



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

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William T. Pound
Executive Director

February 2, 2005

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of the National Conference of State Legislatures (NCSL), I am urging you to oppose passage of S. 5, the "Class Action Fairness Act of 2005." This legislation will federalize class actions involving only state law claims. S. 5 undermines our system of federalism, disrespects our state court system, and clearly preempts carefully crafted state judicial processes which have been in place for decades regarding the treatment of class action lawsuits. The overall tenor of S. 5 sends a disturbing message to the American people that state court systems are somehow inferior or untrustworthy.

S. 5 amends the Federal Rules of Civil Procedure to grant federal district courts original diversity jurisdiction over any class action lawsuit where the amount in controversy exceeds \$5,000,000 or where any plaintiff is a citizen of a different state than any defendant, or in other words, any class action lawsuit. The effect of S. 5 on state legislatures is that state laws in the areas of consumer protection and antitrust which were passed to protect the citizens of a particular state against fraudulent or illegal activities will almost never be heard in state courts. Ironically, state courts, whose sole purpose is to interpret state laws, will be bypassed and the federal judiciary will be asked to render judgment in these cases. The impact of S. 5 is that state processes will be preempted by federal ones which aren't necessarily better.

NCSL opposes the passage of federal legislation, such as S. 5 which preempts established state authority. State courts have traditionally and correctly been the repository for most class action lawsuits because state laws, not federal ones, are at issue. Congress should proceed cautiously before permitting the federal government to interfere with the authority of states to set their own laws and procedures in their own courts.

NCSL urges Congress to remember that state policy choices should not be overridden without a showing of compelling national need. We should await evidence demonstrating that states have broadly overreached or are unable to address the problems themselves. There must be evidence of harm to interests of national scope that require a federal response, and even with such evidence, federal preemption should be limited to remedying specific problems with tailored solutions, something that S. 5 does not do.

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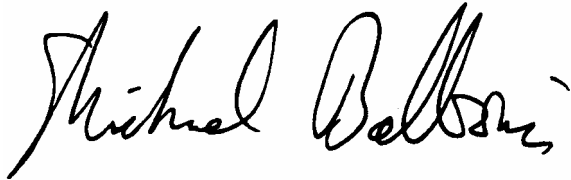
Website www.ncsl.org

February 2, 2005

p. 2

I urge you to oppose this legislation. Please contact Susan Parnas Frederick at the National Conference of State Legislatures at 202-624-3566 or susan.frederick@ncsl.org for further information.

Sincerely,

A handwritten signature in black ink that reads "Michael Balboni". The signature is written in a cursive, flowing style.

Senator Michael Balboni
New York State Senate
Chair, NCSL Law and Criminal Justice Committee