prohibiting a so-called "jury waiver." Jury waivers are available in federal law.

Our Supreme Court did not rule that jury waivers are unconstitutional. It said they must be expressly permitted by a state statute - which the law does not do. One justice even urged the Legislature to pass a law and put California back on track.

The Civil Justice Association of California is working now with the Legislature to make that happen.

Our quick survey of companies and business associations found that regardless of whether they use jury waivers in contracts, they believe it is an option that should be available. Mediation and arbitration are other tools companies and individuals can use to bring legal disputes to a faster, less-costly conclusion. All these tools save court time and taxpayer money.

You won't be surprised to know that the same plaintiffs' lawyers that have been attacking arbitration for years argued for an end to jury waivers. Big, expensive trials usually mean more money for these lawyers. With a "portfolio" of cases, a plaintiffs' lawyer can afford to wait out the courtroom process until his opponent is willing

to pay more to settle the case or - better yet - a runaway jury gives him a bigger pot from which to carve out his contingency fee.

These lawyers were not altogether happy with the Supreme Court's decision. It included a not-too-subtle endorsement of arbitration's legitimacy.

It also provided a road map for the Legislature to reinstate jury waivers.

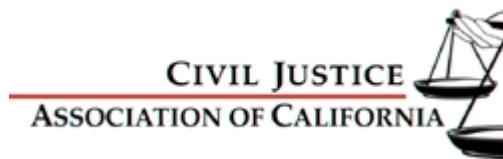
We can only hope the Legislature quickly follows this road map and steers around the barricades the plaintiffs' lawyers are bound to erect.

**John H. Sullivan**  
**President**  
**Civil Justice Association of California**  
**Co-Chair**  
**Californians to Stop Shakedown Lawsuits - Yes on Proposition 64**

**Contributor:**



John Sullivan  
President  
Civil Justice Association of California  
1201 K Street,  
Suite 1960  
Sacramento, California 95814  
916-443-4900  
(f) 916-443-4306  
[cjac@cjac.org](mailto:cjac@cjac.org)



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