Opinion Pages All Over America Are Saying It:
Don’t Make A Federal Case Out of Class Action Lawsuits

As of October 22, 2003

“Paying scant heed to any notion that justice delayed is justice denied, the U.S. House has gladdened the hearts of several hundred corporate lobbyists and their bosses with passage of the deceptively named Class Action Fairness Act.”
--Raleigh News & Observer Editorial, 7/5/03

“This bill is an obvious attempt to cheat consumers, subvert federalism and shield corporate America from negligence.”
--Arizona Daily Star Editorial, 6/28/03

“The Class Action Unfairness Act … a phony banner of legal reform … would severely undermine the ability of Americans to win redress in the courts for corporate bad behavior that harms consumers, the environment or public health.”
--New York Times Editorial, 4/25/03

“…Alas, the sledgehammer-on-anvil approach by supporters of the legislation calls for dumping virtually all such lawsuits in federal courts. For a variety of very sound reasons, that is a profoundly bad idea.”
--Roanoke Times Column by Editorial Page Editor, 7/6/03

“… There are plenty of good reasons for reforming the manner in which class action lawsuits are handled in the judicial system. But giving a free pass from civil action to Ken Lay, or any of the other corporate malefactors, is not tort reform by any stretch of the imagination.”
--Toledo Blade Editorial, 7/9/03

“Congress is trying to take jurisdiction of state matters for no reason other than to protect their fat-cast friends.”
--Huntsville (AL) Times Column by Editorial Board Member, 4/16/03
“Fairness to Whom?’ … It thus would undermine efforts by the states to enforce their consumer-fraud and environmental-protection laws. Many states conserve governmental resources by relying on private actions to help enforce such laws.”
--Columbus Dispatch Editorial, 5/8/03

“Class Action Unfairness … would usurp state law; it would delay indefinitely hearings for countless people who may be victims of defective products, fraud, discrimination and environmental pollution.”
--Palm Beach Post Editorial, 5/15/03

“Unfortunately, the bill’s reforms would trample the principle of federalism by giving federal courts jurisdiction over matters of state law and would bury federal court dockets in an avalanche of cases.”
--Salt Lake Tribune Editorial, 5/12/03

“And dramatically shifting class-action jurisdiction from state to federal courts won’t achieve justice for litigants more quickly or make settlements fairer for consumers who are left holding measly coupons.”
--Fort Worth Star Telegram Editorial, 6/12/03

“What’s proposed in Congress is a sweeping federal takeover of class-action lawsuits handled by state courts … [The] measures before the House and approved by a Senate committee are unacceptable.”
--Philadelphia Inquirer Editorial, 5/16/03

“Federal judges would have to brush up on unfamiliar state law, along with juggling an increase in their caseloads with no extra resources. That's why Chief Justice William H. Rehnquist, no strong friend of consumer or environmental groups, opposes the legislation.”
--Los Angeles Times Editorial, 4/9/03

“If federal courts weren’t already overwhelmed, this would still be a bad idea because most of the issues arising in class actions are covered by state laws and rules.”
--Tampa Tribune Editorial, 6/11/03
“Citizens’ ability to turn to the courts, where the rule of law still has a fighting chance to prevail over economic and political power, is under assault.”
--Louisville (KY) Courier Journal, Editorial, 8/6/03

“... over-reaches and could create more problems than it solves … robs state legislatures and courts our their control.”
--Monroe (LA) News Star Editorial, 7/30/03

“[The bill] would tilt the scales of justice in favor of defendants, which are often large corporations … Congress should find a way to curb the abuse of class-action lawsuits, but it should do so in a way that preserves citizen access to state courts.”
--Wisconsin State Journal Editorial, 5/27/03

“The Judicial Conference of the United States, which has complained for years about the overcrowding on federal dockets, adamantly opposes the bill. Like the recent malpractice legislation, this bill robs state legislatures and courts of their control.”
--Tennessean Editorial, 7/28/03

“…the legislation would provide little or no advantage for the nation but would do great harm to the states and people injured by defective products such as cars, tires, building materials and prescription drugs.”
--Houston Chronicle Editorial, 4/29/03

“As sympathetic as we are to [H.R. 1115]’s goal, this is a case where the cure is worse than the disease.”
--Augusta (GA) Chronicle Editorial, 6/1/03

“… Americans need a way to band together to sue corporations that do them small injuries – small, but adding up collectively to major harm. That’s why class-action suits exist. But such suits have to be fair. Reform should balance the scales of justice, not take advantage from one side only to give it to the other.”
--Omaha World Herald Editorial, 7/25/03

“Members of Congress who vote for this bill will be voting for erring corporations, not injured constituents.”
--Wilmington (NC) Star News Editorial, 6/1/03
“Where there are frivolous and unmerited lawsuits, state judges are more than able to levy fees and fines. Reform should be made at the state levels.”

--Shreveport (LA) Times Editorial, 6/9/03

“Supporters will say these bills are about reforming a bad process. What they really are about is discouraging a legitimate right to seek redress for wrongdoing -- without making a federal case of it.”

--Detroit Free Press Editorial, 6/11/03

“Large corporations are pushing for the change; stricter federal rules would doubtless squelch many lawsuits. Consumer advocates, environmentalists, civil rights champions, patient rights backers and others who use class action lawsuits to correct injustices oppose the measure.”

--Milwaukee Journal Sentinel Editorial, 4/10/03

“Along with shifting most class-action suits--even those against the likes of Enron now being heard at the state level--to the federal courts, the proposed law contains automatic mid-trial appellate provisions that could add three full years to final disposition of a suit … thumbs the eye of fairness and federalism at the same time.”

--Fredericksburg (VA) Free Lance Star Editorial, 6/8/03
April 25, 2003

The Class Action Unfairness Act

Under a phony banner of legal reform, and aided by an expensive lobbying effort by business interests, the Senate is barreling ahead on legislation that would severely undermine the ability of Americans to win redress in the courts for corporate bad behavior that harms consumers, the environment or public health.

At issue is the future of class-action lawsuits, a valuable mechanism that allows individuals with similar injuries to band together, conserving court resources and easing citizens' access to the courts. There are real abuses in this sphere that Congress could constructively address. It could go after collusive settlements in which lawyers profit handsomely while plaintiffs are shortchanged, or the problem of overlapping or duplicative lawsuits brought in different states.

But the mislabeled Class Action Fairness Act, just approved by the Senate Judiciary Committee, is not a plausible answer. By allowing big polluters and other corporations to move most class-action lawsuits from state courts, where they properly belong, into already overburdened federal courts and by imposing new procedural hurdles, the measure would delay, if not deny, justice to plaintiffs in legitimate class-action lawsuits.

The judiciary committee approved an amendment, offered by Senator Dianne Feinstein, Democrat of California, that is intended to narrow the proposal's reach somewhat and make it seem less blatantly unfriendly to the consumer, environmental, civil rights and public health interests that are trying to defeat the measure. But the face-saving amendment would allow only a small swath of cases to remain in state courts, based on a strange formula that has the makings of a litigation nightmare.

The bill's sponsors, Senators Charles Grassley, Republican of Iowa, and Herb Kohl, Democrat of Wisconsin, may call it reform. But there is no disguising the gift to well-heeled special interests — and no disguising the departure from core principles of federalism, which the Judicial Conference of the United States, the policymaking body for the federal judiciary, cited in its March statement of opposition.

The measure's timing only adds to the disgrace, coming on the heels of the Enron and WorldCom scandals. By rallying colleagues to block the bill's rollback of corporate accountability and American rights, the Senate minority leader, Tom Daschle, would perform a valuable public service.
Citizens’ rights suffer if Congress sends all class-action suits to federal court

For a shorthand pitch on their congressional campaign to shift most class-action lawsuits from state to federal court, U.S. Chamber-backed groups could just quote sportscaster Warner Wolf's trademark: "Let's go to the videotape!"

That's because a video-store lawsuit is fast becoming a staple in the arsenal of anecdotal evidence: the near-legendary Blockbuster movie-rental chain settlement reached in mid-2001 over late fees.

While video customers received coupons for free rentals and dollar-off deals, plaintiff attorneys in the case were awarded $9.25 million.

On the basis of such high-profile lawsuits that provide consumers with puny payouts while attorneys haul in huge fees, proponents want to rein in class-action suits across the board. Make sense?

Well, those opposing this tort reform could well answer that question with their own Warner-ism: "C'mon! Gimme a break!" That includes federal and state judges, consumer, civil rights and environmental groups, and, of course, the plaintiffs' bar.

What's proposed in Congress is a sweeping federal takeover of class-action lawsuits handled by state courts.

The proposal takes aim at a real problem - those coupon settlements, and the trend of massive legal claims such as the recent diet drug cases. Yet its scope is far too broad, its impact on citizens' access to the courts too little understood.

One danger is that legitimate lawsuits could be tossed out or stalled, if defendants are given the right to move cases from state to federal court. The federal docket is crowded, and the shift would put federal judges in the difficult position of interpreting state laws.

In the best instances, class-action lawsuits are the average citizen's legal tool to check corporations and government when they harm large numbers of people. Fines and damage settlements stemming from product-safety suits, environmental hazards, securities fraud, discrimination and the like, also serve society; they stand as a deterrent.

It's a system ripe for abuse, though. So there is a need for greater judicial scrutiny to ensure fair treatment of individuals actually harmed by, say, a faulty product, drug, or chemical-plant spill.
And guess what? The federal judiciary is doing just that. Late this year, its governing body will direct federal judges to ensure settlements are "fair, reasonable and adequate." Translation: Keep lawyers' fees and damage settlements more in balance. State courts should adopt the same standard at once.

There is a role for Congress, but it involves more modest reform to deal with so-called mass torts.

When dozens of lawsuits pop up in different states over the same allegations, federal courts should be able to gather them together - and then rule on the best forum for litigation.

In their present form, measures before the House and recently approved by a Senate committee are unacceptable. Language inserted in the Senate bill by U.S. Sen. Arlen Specter (R., Pa.) preserves some citizens' access to state courts. Even that moderating proposal is said to be under attack, though. (Hang tough, Sen. Specter.)

A better plan: Hold off on any further congressional action. Rewind the tape and debate the issue anew. And then craft modest solutions that do not target class-action abuses at the expense of citizens' right to their day in court.
Thursday, May 8, 2003

'FAIRNESS' TO WHOM?

In politics, it's a good rule to be suspicious of any idea that is paraded under the flag of fairness. Such a label misleads more than it informs.

This rule certainly holds true with the Class Action Fairness Act of 2003, a bill that is touted as working a major reform of the nation's system of adjudicating class-action lawsuits.

This essentially one-sided bill is being rammed through the U.S. Senate with no hearings or debate, while the subject of the bill deserves real debate.

Class-action lawsuits are valuable components of the American justice system. Their purpose is to allow efficient court consideration of numerous identical but small claims against the same defendant. Typical class-action claims involve consumer fraud and environmental pollution.

In practice, there are abuses in the system. Sometimes, class-action lawyers allege a product defect that causes nominal monetary damage to a discernible group of people. The lawyers make money by suing the manufacturer even though many of the "clients" might not even be unhappy with the product.

Abuse works both ways: A company that realizes it is legally liable for, say, defrauding customers sometimes collude with friendly lawyers to sue it in a class action, then settle for pennies on the dollar. The lawyers pocket an easy fee, the company gets off lightly and customers are left holding the bag.

Courts have the power to police such abuses, and proponents of the bill have not shown that abuses are widespread or that the courts have failed such that Congress needs to step in. If there are problems that require a legislative solution, the solution should be one that is carefully tailored, not the blunt instrument of this bill.

The bill, also known as the Grassley-Kohl bill after chief sponsors Sens. Chuck Grassley, R-Iowa, and Herb Kohl, D-Wis., passed the Senate Judiciary Committee on a party-line vote after committee Chairman Orrin Hatch, R-Utah, refused to hold hearings. A companion House bill is on a similar fast track.

Proponents say the bill would curb such abuses as the collusive lawsuits mentioned above. But that and other seemingly consumer-friendly provisions mask the real purpose of the bill, which is to make filing a class action more difficult.

While corporations and ordinary citizens deserve a level playing field, this bill would tilt the field. It would do this by giving federal courts automatic jurisdiction over any class actions that entail more than $2 million in claims. Federal class-action rules are tougher than many states' rules, so fewer suits would be certified as class actions.
Fewer lawsuits would be a general good if the weeding-out is done according to the merits of each case, but the Grassley-Kohl bill in effect would weed out suits by favoring one party over the other. Federal courts have a much larger backlog than the state courts, and decisions would be delayed. In class actions, defendants are typically more able than plaintiffs to wait out delays.

The bill is bad for the court system. More cases would be shoveled into federal courts, which already are overloaded -- in part because of Senate foot-dragging on judicial appointments.

A main drawback to this bill is that Congress is intruding on matters that should be properly left to the states, violating federalism principles that underpin the American constitutional system.

The bill would federalize even those complaints involving defendants and plaintiffs from the same state that are filed in state court under state law. It thus would undermine efforts by the states to enforce their consumer-fraud and environmental-protection laws. Many states conserve governmental resources by relying on private actions to help enforce such laws.

The bill is opposed by groups representing both state and federal judges.

The federal Judicial Conference, led by U.S. Chief Justice William H. Rehnquist, opposes the bill because of workload and federalism concerns. The Conference of Chief Justices, representing the highest judicial officers in each state, argues that any reforms should allow state courts to retain jurisdiction over cases when the harm occurs to citizens of a state within that state.

When legislation is fast-tracked through Congress in the dark of night, fairness is seldom the goal. This bill should be sidetracked.
Class-action unfairness

Today, the U.S. House Judiciary Committee should stop a bill that would give federal courts power over most class-action lawsuits. The action not only would usurp state law; it would delay indefinitely hearings for countless people who may be victims of defective products, fraud, discrimination and environmental pollution.

The misnamed Class Action Fairness Act would send to federal court disputes over more than $2 million with at least one plaintiff and one defendant living in different states. That standard would divert virtually all class-action litigation, swamping already overloaded federal districts, which have fewer judges than state courts. It would force citizens to wait years for a judge to hear their cases, effectively denying them a chance at justice.

Nationally, the median waiting time for civil cases that went to trial last year in federal court was nearly 21 months, from filing to disposition. Fifteen percent of all federal civil cases were more than 3 years old. Cases did not age as slowly in the Southern District of Florida, from Vero Beach to Key West. It conducts more jury trials than any other federal district court. There were 7,499 new civil cases filed in this district last year, and 7,761 were terminated. But South Florida's federal judges also handled an average of 441 new cases each, 7 percent above the national average.

The bill, proposed by Sen. Charles Grassley, R-Iowa, and Sen. Herb Kohl, D-Wis., both members of the Senate Judiciary Committee, claims to correct class-action abuses -- frivolous lawsuits, "state-shopping" for sympathetic judges and juries, and multimillion-dollar awards that leave plaintiffs with meager payments but give attorneys hefty fees. But making those changes is a job for courts and state legislatures, and reform efforts are under way.

The bill proposes many remedies adopted five months ago by the federal Judicial Conference of the United States: hearings to determine whether a settlement is fair, clearer language in notices to class members and new procedures for approving attorneys' fees. Those reforms still would allow legitimate class-action settlements, which curbed fraudulent business practices and hazardous dumping, improved workplace conditions and removed shoddy and dangerous merchandise from the market.

State and federal judges, consumer and public-health advocates, and environmentalists oppose the bill, and similar versions have failed in the two prior Congresses. This year, however, some senators have chosen to heed lobbying by car- and tire-makers, pharmaceutical companies, health maintenance organizations and insurance companies and other business interests. The full Senate is about to vote on the legislation. The House should not let the bill get that far.
Dubious Class Actions

In a wonderful example of creating a cure that is worse than the disease, the U.S. Senate is considering a bill that attempts to clean up abuses of class-action lawsuits. Unfortunately, the bill's reforms would trample the principle of federalism by giving federal courts jurisdiction over matters of state law and would bury federal court dockets in an avalanche of cases.

The title of the Class Action Fairness Act of 2003 is an insult to truth in labeling. It would make the federal courts, rather than state courts, the forum for any suit in which the plaintiffs and the defendant are citizens of different states and the sum in dispute exceeds $5 million. These thresholds are too low, and would force many class-action lawsuits into the federal courts, which already are creaking under the weight of heavy case loads.

The practical effect would be that plaintiffs would have to wait years to have their lawsuits heard, if they were heard at all. Justice delayed would be justice denied.

This is not just idle speculation. The professional associations of both the federal and state judiciaries have objected to the bill.

An amendment to the bill by Sen. Dianne Feinstein, D-Calif., would create an exception to federal jurisdiction in cases where two-thirds of the plaintiffs and the primary defendants were citizens of one state. But in complex cases alleging consumer fraud, for example, it is sometimes impossible to determine the proportion of victims who live in each state.

We agree with Sen. Orrin Hatch, a co-sponsor of the bill, that abuses of class actions should be eliminated. Unscrupulous attorneys sometimes file these suits, shop for a sympathetic state court and win multimillion-dollar awards, the bulk of which go to the lawyers. The legions of plaintiffs sometimes end up with nearly worthless coupons.

The Class Action Fairness Act, which passed favorably out of the Senate Judiciary Committee that Sen. Hatch chairs, does contain a number of reforms designed to prevent these abuses. But its core provision that would shift these cases to the federal courts is both overbroad in its approach and impractical in its application. It is also disturbing that Sen. Hatch did not conduct hearings on the bill.

A better approach would be to enact reforms in the few states where most of the abuses occur, including Alabama, Illinois and Texas. Alabama's legislature has taken action, and judges and legislators are working on the problem in other states. A one-size-fits-all solution at the federal level is not the answer.

While class actions have been abused, others of them have won important judgments that improved product safety and punished irresponsible corporate behavior.

Yes, the process needs to be cleaned up. But a cure that kills the patient is no cure at all.
Threat to Class Actions

Some lawyers representing consumers and injured workers in large class actions have taken advantage of their clients. No big shock there. They have paid themselves multimillion-dollar fees and, in doling out settlement funds, overcompensated workers with minimal injuries, often at the expense of those more severely injured. However nasty these excesses, they do not mean that class-action lawsuits should be severely limited, as proposed by Sens. Charles Grassley (R-Iowa) and Herb Kohl (D-Wis.).

Class actions allow people with similar injuries to band together, enabling those of modest means to seek redress for environmental damage, protect the public's health and improve workplace conditions. As a result of one suit brought by environmentalists in the early 1990s, California public health officials began monitoring blood lead levels in poor children, as required by law. A Pennsylvania case led to substantial settlements to patients who had been referred by their HMO to a fraudulent, unlicensed physician.

A Grassley-Kohl bill working its way through the Senate has some prominent selling points -- it sets fairer rules for distributing damage awards and would curb high legal fees -- but these are window dressing for the bill's real goal of blocking and delaying class actions.

The measure, S 274, would transfer most class actions filed in state courts to federal court and force these cases through new procedural hoops. State judges and elected officials like California Atty. Gen. Bill Lockyer oppose the bill, saying it undermines the sovereignty of state courts. S 274 faces a vote Thursday in the Senate Judiciary Committee.

It is no surprise that corporations, including HMOs, drug makers and insurers, are prominent supporters of the bill. Anxious to get trial lawyers off their backs, they argue that transferring suits into federal courts would hobble lawyers who "shop" for a state with a lenient negligence standard in which to file their cases, or for a county known for sympathetic judges or generous juries.

Yet if the Grassley-Kohl bill passes, the federal judge in many cases will have to apply the law of the state where the case was filed, so shopping around will not be deterred. Federal judges would have to brush up on unfamiliar state law, along with juggling an increase in their caseloads with no extra resources. That's why Chief Justice William H. Rehnquist, no strong friend of consumer or environmental groups, opposes the legislation.

A better solution to frivolous suits and lawyer shakedowns is for state judges to impose tighter scrutiny from the start -- on whether the suit qualifies as a class action to begin with, what deals the lawyers have cut for themselves and how the injured or defrauded clients would be paid. State judges already have this authority. They need to use it more effectively.
CONGRESS SHOULD CURB CLASS-ACTION REFORM; Lawmakers ought to rein in the abuse of class action lawsuits, but the proposal co-written by Sen. Kohl is flawed

The examples of class-action lawsuits that yield jackpots for lawyers but little for plaintiffs show a need to rein in abuse. But the proposal now in Congress to reform class-action justice goes too far.

Congress ought to take the best elements of the proposal, co-written by Wisconsin Sen. Herb Kohl, to fashion a better plan.

A class-action lawsuit is filed on behalf of a group of individuals, all of whom have the same complaint. It is a valuable vehicle for consolidating claims, but it is subject to abuse. Congress has received testimony from plaintiffs whose awards did not cover their attorney's fees and from people who were awarded nearly worthless coupons while their lawyers profited handsomely.

A notorious example was the 2001 settlement of a class-action suit against the Blockbuster movie-rental chain over late fees. The plaintiff's lawyers got $9.25 million out of that deal. The plaintiffs got movie coupons.

That's an unjust result.

Unscrupulous lawyers have even created a class-action industry for profit. Two Chicago lawyers found clients to sue Penthouse magazine for $8.99 each because they bought copies of the magazine to see photos of Anna Kournikova, which turned out to be photos of someone else. The underlying motive for the suit was to reach a settlement lucrative to the lawyers.

Legislation introduced by Kohl and Sens. Charles Grassley, R-Iowa, and Orrin Hatch, R-Utah, aims to curtail such abuse. But its most controversial provision poses a problem. The provision would allow a defendant to move a lawsuit of more than $2 million from a state court to a federal court. The option of choosing the most favorable court would tilt the scales of justice in favor of defendants, which are often large corporations. Currently, the system is tilted in favor of plaintiffs because they can shop around among various states to find the most sympathetic courts. That leeway is worth examining, but simply reversing the favoritism to the defendants' advantage is unfair.

Language inserted in the Senate legislation by Sen. Arlen Specter, R-Pa., helps to preserve plaintiff access to state courts, but the language is an incomplete guarantee and it's far from clear it will remain in the bill.
Another problem is that defendants are likely to shift lots of cases to federal courts. But federal courts are hardly looking for more cases to handle. Shipping class-actions to federal courts raises the risk of justice delayed by a backlog of federal cases.

Other provisions of the proposal make more sense. For example, the bill would require that all notices of settlements be written in understandable terms and include the amount and source of lawyers' fees. The bill also requires that courts give scrutiny to lawyers' fees in settlements where plaintiffs receive non-cash awards like coupons. And the bill would prohibit lawyers from paying bounties to encourage plaintiffs to join a suit.

Congress should find a way to curb the abuse of class-action lawsuits, but it should do so in a way that preserves citizen access to state courts.
Editorial

DECLASSE / Nominal conservatives assault once-cherished federalism

A major tenet of mainstream conservative philosophy is the limiting of the federal government's power and the entrusting of most political matters to the states, which are closer than Washington to the governed. That principle, known as "federalism," lies at the heart of the nation's history and its Constitution.

When the spirit of federalism does not suit the convenience of big business, however, some nominal conservatives in Congress are all too ready to betray it. An example is a bill that would redirect most new class-action lawsuits from state to federal courts.

Known as the Grassley-Kohl Bill after its sponsors, Sens. Charles Grassley, R-Iowa, and Herb Kohl, D-Wis., the legislation would provide little or no advantage for the nation but would do great harm to the states and people injured by defective products such as cars, tires, building materials and prescription drugs.

This assessment is supported by the action of Senate Judiciary Committee Chairman Orin Hatch, R-Utah, who raced the bill through committee without a single hearing. Any hearing would have revealed the bill's weaknesses, as well as opposition by both state and federal judges.

The Grassley-Kohl legislation pending in both House and Senate would swamp the federal courts already understaffed and overburdened with drug, corporate corruption and homeland security cases. In many instances, justice would be delayed and therefore denied. In some cases, revised federal rules would prohibit legitimate class action suits from being heard.

Should it become law, Grassley-Kohl would undermine states' ability to enforce their consumer and environmental protection laws. The undermining would not be an unintended consequence, but a principal goal of the legislation's sponsors.

In Texas, those sponsors include Sen. John Cornyn and Rep. Tom DeLay. The next time these politicians express their love of federalist principles, their constituents will have cause to doubt their sincerity.

Most class-action suits are and should remain the province of the states. Any abuses of class-action suits should be addressed by the states, as the Texas Legislature is attempting to do this session.
Wrong litigation curb

Curbing predatory class action lawsuits should be high on the nation's agenda. Lawsuits cost corporate America billions of dollars to insure and defend against - resulting in higher prices to consumers. Settlements often provide little significant compensation to victims, yet they hugely enrich plaintiffs' lawyers.

That's not justice; it's legalized extortion. But it explains why there's growing sentiment in Congress to pass something called the Class Action Fairness Act. It has already been approved by key committees in both chambers of Congress and is slated for a vote by the full House this week.

As sympathetic as we are to the bill's goal, this is a case where the cure is worse than the disease. We recommend against it.

The measure calls for removing most class action lawsuits from state courts and state legislatures' oversight and dumping them into the federal courts.

Hello! Congress knows better than most - except for federal judges and prosecutors - that the federal judiciary is already terribly overburdened. As a practical matter, it needs a whole new category of lawsuits on its plate about as much as police need more criminals on the streets.

As a matter of principle, HR 1115 is a bad idea because it would mark a new federal encroachment on states' rights. The legislation is opposed by the Judicial Conference of the United States, headed by U.S. Supreme Court Justice William Rehnquist, not only because it "would add substantially to the workload of the federal courts" but also because it's "inconsistent with the principles of federalism."

The Conference of Chief Justices, representing the highest judicial officers in each of the 50 states, is also opposed, pointing out the separate states are far better equipped in terms of manpower and precedent to deal with class action suits within their borders than the federal system is.

Besides, federal judges are involved with class actions to the extent that they handle appeals. Other foes of the legislation include groups representing minorities, consumers, environmentalists, senior citizens and public health professionals.

Finally, federal and state courts are already embarking on their own class action reforms, and they are far better suited for the task than Congress.
It's your rights they want

The companies that make tires that unravel, SUVs that roll over, drugs that cause strokes and HMOs that deny you proper medical care are sick and tired of being sued.

They and other potential defendants want the Republican Congress to protect them from you, and it's been gratifyingly obedient so far.

In the next few days, the House of Representatives might well jump through the hoops for its campaign contributions. The companies' goal is to minimize "class action" suits – the ones in which injured customers or their survivors band together, hire good lawyers and sue the daylights out of them.

The laws in some states give consumers a better break than federal laws do. That's why these corporations want suits sent to the federal courts, where weaker laws might apply.

As a bonus, getting such cases heard in federal courts might take a lot longer. Federal judges are relatively few and often up to their gavels in work already.

Speaking for the Judicial Conference of the United States, Chief Justice William Rehnquist has asked Congress not to pass this "reform." He also noted that it would be "inconsistent with the principles of federalism."

Federalism, of course, is the religion of many administration officials, congressional leaders and judges – unless it stands in the way of what they want. In such cases, it can be ignored.

Of course, this legislation isn't about constitutional theory. It's about power. These companies don't want ordinary people to get together and sue them. Phooey on federalism.

Members of Congress who vote for this bill will be voting for erring corporations, not injured constituents.
June 9, 2003

**Congress must kill class action bill**

The "Class Action Fairness Act" is classic misnomer that will tilt justice in favor of corporate America at the expense of consumers.

As early as today, the Republican-led U.S. House of Representatives will consider a measure - HR 1115 - that strikes a blow against federalism. Although this bill is portrayed as a modest effort to end "abusive" class actions brought in state court, in the words of consumer watchdog Public Citizen, it is actually an unprecedented attempt to shift cases that have historically been heard in state court to the federal courts.

Congress appears to be meddling in areas that should be left to states whose laws have been violated. Practically speaking, the clogged federal system would be further overloaded, delaying cases and justice for years. That sort of delay often serves to help those with the deepest pockets.

This legislation - the Senate has another in S 274 - would allow corporations to pick the most favorable turf on which to make their stands.

No doubt abuses occur in our litigious society, but class-action suits - a valuable tool for aggregating small claims that otherwise might not warrant individual litigation - help keep corporations honest, mindful of consumer health and safety. Where there are frivolous and unmerited lawsuits, state judges are more than able to levy fees and fines. Reforms should be made at the state levels.

Louisiana's Democratic senators are split on the issue. John Breaux does not support the legislation while Mary Landrieu is in fact a co-sponsor. Northwest Louisiana Congressman Jim McCrery, a Republican, has not indicated which way he will vote.

Among those wary of such radical reform is the Judicial Conference of the United States, headed by Supreme Court Chief Justice William Rehnquist. That group has urged Congress not to eliminate the role of state courts.

Also, the states' Conference of Chief Justices in a letter to House Judiciary Committee Chairman Henry Hyde said it sees no "hard evidence of the inability of state judicial systems to hear and decide fairly class actions brought in state courts."

For the sake of federalism and consumers, Congress should reject the Class Action Fairness Act.
Class Action: Plan seems less about justice than helping business

Now don't go making a federal case of it...

That old expression is a good one to direct at Congress, since the House and Senate appear to be racing each other to pass bills that would discourage class-action lawsuits by shifting them from state courts to the federal system. This is an interesting tack for a lot of conservative lawmakers who profess to want less federal involvement in American lives. Federal judges, already buckling under case overload, are opposed to it. So are state judges. Consumer groups see the bills as an overkill remedy for a system that's already being repaired by judicial initiatives.

Class-action suits allow one or a few people to seek damages for hundreds or even thousands of individuals who may have been affected by a bad product or policy. They are, understandably, the bane of big business and have been outrageously lucrative to some lawyers. But they also have produced changes in dangerous products or practices and held companies accountable.

Shifting such suits to federal courts sets up new procedural hurdles, appeal possibilities, and delays even before the merits of a claim are addressed. Even suits in which the entire “class” of potentially harmed people resides in the same state as the company being sued would be moved to the federal system, where cases languish years longer than in state courts.

The House version of the legislation is particularly offensive because it is retroactive, meaning it would affect class-action claims now pending against Enron, WorldCom, Adelphia and other corporations accused of defrauding investors while their executives made millions of dollars.

Supporters will say these bills are about reforming a bad process. What they really are about is discouraging a legitimate right to seek redress for wrongdoing -- without making a federal case of it.
Unfair federal fairness act

A push is under way in Congress to make federal cases of class action lawsuits now brought in state court. Today, a Senate committee will take up the ironically labeled Class Action Fairness Act, which would make it harder for victims to right commonly shared wrongs in court, would inappropriately usurp state power and would weigh down the already overburdened federal judiciary with many new cases a year. This ill-conceived measure ought never to see the light of day.

The legislation would steer into federal court many cases now filed as class actions in state courts. If at least $2 million is at stake and if at least one plaintiff and one defendant live in different states, then the defendant can make the case federal.

Large corporations are pushing for the change; stricter federal rules would doubtless squelch many lawsuits. Consumer advocates, environmentalists, civil rights champions, patient rights backers and others who use class action lawsuits to correct injustices oppose the measure. And they have notable company: the federal and state judiciaries. The state judiciary questions the usurpation of power. And the federal judiciary, headed by Chief Justice William Rehnquist, notes the added crushing workload. Members of Congress should heed these voices of reason.

A class action is a way a group of victims too numerous to name in a lawsuit can redress their grievances and stop an unfair practice. Often (but not always) the damages are too meager to spur a victim to sue singly. Take a hypothetical phone company that intentionally overcharges its customers an average of a nickel a month for five years. A class action suit is a way to make the company pay for its fraud.

Class actions have served noble causes, such as the fight against racial discrimination. They also have been abused on occasion. The abuses ought to be addressed, but Congress shouldn't close off state courts as an option for such suits. Pushing this load on the federal judiciary would upset the present balance between state and federal power. And it would slow justice. State judges are in a better position to handle the suits in a timely manner because they far outnumber their federal counterparts.

The Judiciary Committee will take up this measure today. Surprisingly, Sen. Herb Kohl (D-Wis.) is a chief sponsor. He should reconsider. And the committee should kill the unfair Class Action Fairness Act.
June 8, 2003

Not a class act

FEDERALISM--"states' rights"--is a fundamental constitutional tenet that seeks to prevent the centralization of political power. Sometimes the principle is abused, as when the Jim Crow South cited it to perpetuate mistreatment of blacks. In recent years, however, Republicans, especially, have invoked federalism beneficially to repeal the ludicrous national 55 mph speed limit, allow state experimentation with welfare reforms, and so forth.

Now legislation called the Class Action Fairness Act (CAFA) raises the question: Do congressional Republicans really believe in federalism, or are they phonies?

The act, which may be debated by the House of Representatives tomorrow, would serve Big Business by giving federal courts jurisdiction over most class-action suits--i.e., suits involving many plaintiffs allegedly injured by a company's actions or products. State courts are, grouses the U.S. Chamber of Commerce, so unpredictable and different when trying companies with a national scope. But egregious state judgments against firms can be appealed in the federal system. To begin such cases in that system is, literally, unprincipled (see above) and impractical.

As recently as 1999, the federal courts already were groaning under 17,126 civil cases that had been pending for more than three years, and their class-action caseload (some 3,251 suits) had grown 23 percent in the previous two years. All this afflicted the federal system, keep in mind, before Democratic U.S. senators put the stall on President Bush's U.S.-court nominees. With planned onslaughts like the CAFA, notes U.S. Supreme Court Chief Justice William Rehnquist, "just filling the vacancies will not be enough." He adds: "If the federal system ends up with the same potpourri of cases that state courts must necessarily decide, it may lose the special competence that now sets it apart from many state systems."

Along with shifting most class-action suits--even those against the likes of Enron now being heard at the state level--to the federal courts, the proposed law contains automatic mid-trial appellate provisions that could add three full years to final disposition of a suit. Large corporate defendants have a huge edge in such costly wars of procedural attrition. Thus, CAFA thumbs the eye of fairness and federalism at the same time. Only a few independent-minded congressional Republicans such as 1st District Rep. Jo Ann Davis can stop enactment of this deeply anti-conservative legislation.