



July 6, 2004

The Honorable Orrin G. Hatch  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510-0001

Dear Mr. Chairman:

AARP strongly supports the consumer rights amendment that Senator Jeff Bingaman intends to offer to mitigate some of the harmful and likely unintended effects of S. 2062 on class action litigation.

The purported goal of S. 2062 is to provide a single forum for cases involving plaintiffs from multiple states; under S. 2062, federal courts would generally hear large class action lawsuits affecting consumers nationwide. Unfortunately, the practical result of S. 2062 in its current form is that these cases will not be heard. Instead, consistent with numerous recent federal court decisions, they will be denied class certification because multiple state laws apply, *the very reason they were sent to federal court*.

A related failing of S. 2062 is that it would deny harmed consumers the right to use their own state courts to bring class actions under state law, even if every class member is from the same state, so long as any "primary defendant" is not incorporated or does not have its principal place of business in that state. Despite the amount of business a major interstate corporate defendant does in a state, no matter how many employees it has there, and no matter how much damage it does in the state, that defendant is likely to be protected from the reach of state laws and state courts. Thus, S. 2062 would limit, not expand, access to justice for all persons who need redress for the harms they have suffered.

If S. 2062 becomes law, consumers will no longer have the option of bringing a multi-state case in state court. Sadly, older Americans are often prime targets of consumer fraud, deceptive sales practices, or sales of defective products, so they stand to lose much under this legislation. While not a perfect remedy, the Bingaman consumer amendment gives federal judges an additional tool to manage multi-state class actions based on state consumer laws. Under the amendment, the judge would have the option to bypass complex state procedural choice-of-law rules, and instead apply a single state law that has a sufficient connection to the case to meet constitutional requirements. Even should a federal judge reject this option, the amendment does not allow denial of class certification on the single ground that multiple state laws apply.

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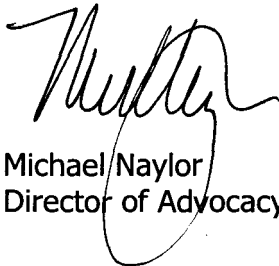
The Bingaman consumer amendment would ensure that S. 2062 accomplishes its intended goal of providing nationwide class actions a single, federal forum. It also would thereby ensure that consumers living in relatively small states will have a fair chance of obtaining relief, even if the number of injured class members in such states is small. Otherwise, unless large numbers of injured consumers happen to reside in the same small state, the number of victims will not justify litigating a complex class action lawsuit to vindicate their rights.

In short, AARP is concerned that persons and entities that commit serious violations of state law may be less likely to be held accountable for wrongdoing, even though many states have now enacted civil rights and consumer protections to fill voids that exist in federal law. When a case is based solely on a violation of state law, we see no compelling reason for limiting state courts' ability to act. Indeed, state courts should have primary responsibility for developing state law in these critical emerging areas. By contrast, federal law often discourages federal judges from playing a significant role in deciding novel and difficult issues of state law.

AARP urges you to support the Bingaman amendment to ensure that multi-state class actions based on state consumer laws are not essentially dismissed because federal judges find the variety of relevant state laws to be judicially unmanageable. Your support of the Bingaman amendment will give millions of injured plaintiffs who do not live in states with resources to pursue the lawsuit their day in court. We strongly urge you to vote for the Bingaman consumer amendment.

If you have any questions or need more information, please contact Larry White or Jo Reed at (202) 434-3800.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Naylor", written in a cursive style.

Michael Naylor  
Director of Advocacy



July 6, 2004

The Honorable Jeff Sessions  
Chairman  
Subcommittee on Administrative Oversight and the Courts  
Committee on the Judiciary  
United States Senate  
323 Dirksen Senate Office Building  
Washington, DC 20510-0001

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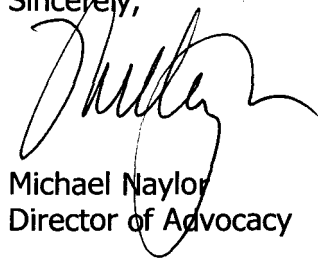
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Sincerely,

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Michael Nayloy  
Director of Advocacy