



Oppose Proposals That Would Cut Off Americans' Access to Court

In March 2017, the U.S. House of Representatives passed bills that would unnecessarily burden the civil justice system. The bills, particularly legislation that would add onerous and unnecessary requirements on class actions, are an unwarranted attack on Americans' access to court. In addition, supporters of the legislation failed to explain why the proposals are necessary. The U.S. House Judiciary Committee refused to examine the policy considerations, reporting the bills without even a hearing. The bills would:

- a) unnecessarily delay and deny Americans' ability to seek remedies for injuries caused by wrongdoing;
- b) undermine already established processes for federal court rulemaking and would unduly interfere with judges' decision-making and ability to manage their cases, causing further obstruction and delay; and
- c) add to already existing obstacles, such as forced arbitration clauses, in the path of consumers and workers seeking redress in court for widespread or systemic harm.

The U.S. Senate should reject these bills.

H.R. 985 - Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017 (passed the House)

Class actions are a critical device for American consumers, workers and small businesses to seek remedies when ripped off or exploited by corporations. They have resolved widespread and systemic harm related to violations of state and federal consumer protection, civil rights, investor rights, workplace rights and fairness, fair competition laws, and other protections. For decades, class actions have effectively halted illegal corporate conduct, prevented risky behavior, and compensated injured victims. H.R. 985 passed the U.S. House in a close vote and with no bipartisan support. There was bipartisan opposition: Democrats and 14 Republicans voted NO.

- The bill's provisions would add requirements ("same type and scope of injury") that if defined strictly, would be virtually impossible to meet, robbing individuals of the ability to band together in class actions.
- The bill would bar class actions where the class attorneys have previous ties to the named plaintiff or class representative including being a relative, present or former client. It would obstruct the ability of nonprofit attorneys, including legal services organizations, to represent low-income Americans and vulnerable populations.
- The bill's burdensome payment scheme for attorneys would discourage representation of consumers and workers injured by widespread or systemic wrongdoing.
- The proposal would remove courts' discretion in managing litigation as they review motions; deny them the flexibility to consider circumstances during the discovery process and in calculation of fees and costs; and substantially add to the caseload of appellate courts.
- It would interfere with the work of the federal courts' policy making body, the Judicial Conference of the United States, which works to improve class action procedures under Rule 23 of the Federal Rules of Civil Procedure.

H.R. 720 - Lawsuit Abuse Reduction Act (passed the House)

H.R. 720 would make major, substantive changes to Rule 11 of the Federal Rules of Civil Procedure, bypassing both the Judicial Conference of the United States and the U.S. Supreme Court in the process. Rule 11 provides

judges with authority to sanction attorneys for filing frivolous claims and defenses. It provides judges with discretion to decide, on a case-by-case basis, if sanctions are appropriate. H.R. 720 would remove this judicial discretion, mandating sanctions. It would reinstate a rule put into effect in 1983 that was so unworkable it was rescinded in 1993 after many problems and nearly universal criticism. Among those problems were: the rule had a chilling effect on the filing of meritorious civil rights, employment, environmental, and consumer cases; the rule was overused in civil rights cases as sanctions were sought and imposed against civil rights plaintiffs more than against any other litigants in civil court; and the rule burdened the already strained federal court system with satellite litigation over compliance with the rule. These burdens adversely affected cases of all types, including business-to-business civil litigation. Congress should be looking for ways to decrease, not increase, wasteful burdens on the courts, and should avoid rules changes that have a discriminatory impact on civil rights, employment, environmental, and consumer cases.

H.R. 725 - The Innocent Party Protection Act (passed the House)

This bill would upend long established law in the area of federal court jurisdiction. It would allow corporations to move cases properly brought in state courts into federal courts. It would impact cases where a federal district court considers a plaintiff's motion to remand a case to state court, after a defendant has removed the case from the state court to federal district court. Corporate defendants typically prefer to litigate in federal court. The legislation would help defendants to keep the case in federal court by ordering the federal court to consider evidence and specify four findings that would require a federal district court to deny a plaintiff's motion to remand. H.R. 725 would result in additional time, expense, and inconvenience for the plaintiff and witnesses. The bill would result in needless micromanagement of federal courts and a waste of judicial resources. While it purports to fix a non-existent problem, it creates problems itself.

H.R. 732 – Stop Settlement Slush Funds Act (reported out of House committee; not yet voted on by full House)

Under existing laws, settlement terms that result from federal enforcement actions can sometimes include payments to third parties to advance programs that assist with recovery, benefits, and relief for communities harmed by lawbreakers, to the extent such payments further the objectives of the enforcement action. This bill would cut off any payments to third parties other than individualized restitution and other forms of direct payment for "actual harm." That restriction would handcuff federal enforcement officials by limiting their ability to negotiate appropriate relief for real harms caused to the public by illegal conduct that is the subject of federal enforcement actions. This bill would be a gift to lawbreakers at the expense of families and communities suffering from injuries that cannot be addressed by direct restitution.

ASK - Lawmakers must reject proposals that would unnecessarily delay and deny Americans' ability to seek remedies for injuries caused by wrongdoing, and that would undermine established processes for federal court rulemaking and unduly interfere with judges' discretion, causing further obstruction, costs and delay.

###