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Joan Claybrook, President

September 13, 2004

Re: H.R. 4571 - "Lawsuit Abuse Reduction Act"
H.R. 3369 - "Nonprofit Athletic Organization Protection Act"

Dear Representative:

Tomorrow the House will consider two bills strongly opposed by Public Citizen: H.R. 4571, the so-called "Lawsuit Abuse Reduction Act" and H.R. 3369, the "Nonprofit Athletic Organization Protection Act."

H.R. 4571

Rule 11 of the Federal Rules of Civil Procedure currently provides for the imposition of sanctions at the discretion of judges to deter abuses in the signing of pleadings, motions, and other court papers. H.R. 4571 would make major, substantive changes to Rule 11, returning to earlier problems that were fixed in 1993 amendments to the Rule and bypassing both the Judicial Conference of the United States and the U.S. Supreme Court in the process. For instance, the bill would make sanctions mandatory rather than discretionary if the court found that a filing was frivolous. It would also break new ground by making Rule 11 applicable to state courts cases that affect interstate commerce. The proposed changes would shift the purpose of the Rule from that of deterring frivolous litigation to compensating parties who have the resources and the time to litigate against opposing counsel.

History shows that mandatory Rule 11 sanctions imposed in 1983 were used disproportionately against plaintiffs' (particularly civil rights) attorneys and those attempting to extend the law in support of unpopular causes. For example, in 1991, a study entitled *The Federal Judicial Center's Study of Rule 11*, found that the incidence of Rule 11 sanctions was higher in civil rights cases than other types of cases. As a result, the Rule had a chilling effect on lawsuits brought by workers, consumers and seniors against corporate wrongdoing. Moreover, practical experience under Rule 11 before 1993 demonstrated that the rule spawned satellite litigation about sanctions and created unnecessary rivalries between counsel, which in turn impeded cooperation and settlement.

To remedy these abuses, Rule 11 was revised in 1993, using the process set out in the Rules Enabling Act, with hearings and consideration by the Supreme Court and Congress. H.R. 4571 will reverse many of the positive changes made to Rule 11 by the 1993 amendments.

Other sections of H.R. 4571 are also problematic. Making Rule 11 applicable to cases in state courts that affect interstate commerce ignores the principles of federalism and is perhaps unconstitutional. It is an affront to state courts to tell them how to police their own litigation. Additionally, the amendment deleting Rule 11(d) is unwise. The discovery rules have their own procedures for imposing sanctions – adding Rule 11 would be redundant and would simply lead to more litigation and about which scheme ought to be applicable under the circumstances.

H.R. 4571 would expand litigation and deter legitimate claims brought by plaintiffs. In times of heavy dockets, Congress should be looking for ways to decrease, not increase, satellite litigation, and also avoid rules changes that have a discriminatory impact on civil rights cases. Please vote no on H.R. 4571.

H.R. 3369

H.R. 3369 is designed to protect nonprofit athletic organizations from lawsuits arising from claims relating to the passage or adoption of rules for athletic competitions and practices. Although designed to address personal injury claims by athletes, the language in the bill would also apply to other types of lawsuits, including civil rights, anti-trust, labor, environmental and even contract cases.

H.R. 3369 is fundamentally unfair because it gives broad immunity to the protected organizations while allowing them to sue whomever they wish. It is the height of hypocrisy to suggest that these organizations be allowed to have their day in court while limiting the ability of individual athletes and others to hold them accountable.

Finally, there is no reason for Congress to interfere with each state's ability to decide the level of protection afforded to its athletes and athletic organizations. There is no evidence that nonprofit athletic organizations need the level of sweeping immunity that H.R. 3369 would grant them. We urge you to vote against H.R. 3369.

Sincerely,

Frank Clemente
Director, Public Citizen's
Congress Watch

Jackson Williams
Legislative Counsel