January 16, 2018

The Honorable Jeb Hensarling
Chairman
Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Vote NO on H.R. 4738, the Mutual Fund Litigation Reform Act

Dear Chairman Hensarling, Ranking Member Waters, and Members of the Committee:

We are writing to urge you to oppose H.R. 4738, the "Mutual Fund Litigation Reform Act," which is scheduled for mark-up this week. This bill would make it virtually impossible for retail investors to hold their mutual funds accountable when their advisers charge excessive and unreasonable fund fees.

This bill would cripple mutual fund shareholders' ability to bring section 36(b) breach of fiduciary duty claims under the Investment Company Act in two ways. First, it would raise the pleading standard to require plaintiffs to state with particularity all facts establishing a breach of fiduciary duty, before they have access to that evidence through discovery. Second, it would increase the burden of proof for these claims, requiring plaintiffs to prove a breach of fiduciary duty by clear and convincing evidence rather than the standard that is traditionally applied in civil cases, preponderance of the evidence.

Section 36(b) cases are already extraordinarily difficult to bring successfully because the framework that applies to these cases is plainly tilted to the mutual fund industry. According to a Supreme Court decision issued in 2010, to prevail in a Section 36(b) case, an investor must prove that a mutual fund adviser's fee "is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining." *Jones v. Harris Assoc. L.P.*, 559 U.S. 335, 346 (2010). In the few cases that have been decided since *Jones* was issued, the investors unsurprisingly have not been successful and the courts have expressed a willingness to defer to fund boards. These decisions are likely to further temper any desire to bring section 36(b) cases, limiting such cases to the most clear-cut violations.

By raising the pleading standard and burden of proof on fund investors, this bill would tilt an already pro-fund industry legal framework even more toward industry interests and against retail investors. For these reasons, we urge you to oppose this ill-considered legislation.

Sincerely,

American Association for Justice
Americans for Financial Reform

Consumer Action
Consumer Federation of America
Fund Democracy
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
Public Citizen
Public Justice
US PIRG