March 7, 2017

Re: H.R. 985 Floor Vote

Dear Representative:

The National Association of Consumer Advocates, a nonprofit association actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means, writes to urge your opposition to H.R. 985. For the floor vote, H.R. 985 combines the so called "Fairness in Class Action Litigation Act of 2017" with the Furthering Asbestos Claim Transparency Act of 2017. While both proposals should be summarily rejected due to the unjustified threat they present to consumers' and victims' access to the civil justice system, this letter specifically addresses the unnecessary proposed changes to individuals banding together in class actions. We urge a NO vote on H.R. 985.

First, House supporters of H.R. 985 have failed to explain why this bill is necessary. The House Judiciary Committee literally refused to examine the policy considerations, reporting H.R. 985 without even a hearing. Second, the legislation's extreme proposals would disrupt class action proceedings with onerous and unnecessary requirements, cutting off access to justice for millions of Americans injured by corporations that break the law. Meanwhile, corporations would be free to disregard state and federal protections for consumers and workers without fear of being held accountable.

In many cases, where a corporation's conduct is so rife and pervasive that it harms a group or groups of individuals, individual dispute resolution has not been sufficient to enforce consumer protection laws for all persons affected by the bad behavior. As is typical in these cases, most individuals lack the resources to take their cases to court individually. The class action device, on the other hand, for decades has proven effective in efficiently resolving groups' claims by rectifying predatory behavior and compensating injured victims.[1] They enable consumers to seek remedies under consumer protection laws when their rights are violated. The ability of consumers to band together in class or collective actions also gives corporations much-needed incentive to comply with the law.

Already, there are considerable obstacles that block consumers from banding together to seek redress. Increasingly, corporations use their fine-print contracts to prohibit consumers and workers from going to court or joining their claims in class or collective actions. Instead, corporations require claims to be resolved in private, secret arbitration proceedings on an individual basis. The recent Wells Fargo "fake account" scandal is a prime example of how forced arbitration clauses prevent groups of consumer claims from going forward. Wells Fargo

[1] See, e.g, Benjamin Mueller, *Victims of Debt Collection Scheme in New York Win $59 Million in Settlement*, THE NEW YORK TIMES, Nov. 13, 2015, http://nyti.ms/2lXzqKf.

is relying on its fine-print consumer contract terms to deny its customers the ability to band together in court to pursue claims for losses they suffered when the bank's employees opened millions of fake accounts in the customers' names without permission.[2]

The provisions of H.R. 985 would exacerbate the corporate attack on consumers' access to justice. Meanwhile, it would do nothing to improve class action adjudication. Instead, the bill appears to be a cynical maneuver simply meant to wipe out a crucial mechanism in the civil justice system that remedies widespread harms and systemic wrongdoing.

For example, a requirement in the bill that each class member suffer the same type and scope of injury from the conduct potentially would drastically reduce recovery for individuals with different injuries even though they are harmed by the same misconduct. Classes typically include a range of individuals, who almost never suffer precisely the same degree of injury. If the terms are defined restrictively, the requirement would rob consumers and workers of their ability to band together.

The bill provision that bars consumer lawyers from having ties to the named plaintiffs or class representatives, including being a relative, present or former client or any contractual relationship with class counsel, is overbroad and may be a potential violation of their constitutional rights of free speech and association. The bill would also obstruct the ability of legal services organizations to represent low-income Americans who are in need of free legal services. Class action representatives and named plaintiffs in legal services' cases are often prior or current clients. Many class actions, specifically those brought by non-profit lawyers, seek to effect systemic change and right wrongs suffered by vulnerable populations.

The legislation also indicates an unwarranted lack of confidence in courts' administration of class action litigation. It removes courts' discretion in managing litigation as they consider motions; denies them the flexibility to consider circumstances in calculation of fees and costs; and burdens appellate courts by requiring them to hear every appeal, no matter how frivolous, after certification determinations. These provisions would foster a prolonged and protracted process that would unduly delay justice for injured consumers. Ultimately, this legislation would discourage and deny outright individuals' ability to file or participate in class actions to expose wrongdoing and seek redress against corporate lawbreakers.

It is clear that restricting consumers' and workers' participation in class actions through exclusionary provisions and unreasonably burdensome requirements is contrary to the public interest and would deprive millions of Americans of their rights. We urge you to reject H.R. 985.

Sincerely,

Christine Hines
Legislative Director
National Association of Consumer Advocates

[2] Michael Corkery et al, *Wells Fargo Killing Sham Account Suits by Using Arbitration*, THE NEW YORK TIMES, DEC. 6, 2016, https://nyti.ms/2k4yglo.