

April 29, 2015

Hon. Trent Franks, Chairman
Subcommittee on the Constitution and Civil Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Hon. Steve Cohen, Ranking Member
Subcommittee on the Constitution and Civil Justice
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Franks and Ranking Member Cohen:

The Subcommittee on the Constitution and Civil Justice will soon consider H.R. 1927, the “Fairness in Class Action Litigation Act of 2015,” a bill that would effectively eviscerate consumer, employment and civil rights class actions. The undersigned groups strongly oppose this bill.

Class members must already meet common requirements spelled out in F.R.C.P. 23, which requires that the class have the same type of injury stemming from the same unlawful conduct. However, H.R. 1927 would require that every person in a class have “an injury of the same *type* and *extent*,” which they would have to prove before a class could be certified. What’s more, “injury” is defined as “impact” on “the plaintiff’s body or property.” It is difficult to see how most class actions would ever be certified under these criteria.

First, a common sense reading of the definition of “injury” suggests the bill intends to exclude from court entire categories of class actions. Most victims of civil rights violations or discriminatory practices could not meet this definition. *Brown v. Board of Education* could not have proceeded under H.R. 1927. In addition, laws enacted to protect consumers from predatory practices, such as credit and debt collection abuses, often provide for statutory damages. This is precisely because actual damages in those kinds of cases are difficult or impossible to ascertain despite pervasive company misconduct. These class actions would be barred under this “injury” definition.

But even if this definition were broadened, the requirement that the entire class suffer the same type and extent of injury would sound the death knell for class actions. Classes inherently include a range of affected individuals, and virtually never does every member of the class suffer the same extent of injury even from the same wrongdoing. There are far too many examples to list here of recent, important class actions that would fail to meet this bill’s “extent of injury” requirement and that never would have been certified under H.R. 1927. However, it is worth mentioning a few examples.

Certainly many civil rights, discrimination and statutory damage cases would not satisfy these criteria. This would also be true for recent successful class actions 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 over 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. The list is endless.

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.¹

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

Sincerely,

Alliance for Justice
 American Antitrust Institute
 American Association for Justice
 American Civil Liberties Union
 American Federation of State, County and Municipal Employees (AFSCME)
 Arkansans Against Abusive Payday Lending
 Asian Americans Advancing Justice
 Bet Tzedek Legal Services
 Blue Ridge Environmental Defense League
 Center for Effective Government
 Center for Justice & Democracy
 Center for Science in the Public Interest
 Citizen Works
 Climate Change Law Foundation
 Consumer Action
 Consumer Federation of America

¹ *Butler v. Sears Roebuck & Co.*, 727 F.3d 796, 801 (7th Cir. 2013).

Consumer Watchdog
Consumers for Auto Reliability and Safety
Consumers League of New Jersey
Consumers Union
D.C. Consumer Rights Coalition
Demand Progress
Disability Rights Education & Defense Fund
Employee Rights Advocacy Institute for Law & Policy
Equal Rights Advocates
Food & Water Watch
Georgia Watch
Homeowners Against Deficient Dwellings
Justice in Aging
Kentucky Equal Justice Center
Law Foundation of Silicon Valley
Leadership Conference on Civil and Human Rights
MFY Legal Services, Inc.
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumer Voice for Quality Long-Term Care
National Consumers League
National Disability Rights Network
National Employment Law Project
National Employment Lawyers Association
National Fair Housing Alliance
National Housing Law Project
National Immigration Law Center
Natural Resources Defense Council
New Jersey Citizen Action
Protect All Children's Environment
Public Citizen
Public Justice
SC Appleseed Legal Justice Center
Science and Environmental Health Network
Southern Poverty Law Center
The Arc of the United States
U.S. PIRG
Woodstock Institute