February 2, 2016

The Honorable Charles Grassley
Chairman
U.S. Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
U.S. Senate Committee on the Judiciary
Washington, DC 20510

Re: *Opposition to Section 3 of H.R. 1927, the Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2016*

Dear Chairman Grassley and Ranking Member Leahy:

The undersigned groups strongly oppose Section 3 of H.R. 1927, the "Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2016," formerly H.R. 526 and S. 357, the "Furthering Asbestos Claim Transparency Act" (FACT Act). H.R. 1927 narrowly passed the House despite bipartisan opposition and was recently referred to the Senate Judiciary Committee. On February 3, 2016, the committee is holding a hearing called "The Need for Transparency in the Asbestos Trusts." With the committee's attention on the asbestos trusts, we wanted to explain the flaws in this misguided legislation and urge you to oppose it.

This bill will interfere with state legal systems without justification, severely invade the privacy of asbestos victims and their families, and delay and deny justice to people suffering from lethal asbestos-related diseases. It will do little more than harm dying victims (including many former Navy shipyard workers), while advantaging the big corporations responsible for compensating them.

For decades, secrecy and deceit have been a way of business for the asbestos industry, and this bill does absolutely nothing to change that. This wholly unnecessary and one-sided legislation is an affront to states' rights and unfair to victims.

Section 3 of H.R. 1927 has two primary provisions:

1) It requires asbestos trusts to disclose on public websites the private, confidential information about every asbestos claimant and their families, including past, current and future claimants. The legislation does nothing to stop asbestos defendants from continuing to demand secrecy when they settle cases (as they routinely do), or force companies to disclose any information to help a claimant with his or her case. To this day, these companies refuse to make public information about where asbestos is present, where it was used, and where it is imported. This bill is an unfair and unwarranted imposition on people who are likely to die because the asbestos industry covered up the dangers of asbestos for over 50 years and still insists on confidentiality today. Moreover, the information that will go on theses public sites includes victims' names, addresses, medical information, how much they received in compensation, and the last four

digits of their social security numbers. This extreme invasion of privacy will make victims and their families vulnerable to predators, con artists, and unscrupulous businesses who will scour these sites for information.

2) It gives any defendant in any asbestos lawsuit the right to demand any information about any asbestos victim from any asbestos trust at any time for any reason. The trusts themselves have already told the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law that such a provision would place substantial burdens on them, requiring them to spend tens of thousands of additional hours per year trying to comply with this requirement.[1] And because the provision is unlimited, the costs of compliance for trusts would be very high as well. Trusts are already underfunded. A RAND study found that the median payment from asbestos trusts to victims is 25 percent of the value of the claim, and some payments are as low as 1.1 percent of the claim's value.

In addition to cost burdens, severe delays will result. As explained by Caplin & Drysdale attorney Elihu Inselbuch in his "Responses to Questions for the Record" following his 2013 subcommittee testimony: because trusts will be buried in otherwise unnecessary paperwork seeking claimant information, "The bill would slow down or stop the process by which the trusts review and pay claims, such that many victims would die before receiving compensation, since victims of mesothelioma typically only live for 4 to 18 months after their diagnosis." In many cases, "the delays in trust payment will force dying plaintiffs, who are in desperate need of funds, to settle for lower amounts with solvent defendants.… Delay is a weapon for asbestos defendants."

Finally, Mr. Inselbuch explained that, because this bill does not require that the information demanded by defendants be relevant to, or admissible in, any lawsuit, it is an unwarranted and "heavy-handed piece of federal interference with the states' legal systems."

Far from being even-handed, this bill allows defendants — and only defendants — to do an end-run around state rules of discovery that place limits on information-gathering. The bill would tip the scales of justice in favor of asbestos defendants by giving defendants access to information about victims' settlements with asbestos trusts while allowing defendants to continue hiding information about their settlements with other victims. To level the playing field, victims should be entitled to information from defendants regarding previous settlement amounts and true transparency about where the defendants' asbestos was used, manufactured, and stored.

As to the claim that this bill will "prevent fraud," this bill places new, burdensome requirements on regularly-audited trusts. No one can find evidence of significant fraud in the trust process. The U.S. Government Accountability Office (GAO) studied the problem and did not identify one fraudulent claim.[2] As Mr. Inselbuch noted, "[b]ecause the injured victim was typically exposed to multiple asbestos products at multiple job sites over a period of many years, he or she must file different claims, with different trusts, with different forms that request different information. The fact that the exposure information submitted to one trust *differs* from the exposure

[1] *See* Letter from Douglas A. Campbell, Campbell & Levine, LLC, to Rep. Bob Goodlatte, Chairman, H. Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary, et al. (Mar. 20, 2013).

[2] UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, REPORT TO THE CHAIRMAN, COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, ASBESTOS INJURY COMPENSATION: THE ROLE AND ADMINISTRATION OF ASBESTOS TRUSTS 23 (2011).

information submitted to another does not mean it is 'inconsistent' — and certainly not specious or fraudulent." Similarly, with regard to charges that victims "double-dip," he explains, "when an asbestos victim recovers from each defendant whose product contributed to their disease, that victim is in no way 'double-dipping'; rather they are recovering a portion of their damages from each of the corporations who harmed them. In fact, each trust is responsible for and pays for only its own share of the damages." And as noted above, each trust usually can pay only pennies on the dollar.

Since at least the 1930s, asbestos companies and their insurers have been denying responsibility for the millions of deaths and illnesses caused by this deadly product. The Centers for Disease Control and Prevention report that roughly 3,000 people continue to die from mesothelioma and asbestosis every year. Other experts estimate the death toll is as high as 15,000 people per year when other types of asbestos-linked diseases and cancers are included.[3] The companies hid the dangers posed by asbestos exposure, lied about what they knew, fought against liability for the harms caused, tried to change the laws that held them responsible and, to this day, fight against banning asbestos in the U.S. The asbestos industry is not interested in transparency. This legislation is nothing but another industry attempt to avoid responsibility for the grave harms they have caused. We are asking you to stand with veterans and other cancer victims of the asbestos industry's wrongdoing and oppose H.R. 1927.

Thank you for your consideration of our views.

Sincerely,

Alliance for Justice
Asbestos Disease Awareness Organization
Center for Effective Government
Center for Justice & Democracy
Connecticut Center for Patient Safety
Constitutional Alliance
Consumer Action
Consumer Watchdog
Consumers for Auto Reliability and Safety
EWG Action Fund
National Employment Lawyers Association
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
OpenTheGovernment.org
Protect All Children's Environment
Public Citizen
US PIRG
Workplace Fairness

cc: Senate Judiciary Committee members

[3] Sonya Lunder, *Asbestos Kills 12,000-15,000 People Per Year in the U.S.*, ASBESTOS NATION, EWG ACTION FUND (last visited July 1, 2015), http://bit.ly/1F51Pjf.