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April 9, 2003

The Honorable Orrin Hatch, Chair
The Honorable Patrick Leahy, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Please Oppose the Feinstein Amendment to the Class Action Bill S. 274

Dear Chairman Hatch and Ranking Member Leahy:

Our organizations recently wrote to you and other members of the Committee to express our opposition to S. 274, the so-called “Class Action Fairness Act of 2003.” This legislation is unfair to citizens with legitimate public health, environmental, and consumer claims who want to bring class actions based on state laws in state courts. The bill would allow defendants in class action claims, as well as in cases with more than one hundred plaintiffs and in cases in which the named plaintiff is acting for the interests of its members or the general public – not just class action cases – to remove many of these claims to federal court, even over the objections of the injured parties.

We write today to state our opposition to an amendment to be offered by Senator Feinstein. Unfortunately, the Feinstein amendment does not fix any of the substantial problems with the underlying bill and, indeed, may make the problems with the bill even more severe for injured parties. While the Feinstein amendment may have been intended to provide more certainty in the cases affected by S. 274, the amendment makes the situation more uncertain in many cases and does nothing to preserve the rights of citizens to bring legitimate state law claims in state courts.

Both S. 274 and the Feinstein amendment would allow polluters, tobacco companies, manufacturers of defective products and other corporate wrongdoers to remove to federal courts cases brought by persons injured by the same misconduct of the same defendant if some percentage of the plaintiff group are not citizens of the same state. Even cases brought by public officials on behalf of injured parties based on violations of state law – other than cases brought by State attorneys general – could be removed to federal court under the terms of S. 274 and the Feinstein amendment. Examples of the kinds of cases that could be affected include:

- Drinking water contamination cases brought against oil companies for polluting drinking water in hundreds of communities in California, New York and elsewhere across the country with MTBE; in one case, a San Francisco Superior Court jury found oil refineries, fuel distributors, and others liable for damages in a product liability suit brought by the South Tahoe Public Utility District brought. The results included multi-million dollar out-of-court settlements for the utility district.
- A class action brought under California’s state consumer protection laws in which consumers obtained redress for an ignition module defect in Ford vehicles, which caused millions of vehicles to intermittently stall while being driven in freeway traffic. The state court found that Ford had illegally withheld documents from NHTSA that might have led to a recall of millions of vehicles. The court ordered Ford to perform a safety recall. The decision led Ford to agree to offer free repairs to millions of Californians with defective cars and created new judicial oversight over that repair process.
- Cases brought against tobacco companies, such as the Engle case in Florida and, more recently, the successful Miles class action in Illinois brought against Philip Morris for deceiving customers who

smoked its "light" brands by claiming their cigarettes were less harmful than regular cigarettes. These cases have shown state law class actions to be an effective mechanism for holding accountable an industry that has injured millions and engaged in widespread wrongdoing, and for compensating those who have been injured. The tobacco industry does not need more protection against citizen suits. If anything, citizens need more protection against tobacco industry wrongdoing.

The Feinstein amendment does not fix the unfairness of the underlying bill in cases such as these and many other similar state law claims. The amendment would divide class action cases (including those of plaintiff groups not really organized in class actions but those treated as so by the bill) into thirds. These extremely arbitrary, artificial dividing lines could still allow many state law cases to be removed to federal courts. In most cases, it will not even be possible for plaintiffs to know the citizenship of all class members at the outset of a class action case, and class membership can change, leaving many cases in a legal limbo. Even if when it is assumed that more than two thirds of class members are citizens of one state, actually establishing this and ensuring that the percentages remain within proscribed limits is a huge and unnecessary task where a defendant in one state has caused harm to many parties and a state court can properly resolve these claims.

Even worse, the fate of the middle category of cases under the Feinstein amendment – those with between one-third and two-thirds of class or plaintiff members in the same state – is even more uncertain than it would be under S. 274. Inexplicitly, the criteria federal judges are supposed to use to make removal and jurisdiction decisions for this category of cases would penalize attorneys and their clients who believed state courts may be the best forum for their state law claims. This and other criteria in the Feinstein amendment are all biased against injured plaintiffs and will be used by defendants to rig the system to their benefit.

We oppose S. 274 because it would deprive many people who have legitimate environmental, public health, and consumer state claims, of their right to have their cases heard in state court, it would make it more difficult to successfully litigate class actions and other types of lawsuits, and it would further clog the federal courts. We believe the Feinstein amendment would make these problems even worse.

We urge you to vote against S. 274 and Senator Feinstein's amendment.

Sincerely,

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