

**CONSUMER GROUPS SAY:
DON'T LOCK THE COURTHOUSE DOORS -- OPPOSE S. 5**

February 15, 2005

Dear Representative:

We, the undersigned groups, urge you to vote against the so-called "Class Action Fairness Act" (S. 5) when it reaches the House floor. If the bill becomes law, millions of consumers who are harmed by violations of state consumer protection laws will have no avenue to recover their losses and hold corporations accountable.

Proponents of the bill have said that "the Class Action Fairness Act would simply allow federal courts to more easily hear large, national class action lawsuits affecting consumers all over the country."¹ Unfortunately, the practical result of the class action bill in its current form is that these cases will not be heard. Instead, they will be denied certification because multiple state laws apply, *the very reason they were sent to federal court.*

If S. 5 passes in its current form, we are extremely concerned that it will effectively eliminate multi-state class actions involving state consumer laws because the overwhelming trend in federal courts is to deny certification in these cases. In fact, no federal circuit court has certified a multi-state consumer class action, while six circuit courts and twenty-six district courts have expressly denied such certification.²

¹ Letter-to-the-editor from Stanton D. Anderson, executive vice president and chief legal officer, U.S. Chamber of Commerce, *Philadelphia Inquirer*, February 27, 2004.

² Third, Fifth, Sixth, Seventh, Ninth and Eleventh Circuits, the Districts of Connecticut, District of Columbia, Kansas, Massachusetts, Minnesota, New Hampshire, and New Jersey, the Eastern Districts of Louisiana, North Carolina, Pennsylvania, and Texas, the Northern Districts of Florida, Georgia, Illinois, Mississippi, Ohio, and Oklahoma, the Southern Districts of Alaska, Florida, Illinois, New York, and Texas, the Western Districts of Michigan, Montana, and Washington, and the Middle District of Alabama.

Even the proponents of the bill admit that these cases do not get certified in federal courts. The Chamber of Commerce, the leading proponent of the legislation, recently argued to the Second Circuit Court of Appeals that “it is nearly a truism that nationwide class actions in which the claims are subject to varying state laws cannot be certified because they are unmanageable.”³

Because the bill creates this loophole that makes the bill unfair to consumers, we supported an amendment sponsored by Senators Bingaman and Feinstein when the bill was before the Senate. The amendment had a simple goal: to ensure that the legislation accomplishes its purported goal of having “national in scope” class actions heard in federal court. The amendment accomplished this by providing a federal judge with an additional tool to manage multi-state class actions based on consumer laws. Under the amendment, the judge would have had the option of bypassing complex state procedural choice-of-law rules, and instead apply one state’s law that has a sufficient connection to the case to meet constitutional requirements. If the judge rejects this option, he or she may not deny class certification on the single ground that multiple state laws apply.

Because the Feinstein-Bingaman was not adopted, harmed consumers will be forced to bring single-state class actions in federal court, recreating the “copycat lawsuit” problem that proponents of the class action have criticized. Moreover, consumers who live in medium to small states will never get relief, because there simply won’t be enough injured consumers in their states to justify litigating a costly and complex class action lawsuit.

If S. 5 becomes law as it is, multi-state class actions based on state consumer laws will not be adjudicated, and millions of injured plaintiffs will never get their day in court. We support any amendment, like the Feinstein-Bingaman amendment and others offered in the Senate, that preserves the right of individuals to bring class actions in an effective, efficient manner. If you do not want to lock the courthouse doors to justice, then we strongly urge you to vote against S. 5.

If you have any questions or need more information, please contact Sandy Brantley, Legislative Counsel, Alliance for Justice, 202.822.6070, or Rachel Weintraub, Asst. General Counsel, Consumer Federation of America, 202.387.6121.

³ Brief of the Chamber of Commerce of the United States as *amicus curiae* in support of appellants, *In Re Simon II Litigation*, No. 03-7140-L, U.S. Court of Appeals for the Second Circuit, p. 16, June 3, 2003.

Sincerely,

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| A. Philip Randolph Institute (Delaware Chapter) | Missouri PIRG |
| Alaska PIRG | Montana PIRG |
| Alliance for Justice | National Association of Consumer Advocates |
| American Association of People with Disabilities | New Hampshire Citizen's Alliance |
| Arizona Citizen Action | New Hampshire PIRG |
| Arizona Leadership Institute | New Jersey Citizen Action |
| California PIRG | New Jersey PIRG |
| Campaign for Tobacco-Free Kids | New Mexico PACE |
| Center for Justice and Democracy | New Mexico PIRG |
| Citizen Action of Illinois | North Carolina Consumers Council, Inc. |
| Citizen Action of New York | North Carolina PIRG |
| Citizens for Consumer Justice (PA) | North Dakota Progressive Coalition |
| Colorado PIRG | Ocean State Action |
| Colorado Progressive Coalition | Ohio PIRG |
| Connecticut Citizen Action Group | Oregon State PIRG |
| Connecticut PIRG | Pennsylvania Citizens for Consumer Justice |
| Consumer Action | Pennsylvania PIRG |
| Consumer Federation of America | PIRG in Michigan |
| Consumers for Auto Reliability and Safety | Public Citizen |
| Consumers Union | Rhode Island PIRG |
| Economic Justice Institute, Inc. | Tennessee Citizen Action |
| Florida Consumer Action Network | Texas PIRG |
| Florida PIRG | United Vision for Idaho |
| Georgia PIRG | USAction |
| Georgia Rural and Urban Summit Group | U.S. Public Interest Research Group |
| Gunfire Reduction Initiative of Delaware | Vermont PIRG |
| Illinois PIRG | Victim's Committee for Recall of Defective Vehicles, Inc |
| Indiana PIRG | Violence Policy Center |
| Iowa Citizen Action | Washington Citizen Action |
| Iowa PIRG | Washington PIRG |
| Maine People's Alliance | West Virginia Citizen Action Group |
| Maryland Consumer Rights Coalition | Wisconsin Citizen Action |
| Maryland PIRG | Wisconsin PIRG |
| Massachusetts PIRG | |
| Michigan Citizen Action | |