

January 6, 2016

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Ryan and Leader Pelosi:

The House may soon consider H.R. 1927, the "Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2015." Section 2 of this bill would effectively eviscerate consumer, antitrust, employment and civil rights class actions. The undersigned groups write in strong opposition to Sec. 2 of this bill.

While a few modifications have been made to the bill since it was first introduced, what has not changed is the requirement that every person in a class have "an injury of the same type and scope" before the case can proceed. (The word "scope" replaced the word "extent" found in the bill's earlier version, but this is a distinction without a difference.) Class members must already meet common requirements spelled out in F.R.C.P. 23, which requires that the class as a whole have the same type of injury stemming from the same unlawful conduct. However, a new requirement that every individual in a class have an injury of the same "scope," proof of which must be established before the case can even proceed as a class, will sound the death knell for most class actions.

Classes inherently include a range of affected individuals, and virtually never does every member of the class suffer the same "scope" of injury from the same wrongdoing. Certainly, many civil rights, discrimination and employment class actions, including cases involving refusals by companies to properly pay workers, would not satisfy these criteria. It is notable that during the bill's June 24 House Judiciary Committee mark-up, Rep. John Conyers offered an amendment to exempt civil rights cases from the bill's reach. In a party-line vote, the committee refused.

There are far too many other examples to list here of recent, important class actions that would fail to meet this bill's "scope of injury" requirement and that never would have gone forward under H.R. 1927. However, it is worth mentioning a few examples. They include recent successful class actions brought over bank and credit card abuses, where the same corporate policy resulted in customers being cheated out of various amounts of money; home and mortgage loan abuses; antitrust violations, where class actions have recovered millions for small businesses in varying amounts from illegal price-fixing cartels; illegal for-profit colleges practices; refusals by companies to properly pay workers; many types of product defects; and denial of insurance benefits. Business owners financially injured by the BP oil spill all had different losses but all were financially injured by the same corporate misconduct. Many more examples could be cited.

It is for these reasons that federal courts have rejected such a "commonality in damages" requirement for class certification. As Judge Posner explained, a "commonality in damages" requirement:

[W]ould drive a stake through the heart of the class action device. . . [T]he fact that damages are not identical across all class members should not preclude class certification. Otherwise defendants would be able to escape liability for tortious harms of enormous aggregate magnitude but so widely distributed as not to be remediable in individual suits.

In addition, by considering this bill now, Congress is circumventing the process that Congress itself established for promulgation of federal court rules under the Rules Enabling Act, bypassing both the Judicial Conference of the United States and the U.S. Supreme Court. In fact, the Judicial Conference already has an Advisory Committee on Civil Rules, which is currently meeting to discuss possible changes to Rule 23. Interference with the proper federal court rules process is reckless and irresponsible, particularly when this proposal is so damaging to victims.

Class action lawsuits are among the most important tools to enable harmed, cheated and violated individuals and small businesses to hold large corporations and institutions accountable and deter future misconduct. Under H.R. 1927, federal courts will be forced to deny class certification to important, worthy classes of aggrieved consumers, employees and small businesses. We urge you to oppose H.R. 1927, the the "Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2015."

Sincerely,

Alliance for Justice
 American Antitrust Institute
 American Association for Justice
 American Federation of State, County and Municipal Employees
 Asbestos Disease Awareness Organization
 Asian Americans Advancing Justice | AAJC
 Autistic Self Advocacy Network
 Caney Fork Headwaters Association
 Center for Effective Government
 Center for Justice & Democracy
 Center For Responsible Lending
 Center for Science in the Public Interest
 Center for Study of Responsive Law
 Committee to Support the Antitrust Laws
 Consortium for Citizens with Disabilities Rights TF
 Consumer Action
 Consumer Federation of America
 Consumers for Auto Reliability and Safety
 Consumers Union
 Consumer Watchdog
 Cornucopia Network/NJ/TN Chapter
 Cumberland Countians for Ecojustice
 D.C. Consumer Rights Coalition
 Demand Progress
 Disability Rights Education & Defense Fund
 Earthjustice

Economic Policy Institute
Essential Information
EWG Action Fund
Food & Water Watch
Home Owners for Better Building
Homeowners Against Deficient Dwellings
Kentucky Equal Justice Center
Law Foundation of Silicon Valley
Leadership Conference on Civil and Human Rights
Madison Area Bus Advocates
Main Street Alliance
MFY Legal Services, Inc.
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Consumer Voice for Quality Long-Term Care
National Council on Independent Living
National Disability Rights Network
National Down Syndrome Congress
National Employment Law Project
National Employment Lawyers Association
National Fair Housing Alliance
National Immigration Law Center
Network for Environmental & Economic Responsibility Of United Church of Christ
New Solutions: A Journal of Environmental and Occupational Health Policy
9to5, National Association of Working Women
Pleasant Hill Community Church/UCC
Protect All Children's Environment
Public Citizen
Reinvestment Partners
SC Appleseed Legal Justice Center
Science and Environmental Health Network
Sciencecorps
Southern Poverty Law Center
Texas Watch
The Arc of the United States
U.S. PIRG
Woodstock Institute
Workplace Fairness