

Alliance for Justice * Center for Justice and Democracy * Consumer Federation of America * NAACP * National Consumers League * National Employment Lawyers Association * National Women's Health Network * Public Citizen * The National Consumer Voice for Quality Long-Term Care * U.S. Public Interest Research Group

June 23, 2011

The Honorable Lamar Smith, Chairman
U.S. House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Re: Consumer, Employment and Civil Rights Groups Strongly Oppose Proposal That Would Burden Judiciary and Unjustly Penalize Cases by Rolling Back Federal Civil Procedure Rules

Dear Chairman Smith, Ranking Member Conyers, and Members of the Committee:

The undersigned organizations are writing to oppose H.R. 966 the "Lawsuit Abuse Reduction Act," which your committee will markup today, Thursday, June 23. This bill attempts to roll back federal legal procedural rules. If passed, H.R. 966 would burden an understaffed judiciary, prolong expensive litigation, and unfairly penalize consumers and employees as participants in civil lawsuits.

Rule 11 of the Federal Rules of Civil Procedure currently provides that judges may use their discretion to impose sanctions as a means to deter abuses in the signing of pleadings, motions, and other court papers. H.R. 966 seeks to make major, substantive changes to Rule 11, forcing a return 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 a court finds that a filing is frivolous, and would eliminate the provision that requires a party to serve advance notice of a contemplated Rule 11 motion and give the opposing party a chance to withdraw the challenged claims or defenses.

During the 1980s, Rule 11 required that judges impose mandatory sanctions. The rule spawned separate and often unnecessary litigation between opposing counsel, which in turn impeded cooperation and settlement. The disputes over sanctions became a tremendous distraction and costly sideshow from getting to the merits of the individual cases.

Studies also showed that the mandatory Rule 11 sanctions before the 1993 amendments were invoked disproportionately against consumer and civil rights attorneys, as well as those attorneys attempting to extend the law in support of unpopular causes. For example, in 1991, the *Federal*

Judicial Center's Study of Rule 11, found that the number of Rule 11 sanctions was higher in civil rights cases than other types of cases. As a result, the Rule discouraged lawsuits brought by workers, consumers, and seniors against corporate wrongdoing. 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.

Previous proposals of the so-called "lawsuit" bill sought to reverse many of the positive changes made to Rule 11 by the 1993 amendments, which were the fruit of the hard lessons that both litigators and judges had learned about the effect of a mandatory and punitive approach to Rule 11 over the ten previous years. Supporters of rolling back Rule 11 often speculate loudly and without much evidence that "frivolous" lawsuits are increasing. On the other hand, there is ample evidence that the pre-1993 rule unfairly penalized consumers and burdened the judiciary with costly and protracted litigation. Indeed, the "cure" of creating satellite litigation over often meritless Rule 11 motions was viewed by those on the front lines — judges — as worse than the supposed disease of frivolous litigation.

Ignoring the decade of problems that led to these amendments and returning to the flawed mandatory sanctions regime would doom the judiciary to repeat history. In times of an understaffed federal judiciary, Congress should be looking for ways to decrease, not increase wasteful burdens on the courts, and also should avoid rules changes that have a discriminatory impact on civil rights, employment, and consumer cases. We urge you to oppose H.R. 966.

Sincerely,

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