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Business-Backed Class Action Bill Locks Consumers Out of Court

Statement by Public Citizen President Joan Claybrook

This week, the Senate will debate one of the most unfair, anti-consumer bills that we've seen in years. This business-backed class action legislation (S. 5) will lock millions of consumers out of the courthouse. Business interests have spent tens of millions of dollars to pass it to avoid public accountability for fraud and deceptive practices.

Let me say that we recognize the class action system is not perfect. There are reforms that we favor, such as getting rid of collusive settlements that businesses like, but which provide little or no benefit for the class members. But such an important change can be made with freestanding legislation. It does not require a wholesale undercutting of the current class action system, as this bill would do.

As everyone knows, we've seen a landslide of corporate corruption and malfeasance in recent years. If this legislation passes, we'll see even more consumer deception and market misbehavior, because many citizens will no longer have the means to hold unscrupulous business people to account. That is the goal of the 500 lobbyists working to pass this bill: to make it impossible for legitimate claims to be decided in court.

They claim this bill merely allows defendants to move state-filed class actions to federal court. But in fact, it creates a Catch-22 for consumers. Here's why: The legislation will result in most multi-state class actions being heard in federal court. Under S. 5, defendant corporations will be able to force most state-filed class actions lawsuits, which are now heard in state courts, into overburdened federal courts. There, federal judges generally do not certify cases that are based on state consumer protection laws, which means the cases are blocked and can't be considered on the merits. The result will deny millions of Americans justice for marketplace fraud and deceptive practices.

Consumers won't be able to file individual suits or many single-state class action suits because in many cases the amount of recovery would be too small to warrant the expense of a lawsuit against a major national corporation with very deep pockets. So consumers will be locked out.

This is an issue of basic fair play. The American Revolution was fought, in part, over no access to the civil courts so that citizens could redress their grievances. This is a right that is essential in a democracy. But this right will, in many cases, literally be taken away by this legislation.

A coalition of more than 80 consumer, senior, environmental, labor and civil rights organizations – not to mention state and federal judge associations and many state attorneys general – oppose this legislation.

Some of us are urging the Senate to adopt two amendments that will help protect the legal rights of citizens should S. 5 become law. One, called the "consumer amendment," will be offered by Sen. Jeff Bingaman and has increasing momentum. It is simply a procedural change to give federal judges the ability to certify multi-state lawsuits that are based on state law by selecting one state law for processing the case. If this simple measure is not adopted, then we will know that the true intent of this bill is to keep legitimate cases out of court.

The second amendment, to be offered by Sen. Edward Kennedy, would exempt discrimination cases and wage-and-hour disputes from the effects of this bill. Bill proponents have given no justification for including such cases in this legislation. It will only serve to delay cases or outright deny workers the pursuit of justice.

Today, you will hear about a number of state cases that demonstrate the absolute need for state class actions to remain a vibrant part of our judiciary. These cases show how plaintiffs were able to pursue justice in state courts – but the federal courts turned a blind eye to their plight because of procedural technicalities that only serve to shield corporate defendants from accountability.

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