Visclosky	Weller	Wicker
Waters	Wexler	Wu

NOT VOTING—13

Ackerman	Johnson (CT)	Smith (WA)
Cubin	Musgrave	Vitter
Davis (IL)	Nunes	Wilson (NM)
Eshoo	Rothman	
Gephardt	Sherman	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1204

So the Journal was approved.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. SHERMAN. Mr. Speaker, I was unavoidable detained during rollcall votes 265, 266 and 267. Had I been present, I would have voted: ''No'' on rollcall vote 265 and 266 and ''yes'' on rollcall vote 267.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 1115.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

CLASS ACTION FAIRNESS ACT OF 2003

The SPEAKER pro tempore. Pursuant to House Resolution 269 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 1115.

□ 1205

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 1115) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes, with Mr. LATOURETTE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 1115, the Class Action Fairness Act of 2003. In years past, the occasional news account of some outrageous class action verdict or settlement was light humor. Now the stories are so common there is no punch line, the class action judicial system itself has become a joke, and no one is laughing except the trial lawyers, all the way to the bank.

Abuse of State class action lawsuits is now systemic and this mounting crisis is a threat to the integrity of our civil justice system and a persistent drain on the national economy. Since this House passed nearly identical class action reform legislation in the 107th Congress, a bill which died in the Democrat-controlled Senate, the problem has only gotten worse. One major element of the worsening crisis is the exponential increase in State class action cases, many of which deal with national issues and classes.

In the past 10 years, State court class actions filing nationwide have increased over 1,000 percent. In certain ''magnet courts'' known for certifying even the most speculative class action suits, the increase in filings over the last 5 years is approaching 4,000 percent. Take, for example, the court in Madison County, Illinois, a rural county of 250,000 people which is on pace for a projected 3,650 percent increase in class action filings over 1998 levels. Eighty-one percent of those cases sought to certify nationwide cases, including all nationwide Sprint customers ever disconnected on a cell phone, all Roto-Rooter customers nationwide whose drains were repaired by unlicensed plumbers, and all nationwide customers who purchased a ''limited edition'' Barbie doll at a higher price.

So why are all these class action cases filed there? Madison County did not experience a similar growth in population during this time, nor did it suddenly become a hub for interstate commerce. Furthermore, there is no evidence to suggest that the good people of Madison County are somehow cursed or more plagued by injuries than the average citizen. Indeed, the only explanation for this phenomenon is aggressive forum shopping by trial lawyers to find courts and judges who will act as willing accomplices in a judicial power grab, hearing nationwide cases and setting policy for the entire country in a local court.

A second major element of the present class action crisis is a system producing outrageous settlements that benefit only lawyers and trample the rights of class members. Class actions were originally created to efficiently address a large number of similar claims by people suffering small harms. Today they are too often used to efficiently transfer large fees to a small number of trial lawyers doing great harm. The present rules encourage a race to any available State courthouse in hopes of a rubber-stamped nationwide settlement that produces millions in attorneys' fees. Clearly, some trial lawyers are winners in this race, but as the Justice Department testified at the committee's last hearing, the losers in this race are the victims who often gain little or nothing through the settlement, yet are bound by it in perpetuity. These same victims and all consumers often bear the cost of these settlements through increased prices for goods and insurance.

Mr. Chairman, I would like to share with Members a survey that was published in the USA Today newspaper on Monday, March 24, 2003: ''Opinions on Class Action Lawsuits, Who Benefits the Most From Class Action Lawsuits.'' Forty-seven percent said lawyers for plaintiffs, 20 percent said lawyers for companies, 12 percent said don't know, 9 percent said plaintiffs, 7 percent said companies being sued, and 5 percent said buyers of products.

Two-thirds of the American public according to this survey indicate that the beneficiaries of class action lawsuits are lawyers and only 14 percent said plaintiffs and buyers of products. This bill is designed to change this mix so that the consumers and the plaintiffs are the ones that benefit rather than lawyers for plaintiffs or lawyers for defendants.

Summarizing the problem last November, The Washington Post editorial board in a critique of the present system wrote:

''Class actions permit almost infinite venue shopping; national class actions can be filed just about anywhere and are disproportionately brought in a handful of State courts whose judges get elected with lawyers' money. These judges effectively become regulators of products and services produced elsewhere and sold nationally. And when cases are settled, the clients get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket only Congress can fix.''

Mr. Chairman, today Congress has an opportunity to end this extortion racket and fix this problem. Article 3 of the Constitution empowers Congress to establish Federal jurisdiction over cases between citizens of different States, but current rules on class actions require that all plaintiffs and defendants be residents of different States and that every plaintiff's claim be valued at $75,000 or more. These jurisdictional statutes enacted before the advent of modern class actions lead to results the framers would find perverse.

For example, under current law, a citizen of one State may bring in Federal court a simple $75,001 slip-and-fall

claim against a party from another State. But if a class of 25 million product owners or users living in all 50 States bring claims collectively worth $15 billion against a manufacturer, that lawsuit usually must be heard in State court.

H.R. 1115 would apply new diversity standards to class actions by changing the diversity requirements for class actions where any plaintiff and any defendant reside in different States and where the aggregate of all plaintiffs' claims is at least $2 million. These modest changes will keep large actions of a national character in Federal court where they belong.

□ 1215

H.R. 1115 also addresses the other major area in need of reform, the incentives for settlements in class action cases and scrutiny of those settlements. Under current rules, the first case settled wins. Those left out must either find a way to join the settlement or forego their claim. This leads to bad settlements favoring lawyers over consumers in jurisdictions with lax class action requirements. In the last year, more such one-sided settlements benefiting only the lawyers occurred.

Example: A settlement with Blockbuster over late fees produced $9.25 million in lawyers' fees, and nothing more but dollar coupons for the consumers represented, only 20 percent of which are likely to be redeemed.

Another example: A settlement with Crayola over asbestos included in crayons produced $600,000 in attorneys' fees, and nothing but a 75-cent discount on more crayons for affected consumers.

In order to prevent abuses like this, H.R. 1115 aims to protect plaintiffs by prohibiting the payment of bounties to class representatives, barring the approval of net loss settlements, adopting better notice requirement provisions which clarify class members' rights, and by requiring greater scrutiny of coupon settlements and settlements involving out-of-State class members.

Finally, Mr. Chairman, it is important to note that the costs of class action abuses are not limited to the parties of the settlements. They are shared by the American consumer through higher prices and higher insurance premiums.

Class action lawsuits also pose a threat to investors and the security of American retirement plans, which are largely invested in equity securities of American corporations. While class action liability can be enormous, news of these lawsuits on Wall Street can drive down any particular stock by as much as 10 points in one day.

I also would note that we are likely to hear names like Enron, Adelphia and WorldCom tossed about today, and rhetoric that this bill would let such noted corporate wrongdoers off the hook. The truth of the matter is that nothing in H.R. 1115 would limit the rights of plaintiffs to seek redress in court in these types of cases.

Under current law, most lawsuits against these companies will be heard in Federal bankruptcy court, for the same reasons that Federal courts should be able to resolve many of the class actions. Federal courts protect the interests of diverse parties from all parts of the country. In addition, section 4 of H.R. 1115 specifically excludes a number of Federal securities and State-based corporate fraud lawsuits.

Mr. Chairman, the need to restore some common sense, fairness, certainty, and dignity in our class action system is clear. The time to act is now, and I urge my colleagues to vote for this bill and to put some sense back into our legal system.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, welcome to ''Bash Trial Lawyers Day'' in the House of Representatives. My friend the chairman used the term 13 times in his presentation.

I just keep wondering, I would ask the gentleman from Wisconsin (Chairman SENSENBRENNER), what kind of law did you practice? I am intrigued by the right of trial lawyers not to be as effective as they can in court.

I notice that the Enron people have pretty good trial lawyers. I notice that WorldCom has pretty good trial lawyers. I notice that Adelphia has pretty good trial lawyers. These are all Republican supporters. I notice that Tyco has pretty good trial lawyers.

Why cannot people with class action suits have trial lawyers that are effective and doing a good job and get compensated for it?

I would yield to the gentleman, if he chooses to comment on that.

Mr. SENSENBRENNER. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Everybody has a right to have a lawyer, but you ought to be for court reform.

Mr. CONYERS. Mr. Chairman, reclaiming my time, everybody has a right to a lawyer. I thank the gentleman very much. I am very happy this gets reiterated.

I just want to count the number of times trial lawyers get it in the neck. Property lawyers, they are okay. Domestic relation lawyers, have you got any beef about them? They are okay. But trial lawyers that try these kinds of class action cases, they are making out like bandits, so, let us put it in the Federal courts. Let us take all of the class action cases and send them to the Federal courts, exactly where the Federal judiciary is begging you not to send them; begging you not to send them. All the consumer groups are begging you not to send them there.

Yet you tried it in 1998, 1999, 2001, and, now for the fourth time in 6 years, you are back at it again.

Why? What is the problem, guys? Should not people, consumers injured, be able to bring their cases to their State courts where they have traditionally?

Well, the answer is, for me, yes; but for you, no.

Could somebody explain to me why we would make the cases retroactive on top of it? I yield the floor. Tell me why Tyco, Enron, WorldCom, Adelphia, just tell me why those five corporations should be granted a delay?

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. CONYERS. I yield with pleasure to the gentleman from Virginia, my friend on the Committee on the Judiciary.

Mr. GOODLATTE. Mr. Chairman, it is not a delay, it is an expedition. Quite frankly, they have no different treatment in Federal courts than State courts.

Mr. CONYERS. Mr. Chairman, I take my time back. I thank the gentleman very much for his contribution.

What this bill does, and I just ask that you would read it, I will quote you the exact place in the bill, is grant an automatic right of appeal in class certification cases automatically. Is that going to expedite things?

Most of the judges do not even grant an appeal if they had the discretion, and think I think you or your staff may be aware of this. That is a delay, I would say to the gentleman from Virginia (Mr. GOODLATTE).

Now, in addition to the automatic delay, there is a stay of all discovery proceedings while the right of appeal is exercised. Do you know how long that could take, I would ask the gentleman from Virginia (Mr. GOODLATTE)? About 2 years. Now you are telling me that is really expediting the process. I wait to hear your explanation of that.

I rise in strong opposition to H.R. 1115. Although the legislation is described by its proponents as a simple procedural fix, in actuality it represents a major rewrite of the class action rules that would bar most forms of State class actions and massively tilt the playing field in favor of corporate defendants.

This is why the legislation is opposed by both the State and Federal judiciaries, consumer and public interest groups, environmental and health groups, and civil rights groups. There are several critical problems with the bill before us.

First, H.R. 1115 will have serious adverse impact on the ability of consumers and other harmed individuals to obtain compensation in cases involving widespread harm. At a minimum, the legislation will force most State class action claims into Federal courts where there will be far more victims to litigate cases and where defendants could force plaintiffs to travel long distances to attend proceedings. At worst, because it is so much more difficult to certify class actions at the Federal level, the bill will operate to terminate most class action entirely.

Second, the bill includes a whole series of unrelated provisions that have nothing to do with class action jurisdiction, but will serve to benefit corporate wrongdoers. For example, section 6 of the bill gives the defendant an absolute right to appeal preliminary court decisions, which will delay the case by up to 2

years. The section also stops the discovery process dead in its tracks while the appeal is pending.

Most outrageously of all, the bill was amended so that it applies retroactively to pending cases. This means that the bill would apply to pending in corporate fraud cases. As my hometown paper, the Detroit Free Press wrote yesterday, ''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.'' Is there a single Member in this Chamber who could defend Congress intervening in a pending case to help these corporate scam artists?

Fourth, the bill federalizes far more than just class actions. Section 4 provides that private attorney general actions and mass tort actions are to be treated as class actions and removed to Federal court. This means that district attorneys will no longer be able to combat fraud and abuse in their own State courts, and groups of harmed tort victims will be forced out of their State courts as well.

Do not be fooled by the Boucher amendment, which proponents claim will incorporate the Feinstein language from the Senate. What they do not tell you is that unlike the Feinstein compromise, the Majority's bill applies retroactively, allows for two year delays or more, and knocks out private attorney general actions. None of these provisions were in the Feinstein amendment in the Senate.

I believe it is time for more corporate accountability, not less. I urge a no vote on this one-sided, anti-consumer legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I would be happy to invite the gentleman from Michigan to my district, or I would be happy to go to Detroit, and have him explain to my constituents or me explain to his constituents why giving a consumer a coupon for 75 cents or $1 off a product that was manufactured by the company that injured that consumer and had a judgment entered against them, while giving a lawyer hundreds of thousands or millions of dollars' worth of legal fees, or having the lawyer send a deficiency bill to every member of the class, this bill takes care of this, is correct, and how it puts consumers in charge rather than lawyers.

Mr. Chairman, I yield 3 minutes to the gentleman from Virginia, Mr. GOODLATTE.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding me time and for his leadership in moving this legislation to the floor.

The reason why the interlocutory appeal allowed in the bill expedites the process and does not make it longer is that that issue is going to be heard on appeal anyway at the end of the trial, and, as you know, that takes years and years. Interlocutory appeals have historically been heard on average faster than appeals at the end of the trial, and, therefore, this will speed up the bringing of whatever allows the process to come to a conclusion.

Now, here is what we are talking about. Cheerios. What justice is done when the plaintiffs' attorney gets $2 million in attorney's fees and his clients get a box of Cheerios, the very product they allege was defective in the first place? What kind of justice for the plaintiffs is done there? I see the justice for the attorneys.

By the way, I say to the gentleman from Michigan, most trial lawyers are embarrassed by this abuse. Only a small cartel of very wealthy class action attorneys benefit from the current system. Most trial lawyers who represent most plaintiffs in America are embarrassed by this kind of abuse in the current system.

Abuses like $8.5 million in the Bank of Boston case for the plaintiffs' attorneys. The plaintiffs wound up having to pay money to their attorneys. Why did the attorneys get fees in a contingent fee case when their plaintiffs wound up having to pay them? They did not get anything.

Or the Blockbuster case that the gentleman from Wisconsin cited: $9.25 million to plaintiffs, $1 off on your movie ticket.

The great airline case, the frequent flier case. A 10 percent discount on your plane flight, if you buy another ticket on this so-called defective airline for $250 or more. The attorneys got $25 million.

The Coca-Cola case, the lawyers got $1.5 million, the plaintiffs got a 50-cent coupon.

Of course, my favorite case, the case of Chase Manhattan Bank, the attorneys got $4 million, the plaintiffs got 33 cents. Here is one of the checks, 33 cents. There is a little catch though, because you had to use a 34-cent stamp in order to send in the acceptance to get the 33 cents. That does not sound like a good deal for me either.

This restores federalism. It removes to our Federal courts the cases that involve the complexity and the diversity that our Founding Fathers created diversity jurisdiction for. A simple change in the law does not change the substance of class action, does not take away the right of anybody to bring a class action, but it does protect our system and the integrity of justice in America.

Mr. CONYERS. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, my distinguished friend, the gentleman from Virginia, forgot to put in Enron class action cases. I guess that was an oversight.

Mr. Chairman, I am pleased to yield 1 minute to the gentlewoman from Ohio (Mrs. JONES), a former prosecutor, judge, and attorney.

Mrs. JONES of Ohio. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I rise in opposition to H.R. 1115. It is another series in ill-advised attempts to institute broad tort reform measures by this body. Class actions are often the only way in which small but meritorious claims can find redress, and, as such, they are an essential tool for enforcing civil rights, public health, environmental and consumer rights and laws.

It is very important, because my colleague disparages the integrity of elected State court judges. As a former State court judge, I speak for all of my colleagues to say that we are as qualified as those appointed by Presidents to the Federal bench.

I would also say that it is very important that if you look at the campaign funds of the people who are supporting this legislation, I guarantee you the organizations that do not want class actions are funding their campaigns.

I do not have enough time to say much more, except to say to all of you, vote against this legislation. It is not good for the consumer.

Mr. Chairman, I rise today in opposition to H.R. 1115, another in a series of ill-advised attempts to institute broad tort reform measures by this body. Class action lawsuits play an important role in our Nation's civil justice system, serving the dual objectives of practicality and fairness. Class actions are often the only way in which the small, but meritorious claims can find redress, and, as such, they are an essential tool for enforcing civil rights, public health, environmental and consumer rights and laws. The bill before us seeks to remove this tool and impair consumers' access to justice. Further, it disregards longstanding principals of federalism and would stress an already overburdened Federal judiciary.

There is no statistical evidence of a State class action ''crisis'' as proponents of this bill claim. In fact, there is empirical evidence to the contrary. For the past several years, the RAND Institute for Civil Justice has been studying class action settlements, only to find that given the small dollar amount of individuals' losses, it was ''highly unlikely that any individual claiming such losses would find legal representation without incurring significant personal expense.'' This study also found that class actions often resulted in changes to a companies business practices and that ''class counsel's fees were a modest share of the negotiated settlements.'' Overall, it concluded that its survey ''contradicts the view that damage class actions invariably produce little for class members and that class action attorneys routinely garner the lion's share of settlements.''

There is also no basis for the unfounded premise that big companies cannot get a fair trial in State courts—claims that are promulgated by sensationalist rhetoric surrounding a mere fraction of the class action suits that are introduced. Where the infrequent abuse has occurred, it is important to note that it is not an endemic feature of State judiciaries as proponents of this legislation would have us believe—in fact, many Federal class acitons have expeirenced the same outcomes that attract criticism at the state level.

My colleague disparges the integrity of elected State court judges. As a former judge I protest—if the campaign coffers of those supporting this legislation were reviewed—I venture a guess then—the contributors are supportive of this legislation.

But there is an overwhelming amount of evidence pointing to the fact that this bill would

make it harder—if not impossible—to bring cases against major corporations in an era of increasing consumer and shareholder vulnerability. Legitimate lawsuits could be thrown out or stalled if defendants are given the right to move just about any class action case from States to a crowded Federal court docket. Since the mid-1990s, the Federal civil dockets have been severely backlogged. From 1993 to 2002, U.S. district court civil filings climbed by nearly 37,000 cases (16 percent). And according to the U.S. Judicial Conference, the Federal courts are short by 150 judges.

This legislation would not only further overburden the schedules of Federal judges, but would put them in the difficult position of interpreting a host of State law issues that don't belong in Federal courts in the first place. This would result not only in extended delays in obtaining benefits for class members, but also increase delays for individual plaintiffs in other cases. And since Federal judges are required to provide speedy trials to criminal defendants, it is likely that class action suits would end up at the end of the long Federal docket line, giving corporate offenders more time to ''shred'' documents or dump stock shares.

There is no doubt that State courts are institutionally better suited to handle class actions than Federal courts. State courts' civil dockets typically experience smaller caseloads than their Federal counterparts, not to mention greater experience with State civil laws. State courts are also more prepared to decide controversial issues of State law than Federal courts. Without State court interpretations, States' bodies of law will not develop solutions to new problems, or guide future conduct of businesses.

It is also important to remember that State courts are held to the very same standards of due process as their Federal counterparts. If State judges fail to perform their duties appropriately, States have adequate mechanisms for reprimanding them. And let us not forget that State judiciaries are capable of self-regulation. Where real problems with the certification process have occurred, the offending States have responded with reforms aimed at improvement. In Alabama, the often-cited ''swamp justice'' State according to the proponents of this legislation—both the legislature and the judiciary have been acting to tighten class action procedure in response to accusations for ''drive-by'' certifications.

If the foundation of our democracy relies on the strength and preservation of federalism and deference to State's rights, how can we support legislation that has as its backbone the notion that State judiciaries are not as competent as Federal courts? Just ask the substantial number of Federal judges who have served on State judiciaries if they are ''better judges'' now that they operate on a Federal court level. I doubt any of them will respond that they are more neutral, or less biased, as a result of their Federal appointment. Put simply, neither the State nor Federal judiciaries are seeking class action reform because they are quite confident in their own competence.

Indeed, Chief Justice Rehnquist and the Judicial Conference of the United States are opposed to this legislation for reasons beyond ''unduly burdened'' Federal courts and disturbing States' jurisdiction over in-State class actions—they are opposed because at its heart it questions the principles that our Nation's courts are the backbone of a fair and unbiased justice system.

Class actions play an important role in our civil justice system. We need to refrain from targeting the few class-action infractions at the expense of many citizens' right to their day in court. We also need to refrain from altering the delicate balance between State and Federal judiciaries established by the drafters of the Constitution and carefully engineered by their contemporaries.

Let us heed the advice of our most senior authority on this matter, Chief Justice Rehnquist, that ''Congress should commit itself to conserving the Federal courts as a distinctive judicial forum of limited jurisdiction in our system of federalism.'' This legislation is nothing more than a technically unsupportable effort to enact institutional advantages for large corporations in all class actions. Instead of promoting fairness and efficiency, H.R. 1115 simply gives tobacco companies, Enrons, Worldcoms, HMO's and polluters the power to choose the legal forum they believe will benefit them most.

A vote against the bill will send the reassuring message to our State and Federal judiciaries that their judgment and integrity is recognized by Congress. As a former judge, and now as a Member of this body, I urge my colleagues to vote against this bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SMITH), the chairman of the Subcommittee on Courts, the Internet, and Intellectual Property of the Committee on the Judiciary.

□ 1230

Mr. SMITH of Texas. Mr. Chairman, I thank the gentleman from Wisconsin, the chairman of the Committee on the Judiciary, for yielding me this time.

Mr. Chairman, I support H.R. 1115, the Class Action Fairness Act. This bill reforms the class action system and addresses the abuses that harm so many Americans.

In recent years, State courts have been flooded with thousands of frivolous lawsuits. Lawyers looking for the most favorable jurisdictions conduct the equivalent of a legal shopping spree. They use loopholes so class action suits can be heard in State courts rather than Federal courts. Today, State courts employ criteria so loosely defined that virtually any controversy can qualify as a class action.

We have all heard of the lawsuits in which the plaintiffs walk away with pennies, sometimes literally, while their attorneys walk away with millions of dollars in fees. For instance, in a suit against Chase Manhattan Bank that was referred to by the gentleman from Virginia (Mr. GOODLATTE) a few minutes ago, consumers were awarded 33-cent checks while the attorneys pocketed $4 million in fees. Mr. Chairman, to describe this suit, as well as other class action lawsuits, as ''frivolous'' is an insult to frivolousness. Even The Washington Post has acknowledged that under the present system ''lawyers cash in, while the 'clients' get coupons.''

There are many ''magnet'' State courts that have a reputation for doling out enormous judgments. This bill makes it easier to get cases into Federal court to avoid such unfair results.

Mr. Chairman, I, along with the gentleman from Virginia (Mr. BOUCHER), amended this bill in the Committee on the Judiciary to apply the law to cases that have been filed, but not yet certified as class actions. Cases that gain class certification after the date of enactment will have, in fact, the new rules apply to them.

This language eliminates any incentive to rush to the courthouse to avoid the reforms contained in the legislation. It also prevents individuals from being made part of a frivolous suit that has been filed before enactment of the new laws.

The widespread abuse of class action lawsuits must be stopped. The Class Action Fairness Act includes bipartisan, sensible reforms that clarify the rights of consumers and restore confidence in America's civil justice system.

Mr. Chairman, I urge my colleagues to support this legislation, and I also thank the chairman of the committee for his action in passing this today.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2½ minutes to the gentleman from New York (Mr. WEINER), a distinguished member of the committee.

Mr. WEINER. Mr. Chairman, something in me enjoys this exercise in self-flagellation by all of the lawyers in this Chamber. From time to time, those of us who are not lawyers in this Chamber, we convene a meeting, and we can do it in the phone booth in the cloakroom; but now we are all so angry at lawyers.

But this is not about lawyers. Frankly, most Americans are neither lawyers nor, thank God, are they victims, so they do not have to go into courts; and that is a good thing. But the groups that do represent victims, that do represent average Americans, almost universally oppose this legislation. Those that represent cancer patients, the American Cancer Society, oppose this legislation. Those who fight against pollution, the Clean Water Action, oppose this legislation. Those who represent seniors, the Gray Panthers, oppose this legislation. Those who represent consumers oppose this legislation. Those who fight against violence against women, the National Women's Health Network, oppose this legislation, because it is bad for victims and it is bad for those who use the system.

The gentleman from Virginia had these great charts. I am going to have to gesture because he would not let me use them. He had these great charts about 35 cents; that is all people are getting. Do my colleagues know why? Because there are millions and millions of victims; millions and millions of victims in that class. That is all that can go around is 35 cents. There

are hundreds and thousands of victims in this class. When you brag that, well, all the money that was left after they gave out these multimillion dollars was only 35 cents a person, that is a subject of how many people there were in that class.

I say to my colleagues, the bottom line is that it is ironic to hear the same people who came to this floor a couple of weeks ago and said, oh, the amount the victims are getting is too high, let us cap it at $250,000, now they are saying that 35 cents is too low. Do my Republican colleagues want to have a minimum? Sign me up. What is the number going to be? I know it is lower than $250,000 and higher than 35 cents, but we have to let my colleagues decide, because a jury cannot handle it. Oh, no. It is too mind-boggling for a jury to handle, because that is nine or 12 people from your district. They chose you, but they cannot figure out if Cheerios was right to short-change millions of consumers.

And let me say one other thing. Let me tell my colleagues one other group who should oppose this legislation: anyone that has the audacity to call themselves conservative. If you think it is conservative to take power away from the people and their States and give it to 1,500 Federal judges who sit in there in their marble chambers, who never talk to anyone or touch anyone, if you think that is conservative, you have it completely backwards. But then again, you do. You have it completely backwards.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1 minute.

The gentleman from New York unfortunately has got it all wrong. What this bill does is it takes the power away from one State court judge to decide national legal and national economic policy and puts it in the Federal courts where the founders intended it to be when they established the right of Congress to establish diversity jurisdiction.

The second point that I would like to make is why did all of these consumers only get 33-cent checks? It is because the lawyers signed off in the settlement that filled their pockets to overflowing with legal fees and giving 33-cent checks to the clients that they supposedly represented. Now, if those lawyers were a little bit more fighting for their clients and less for themselves, maybe those checks would have been bigger because the fees would have been smaller.

Mr. Chairman, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Chairman, I thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for his work on this issue.

I am a lawyer. I am for class action reform. These lawsuits continue to victimize the victims. Even The Washington Post, as the gentleman from Texas referred to, said the clients get token payments: 33-cent checks, boxes of Cheerios. In one case, the clients even ended up having to pay. The lawyers get enormous fees. This is not justice; it is an extortion racket that only Congress can fix. That is why we are here today. We are here to fix it.

The intent of the class action system is to facilitate large groups who have similar harm caused to them to efficiently recover damages. Recover damages. That is appropriate damages, not 33-cent checks. We are here to change that so that appropriate damages will be recovered.

How are we going to do that? We are going to change the system. We are going to make sure that not one small court in one State makes a decision for an entire Nation of victims. We are going to put it in the Federal court where it should be.

Recent studies of the class action system show there is a 1,315 percent increase in class action suits filed in State courts. Listen closely: 1,315 percent increase in class action suits filed in State courts. Why? Because some of those State courts have been very friendly to that small group of trial lawyers who take on these suits and get 33 cents for their clients and large, million-dollar settlements for themselves.

Here is another number: those attorneys who search for local friendly courts like Madison County, Illinois. Madison County, Illinois, has seen a 1,850 percent increase in class action filings that certify their classes and they will rubber-stamp these ridiculous, useless settlements.

This abuse has three larger consequences. First, as I said, the plaintiffs are denied real relief, and we have heard many examples, while the attorneys pocket huge rewards. It is time for us to take responsibility and make sure that clients get proper settlements. Support this reform.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, let me tell my colleagues who does support this bill, and particularly the provision that makes the automatic appeal and the stay of the discovery proceedings retroactive. It is none of the groups that were enumerated by the gentleman from New York, no. We have two letters that were submitted as testimony, as exhibits before the Committee on the Judiciary. One is the Association to Advance Technology. Another is a similar trade association involving the high-tech industry. My memory is that it was submitted by the gentleman from Virginia.

I just wonder, and I am really posing a question, I guess, do any members of either of these trade associations have class action suits pending against them now? I do not know, and I do not see the gentleman responding. But he was very effective with his parade of horror stories.

Well, let me tell my colleagues, too, I do not have any charts; but maybe we could present pictures here, pictures of dead people, people who died as a result of defective tires that were manufactured by Firestone. Maybe we could read the names of those who died as a result of not being informed by the tobacco industry about the carcinogens that are present in a cigarette. But thank God we had class action suits, because this Congress is not ready to take action until some lawyer, yes, a lawyer, went out and filed a class action suit and finally revealed what the truth was, that these industries were withholding information that affected the public welfare of the people of the United States.

Mr. Chairman, this bill doesn't ''reform'' the class action system. It eviscerates it. And before we curtail the ability of our citizens to bring class actions, we need to be clear about why they exist in the first place.

Class actions do not exist solely or even primarily to provide relief for private wrongs. They exist to correct, punish and deter misconduct that harms large numbers of ordinary people and society as a whole. Class actions level the playing field, uniting ordinary citizens who could never undertake complex and costly litigation on their own.

You can understand why a mechanism like this is threatening to major corporations. Faced with a single lawsuit by an average citizen, most major companies can barely stifle a yawn. It is only the prospect of a class action suit joined by hundreds or thousands of such citizens that can get their attention.

You can understand why corporate defendants would do all they can to stack the deck in their favor. Or in this case, to shuffle the deck in their favor.

The sponsors have hit on a brilliant strategy. Since Congress cannot dictate the rules by which state courts handle their cases, the bill simply removes the cases from state court and transfers them to federal court. Then, once they're in federal court, the bill changes the rules to make sure that most of these cases will never see the light of day.

As soon as the district court either grants or denies certification to the class, the bill gives the parties the right to an automatic interlocutory appeal of the decision. And as soon as a party files an appeal, the bill halts all discovery proceedings in the case until the appeal is completed.

What does this mean in practical terms? Given the huge backlogs in federal court—backlogs which this bill will only make worse—it will be years before discovery can resume. And years more before plaintiffs who have suffered grievous injuries can get to trial on the merits.

What's important to understand is that this doesn't just delay recoveries. It undermines the very purpose of the class action system by removing the incentive for corporate defendants to fix problems. And delaying the release to the public of information that might save lives.

The current federal rules permit the judge to entertain an appeal of a class certification order, and even to stay proceedings until the appeal is resolved. But as Judge Scirica has

explained in a recent letter to the committee on behalf of the Judicial Conference of the United States: ''Providing an appeal as of right might tempt a party to . . . appeal solely for tactical reasons. Staying discovery and other proceedings in the district court would only increase the tactical advantages of filing an interlocutory appeal, particularly because resolution of the appeal may not occur for 12 to 18 months.''

Nor will this problem affect only the cases that the bill transfers to federal court. It will also affect the hundreds of cases that are already there, since the bill applies retroactively to cases that have not yet been certified at the time it goes into effect.

Thoses cases include some of the most notorious corporate fraud cases in history, including—

The Enron case, on behalf of thousands of investors who claim more than $20 billion in damages as a result of the series of fraudulent transactions that destroyed the company and rendered its stock worthless.

The WorldCom case, in which the plaintiffs contend that corporate insiders and auditors disseminated materially false and misleading information and used illegitimate accounting schemes to hide losses and inflate reported earnings.

The Adelphia case, in which plaintiffs allege violations of federal securities laws flowing from the failure to disclose billions of dollars in debt.

The Global Crossing case, in which plaintiffs cite the accounting schemes that grossly misrepresented the company's financial picture and precipitated the ruin of the company.

The ImClone case, in which senior corporate executives engaged in fraud, perjury, and obstruction of justice for which the CEO has just been convicted in federal court and other indictments are pending.

These class actions seek to address the looting of company after company by corporate insiders, whose brazen misconduct and self-dealing defrauded creditors and investors of billions of dollars, and stripped employees and retirees of their livelihood and life savings.

Yet if this bill becomes law, the victims of those practices will face new obstacles in their efforts to call those executives to task.

Are there abuses of the class action system? Of course. We've all herd about abusive coupon settlements, collusive settlements, excessive fees, and the like. The Democratic substitute would address these problems. But the bill does not. That is not its purpose. Its purpose isn't to fine-tune the class action system but to eviscerate it. To shield corporate malefactors from civil liability and leave the public unprotected.

At our markup of this bill, one of its supporters said, ''The goal of this bill is to ensure that legitimate plaintiffs receive fair and prompt recoveries.''

Plainly that is not the goal of the bill. The goal is to ensure that legitimate plaintiffs are denied any recovery at all. And that whatever recovery they do receive is delayed as long as possible.

This bill is not about protecting plaintiffs. It's not about protecting the public. It's about protecting large corporations whose conduct has been egregious. It's about protecting the powerful at the expense of the powerless. And to prevent people from banding together as a class to challenge that power in the only way we can.

We must also see this bill in its proper context. It is only part of an ambitious and multipronged campaign by major corporations to evade their obligations to society.

Under the guise of ''deregulation'' we're watching the wholesale dismantling of health and safety standards, environmental protections, and longstanding limits on concentration of ownership within the media and other key industries.

This House has just passed a bill that releases gun manufacturers from liability for the death and destruction they cause. And a bankruptcy ''reform'' bill that rewards abuses by credit card companies and does nothing to curb the greed and irresponsibility that have bankrupted major corporations and left employees, retirees and creditors holding the bag. And a medical malpractice bill that caps recovery for the injuries inflicted on patients by negligent health care providers, while doing nothing to reduce the rate of medical errors or curb the exorbitant premiums charged by insurance companies.

Today's bill completes this picture. It takes aim at the civil justice system that exists to correct the wrongs that the government cannot or will not address. Not content to put an end to regulation, the proponents seek to muzzle the courts as well.

We cannot allow them to do it, Mr. Chairman. I urge my colleagues to vote ''no.''

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Chairman, I rise in support of H.R. 1115, the Class Action Fairness Act, and I want to thank the chairman of the Committee on the Judiciary and the gentleman from Virginia (Mr. GOODLATTE) for bringing this legislation to the floor today. It is critical that the House act on this issue.

Over the past 10 years, there has been a dramatic increase in the filing of class action lawsuits in the United States. Some of these lawsuits have played a valuable role in our legal system allowing for the efficient resolution of legitimate claims where there were numerous parties involved. Unfortunately, too many class actions are frivolous and are brought about by greedy trial lawyers who are more concerned with shopping for the best venue to collect fees than with producing justice for the injured parties.

We have heard about some of these examples. The Blockbuster Video case where customers got a coupon for a dollar off the next video. The court in Minnesota that gave the credit card company that was engaged in deceptive practices, those customers got some coupons, and the chance to apply for a credit card at a lower rate. The attorneys got $5.6 million there. In the Blockbuster case, we heard they split $9.25 million. The Coca Cola case, the customers got some 50-cent coupons and the lawyers split $1.5 million.

Mr. Chairman, Americans love couponing. They love double couponing. They love triple couponing. But let me tell my colleagues something: this is a mighty expensive way to do it. The American people get ripped off, and the big-time lawyers and the greedy trial lawyers are getting the millions of dollars. They are hitting the coupon jackpot.

It is time to reform the system. I encourage my colleagues to support this legislation.

Mr. CONYERS. Mr. Chairman, I am happy to yield 3 minutes to the gentlewoman from California (Ms. WATERS), a member of the Committee on the Judiciary.

Ms. WATERS. Mr. Chairman, I thank the gentleman for yielding me this time.

The so-called Class Action Fairness Act has nothing to do with fairness. This corporate defendants' ''Choice of Forum Act'' is a one-sided, unfair gift to the polluters, the Enrons, and the pharmaceutical companies that will hurt consumers by delaying their access to justice. It will indefinitely delay hearings for people who may be victims of defective products, fraud, discrimination, and environmental pollution.

Mr. Chairman, this class action bill was a terrible bill when the House passed it in the last Congress; and fortunately, that bill died in the other body. Incredibly, H.R. 1115, this year's iteration of the bill, is even worse, as it now contains retroactivity language that will allow some of the worst corporate wrongdoers, companies like Enron, WorldCom, and Arthur Andersen, to remove cases filed against them in State court to the Federal courts where their attorneys can use the huge civil case backlogs in our Federal court system to just ''slow-walk'' the victims of their misconduct.

□ 1245

The bill provides an automatic right of an interlocutory appeal of a class action certification, slow walk, and a stay on all discovery while the class certification appeal is pending. Slow walk.

This unwise, ill-conceived intrusion on the jurisdiction of the State courts will destroy access to justice while overwhelmingly increasing the burdens on our Federal courts. That is why this bill is opposed by the Judicial Conference of the United States and the Conference of Chief Justices.

It is also strenuously opposed by every Democratic member of the caucus who has served as a trial judge at either the State or Federal level. It is even opposed by Chief Justice Rehnquist.

Finally, the bill will destroy the efficacy of private attorney general actions that consumers may now bring in the State of California to combat corporate fraud and wrongdoing. No one is better situated than the people of California to protect their rights as consumers under California law. That is why we should not support any bill that would allow corporate defendants to remove these cases to Federal court where they can avoid having to answer

to those State court judges with real expertise and the greatest knowledge of California law.

I strongly support the amendment that the gentlewomen from California (Ms. LOFGREN) and (Ms. LINDA T. SANCHEZ) will offer to strike the language permitting California private attorney general actions to be removed to Federal court. Mr. Chairman, this bill will injure consumers and assist those corporate defendants who simply want to game the system.

We can protect consumers from any perceived abuses in coupon settlements without adopting this assault on consumer access to full, fair, and timely justice. I urge my colleagues to reject this latest Republican miscarriage of justice. I urge my colleagues, just simply oppose this bad bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, once again the opponents of this bill are wrong. The gentlewoman from California (Ms. WATERS) is talking about Enron and WorldCom cases being removed to Federal court. They already are there. Both of these corporations have filed for bankruptcy. Once there is a bankruptcy filing by anybody, the cases are heard in Federal court, simple as that.

I really would hope that they get their facts straight before they attack the bill the next time.

Mr. Chairman, I yield 1 minute to the gentleman from Florida (Mr. FEENEY).

Mr. FEENEY. Mr. Chairman, I want to congratulate and thank the gentleman from Wisconsin (Chairman SENSENBRENNER) and the gentleman from Virginia (Mr. GOODLATTE) for this fine bill. This is a commonsense reform of the class action process throughout the United States.

Mr. Chairman, this bill does not deny anybody access to a court or to a judge. What it does say is that lawyers that have a special relationship with a judge cannot forum shop and select their own judge; they have to have equal-handed justice. This cuts down on the lottery mentality in the court system and gives everybody the same fair and equal access.

Mr. Chairman, the Founders of our great Republic were very concerned about some forum shopping throughout the States where some States would not treat out-of-state defendants fairly, so they created diversity jurisdiction to allow Federal courts to make sure there was an even-handed array of justice.

In some States where they elect their justices, literally we have special interests, in some cases the trial lawyers, that are actually able to buy elections and have their favorite justices determine the entire constitutionality of issues because they run the supreme court.

All this bill does is to say everybody gets a fair shot at a Federal judge if there is legitimate diversity jurisdiction. It stops the lottery game in our court system.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Virginia (Mr. BOUCHER), ranking member of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. BOUCHER), as well.

The CHAIRMAN. The gentleman from Virginia (Mr. BOUCHER) is recognized for 3 minutes.

Mr. BOUCHER. Mr. Chairman, I thank both gentlemen for yielding time to me. It is my pleasure to rise in support of the bill that is before us.

In the 20 years that it has been my privilege to serve in the House, the class action reform measure that is before us today is the most modest litigation reform that has been debated, and it strikes in a narrow and appropriate way at an egregious abuse and miscarriage of justice.

The bill that is before us makes procedural changes only. There are no restrictions on the substantive rights of plaintiffs. There are no caps on damages. There is no limitation on the rights of plaintiffs to recover. The bill simply permits the removal to Federal court of class actions that are national in scope, with plaintiffs living across the Nation and a large corporate defendant doing business throughout the country, even if current diversity of citizenship rules are not strictly met.

This change is much needed. Cases that are truly national in scope are being filed as State class actions before certain favored judges who employ an almost anything-goes approach that renders virtually any controversy subject to certification as a class action. Once the certification occurs, there is then a rush to settle the case. The lawyers who filed the case tend to make an offer that is very hard for the corporate defendant to refuse. They ask for large fees for themselves, typically in the millions of dollars, and then coupons are requested for the class members.

Rather than go through years of expensive litigation, the defendant settles. The judge who certified the case quickly approves the settlement. The lawyer who filed the case gets rich; the plaintiff class members he represents get virtually nothing. That is the problem. That is the abuse that this reform is designed to resolve.

This reform permits the removal of these national cases to the Federal court in the State in which the State class action is pending. In the Federal court, the rights of plaintiffs will be more carefully observed. Any settlement involving noncash compensation will be carefully reviewed to assure that it is fair. Under the bill, cases that are local in scope will remain in the State court where they are filed.

Later today I will be joining with the gentleman from Wisconsin (Mr. SENSENBRENNER) and other Members in offering an amendment that the Committee on the Judiciary and the other body adopted, originally drafted by Senator FEINSTEIN of California, that gives Federal judges greater direction in deciding which cases are national in scope and should be removed to Federal court, and which cases should remain in the State courts in which they are filed.

This is a needed reform. It is a modest remedy. It is procedural only. The rights of all plaintiffs to participate in a class action will be respected, either in State or Federal court. I am pleased to rise in support of this measure and urge its adoption in the House.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT).

Mr. CHABOT. Mr. Chairman, I rise in strong support of the Class Action Fairness Act of 2003.

Mr. Chairman, I want to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) and the gentleman from Virginia (Mr. GOODLATTE) for proposing this good legislation.

As chairman of the Subcommittee on the Constitution, I welcome this opportunity to address some of the criticism that we have heard about this legislation, that it would diminish State court authority or otherwise offend basic federalism principles.

Opponents of this bill have suggested that removing a lawsuit filed in State court to Federal court deprives the State court of its right to decide matters of State law, but all State law-based actions do not presumptively belong in State court. Federal diversity jurisdiction, established by the Framers of the Constitution, allows State law-based claims to be moved from local courts to Federal courts to ensure that all parties will be able to litigate on a level playing field and to ensure that interstate commerce interests will be protected.

Additionally, the expansion of diversity included in the Class Action Fairness Act is consistent with current diversity law, since it allows Federal courts to hear large cases which have interstate implications. By nature, class actions fulfill these requirements.

Mr. Chairman, in most State law-based class actions, the proposed classes encompass residents of multiple States. Therefore, the trial court, regardless of whether it is a State or a Federal court, must interpret and apply the laws of multiple jurisdictions. It is far more appropriate for a Federal court to interpret the laws of various States as opposed to having one State court dictate the substantive laws of others States.

I strongly support this legislation and urge my colleagues to do the same.

Mr. CONYERS. Mr. Chairman, I am happy to yield 3 minutes to the gentleman from North Carolina (Mr. WATT), a distinguished member of the Committee on the Judiciary.

Mr. WATT. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I have followed my colleagues' debate about this, particularly my colleague on the Democratic

side, the gentleman from Virginia, who says that there are no substantive changes in this bill, there are only procedural changes, and that this is a modest change.

The thing that is amazing about that is the modest change is going to move a tremendous volume of cases from the State court to the Federal courts, which is exactly why the Federal judges are opposed to this.

If this is only procedural in nature, I am not sure that I, for the life of me, can understand why we are doing it. If this is only process, it would seem to me that we should be able to get the same result in the Federal court or the State court, because if we listen to what the supporters of this bill are saying, they are not making any substantive changes.

Now, I used to think that I understood my Republican colleagues when they said that they believed in States' rights, and that when we have the level of government or a judicial system that is close to the people, that is where we are likely to get the best kinds of results in cases.

Why, then, if we follow that theory, would we take all of the cases that are now being tried in State court and pick them up and move them into Federal court? For some reason, there is something wrong with that picture. They say the rights of the parties will be carefully preserved in the Federal court. I think that is what I heard my friend, the gentleman from Virginia, say. Well, does that mean that the rights of the parties for all of these years have not been carefully preserved in the State court? I thought that is what the Republican Party stood for, taking things back to the local and State level. I thought they believed in States' rights.

They said, well, if we move to Federal court, we are going to get fairness. We are going to get fairness. They have also said, for some reason, if we move the cases into Federal court we are going to get fairness. The opposite of that is if we leave them in the State court somehow we are not going to get fairness. If we are not changing the substance, then why are they doing this? Why are they doing this?

So this must be about the results that some people are getting that they are not happy with. I am telling the Members, I think if we have the same case in Federal court or State court, we ought to get the same result. That is the way it has always been, and that is the way it would be in the absence of this new bill. I encourage my colleagues to oppose the bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, my friend, the gentleman from North Carolina (Mr. WATT), seems to have forgotten that the civil rights laws that were passed in the 1960s were passed with Republican support because his predecessors in North Carolina would not support civil rights laws, no way, no how. Those laws took away from the States the right to ensure equal treatment of all American citizens. I am proud my party, the party of Lincoln, led the charge on that.

Mr. Chairman, I yield 1 minute to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I thank the gentleman for yielding time to me.

I thank others who have advanced this legislation, the gentleman from California (Mr. DOOLEY), the gentleman from Virginia (Mr. BOUCHER), on our side, and the gentleman from Virginia (Mr. GOODLATTE), and many others.

Mr. Chairman, we know that class actions have played a very important role in advancing progressive goals, like civil rights and consumer rights. But something has gone wrong. A lot of trial lawyers will tell us, privately, that this has to be fixed, and, You guys need to rein it in.

There is an unintended loophole in the interpretation of diversity jurisdiction. That is where we are getting the abuse. We are getting a few trial lawyers who go forum shopping, and they go into the courts of judges who are elected, oftentimes with the contributions of trial lawyers. I am not saying this alone, but The Washington Post said this in their own editorial. They know what decision they are going to get. Oftentimes, they get the thing certified before even notifying the defendants, and then they wind up settling.

□ 1300

But who gets hurt? The consumer gets hurt. And it is not just in paying higher prices for products. They get those worthless coupons. A lot of them do not even know they are members of the plaintiff class. There is any number of consumer provisions in here. It requires scrutiny of these coupon settlements. It prohibits settlements where the class members come out as losers. It bars bounties for class representatives. Settlement awards cannot be based on geography. How unfair a system to base it on where you happen to live. It requires the settlement to be put in plain English so the consumers know what they are dealing with.

This is commonsense legislation. Let us pass it.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Chairman, I appreciate the gentleman yielding me time.

Every time a black Member of Congress gets up to talk about an issue like this, it always becomes a race debate; but I want to tell the gentleman that he is absolutely right.

We used to file every race discrimination case in America in the Federal court, but the law allows those cases to be filed in the State courts, too. And in many cases now, because the States have started appointing judges who came out of this century as opposed to the 19th and 18th century in their racial opinions, then you can get a fair trial in the State courts. And I think you can get a fair trial in the State courts on this issue if you will let the State courts do what they are supposed to do.

Mr. CONYERS. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, I just want to remind my friend, the chairman of the Committee on the Judiciary, that he was not that happy with Federal courts in the University of Michigan affirmative action case. Remember that one?

Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. SOLIS).

Ms. SOLIS. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I would like to also voice my strong opposition to this bill, H.R. 1115. This bill is worse than what we saw last year, and it would be applied retroactively to pending cases, including those brought by employees at Enron for financial fraud, Dow Chemical for environmental charges, and Wal-Mart for employment discrimination against women.

In midstream the bill would strip the rights of plaintiffs in these cases, causing expensive and wasteful interruption of their pursuit for justice and equal treatment under the law.

In the wake of corporate scandals, workers in our country have lost well over $175 billion in retirement savings. Let us look at the real facts here. In California alone, workers have lost over $18 billion in retirement savings. At a time when we should be holding corporations more accountable, not less, their bill sends the wrong message.

Congress should stand up and protect consumers, employees, pensioners, and not corporate wrongdoers. They call this the Class Action Fairness bill? I am sorry. In my language it is a mentiras. That means it is a lie.

I urge my colleagues to please vote for the Sandlin-Conners substitute.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Missouri (Mr. CLAY).

Mr. CLAY. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for yielding me time.

Mr. Chairman, I rise to oppose H.R. 1115 and in support of the Democratic substitute. There is no fairness in this so-called Class Action Fairness Act. This bill amounts to a sweeping Federal takeover of State class action lawsuits.

Instead of improving the class action litigation process, this bill guarantees that those victims of discrimination of corrupt corporate practices will be forced to wait for years for any hope of justice.

H.R. 1115 alters the constitutional distribution of judicial power by moving State class action suits into the Federal court system. This bill undermines State rights and jeopardizes civil rights. Adding cases to the already clogged Federal court system will delay hearings for all class action

cases and cause those civil rights class action cases that truly belong in the Federal courts to await behind cases that should be heard in the State court.

This misnamed bill is opposed by both Federal and State judges. It is opposed by consumer groups. It is opposed by civil rights groups. It is opposed by environmental groups. But predictably it is supported and endorsed by the big corporations. I urge my colleagues to adopt the Democratic substitute.

Mr. CONYERS. Mr. Chairman, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Chairman, Teddy Roosevelt would be spinning in his grave if he knew his party had decided to join ranks with what he referred to as the malefactors of great wealth. And that is exactly what this bill does.

It is incredible to me that some of my colleagues who support this bill come to this well and purport, say that they are on the side of consumers because they have such great sorrow and empathy for consumers. Well, you have to decide what you are on. The Consumers Federation of America knows this is a bad bill for consumers and they are against it. The Consumers Union of America knows this is a bad bill and they are against it. The Consumers for Auto Liability and Safety know this is a bad bill and they are against it. The consumers of America recognize this bill reduces their rights.

And the part that I want to focus on, and I heard one speaker refer to it as mere rhetoric that the consumers are going to get hurt, tell that to the thousands of people that are damaged by Ken Lay and Enron's depredations on them, whose lawsuit will be stayed for at least another year and a half to 2 years if this bill passes. You ought to know what side consumers are on, and in this bill they are against it.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Texas (Mr. SANDLIN).

Mr. SANDLIN. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, what are the Republicans trying to hide with H.R. 1115? Who are they are trying to protect? Do the names WorldCom, Enron and Arthur Andersen strike a familiar note?

Our colleagues on the other side of the aisle are jumping up and down like rodeo dogs trying to claim that they are interested in protecting individuals. Now, is that not a fine kettle of fish?

They must mean individuals like Ken Lay, Jeff Skilling, Bernie Ebbers and the CEOs of corporate wrongdoers who enrich themselves at the expense of American families and pensioners.

Oh, now, I understand. Those are the individuals who we are protecting.

Mr. Chairman, these CEOs do not need further protections. They have the fifth amendment and they use it all the time. Individual groups, the real individual groups such as the American Cancer Society, the American Heart Association, the American Lung Association, CWA, MALDEF, National Education Association, National Women's Health Network, SEIU, United Church of Christ, NAACP, true individuals oppose this legislation. They are the ones that need protections.

Mr. Chairman, who knows more about the judicial system than the Chief Justice of the United States Supreme Court? He is opposed. How about the Judicial Conference of the United States? Opposed. How about ten attorney generals who gave a statement just yesterday? Opposed. Federal courts? Opposed. State courts? Opposed. And I find it interesting that the Republicans have now adopted the Washington Post as their spokesman.

Well, Mr. Chairman, I will see their Washington Post and raise them the Augusta Journal. I will raise them the Columbus Dispatch. I will raise them the Wilmington, North Carolina Star News. I will raise them the Salt Lake City Tribune. I will raise them the Milwaukee Journal Sentinel. The list goes on and on.

And why, oh why, did our Republican friends make this retroactive? We do not do that. Who are they trying to protect? The individuals they are claiming to be interested in? Give me a break, Mr. Chairman. Do the Republicans actually believe anyone in America will believe that the Republicans are standing up for individuals against corporate wrongdoers? And the automatic appeal? That gives Enron some extra years to destroy evidence. That is why they want that.

Make no mistake about it. Thus far it is Enron, for; the American Cancer Society, opposed. Worldcom says yes; the National Education Association, the teachers, they say no. Arthur Andersen, good; United Church of Christ and NAACP, bad.

This act should be called exactly what it is: the Corporate Wrongdoer Past, Present and Future Protection Act; and, by the way, do not forget to send the money.

Let us shred up this document. Let us shred up this piece of legislation just like the documents that the corporate wrongdoers love to destroy. That would be true justice. That is what ought to happen to this legislation.

It is improper. It is unconstitutional. Our friends on the other side know it, and the judicial system of the United States has said this should be opposed.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, I wish the Democrats would get their facts straight before they come to the floor. First, any entity, individual or corporate, that is in bankruptcy is in Federal court and all claims go there: Enron, WorldCom, anybody else that is in bankruptcy.

Secondly, page 16 of the bill, which I will send over to the gentleman from Texas (Mr. SANDLIN), provides specific exemptions for the removal of class action cases to Federal court for all the types of corporate wrongdoing that he said on the floor.

Read the bill, be accurate in your arguments, and support it.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman from Detroit, Michigan (Mr. CONYERS), the ranking member, for yielding me time, and I appreciate this debate. I just wish it was longer, to be able to be more edifying of what we are talking about.

My voice is a little raspy this morning, but it seems that day after day and time after time, we come to this floor to try to keep the door of justice open.

This seems like a one-sided victory. We know they have the votes. But this is personal. And I have always been taught that when we uphold the Constitution and speak on behalf of the American people, we should remove our personal considerations. There is a fight between a few defense lawyers who have come up against worthy plaintiffs' lawyers who prevailed on behalf of class action plaintiffs in a myriad of issues, whether it is the Ford Pinto, whether it has to do with thalidomide that made babies deformed in the 1950s. These are the causes that we are talking about.

This class action legislation is an abuse of power because it undermines the tenth amendment that I have thought we respected in some instances; and that is, we leave certain issues to the States. There are 68 vacancies in the Federal court. All you need to do is kick class action lawsuits out of the State courts that have moved progressively along to allow plaintiffs to have their say, and you will have a backlog of Federal jurisdiction and docket, and you will never see the light of day.

So individuals who have been injured with respect to medical devices or other kinds of manufacturing devices and have drawn together because their resources are small will not have their day in court.

The Lawyers Committee for Civil Rights have brought up another issue. Is it because the juries are predominantly minority in many cases that you run away from justice? Let me say to my friends, justice comes in all shapes, colors, and sizes. I want to stand for justice.

Vote against this bad bill. It closes the door of justice to the American people.

Mr. Chairman, today this Chamber is considering H.R. 1115, the "Class Action Fairness Act of 2003." I oppose H.R. 1115 for several policy reasons including severe infringement on the discretion of the judiciary. I remain steadfast in my belief that this legislation is yet

another example of the legislature interfering in the affairs of the judiciary.

It is remarkable that the proponents of this legislation have always espoused the wisdom of allowing state courts and legislatures to decide for their own citizens what is best for them. They have professed that, as much as possible, the Federal government should not interfere in state business. But H.R. 1115 directly interferes with state court discretion by broadening Federal jurisdiction over state class action lawsuits.

H.R. 1115 makes severe changes to diversity jurisdiction requirements. The bill also makes substantial revisions to the rules governing aggregation of claims. Both of these changes would result in significantly more state court actions being removed to federal courts thereby overburdening the federal caseload.

H.R. 1115 also provides a party to a class action lawsuit with the right to an interlocutory appeal of the court's class certification decision provided an appeal notice is filed within 10 days. The appeal would stay discovery and other proceedings during the pendency of the appeal. This is a substantial change to Rule 23(f) which presently provides the court with discretion to allow an appeal of the class certification order without staying other proceedings. The automatic stay under H.R. 1115 provides defendants with another delaying tactic and another tool to increase the expense for plaintiffs.

These delay tactics and other provisions give a decisive advantage to well-financed corporate defendants. I am deeply concerned that if we pass H.R. 1115 we would eliminate the means by which innocent victims of corporate giants can find justice. First, I believe that before we consider this legislation, Congress should insist on receiving objective and comprehensive data justifying such a dramatic intrusion into state court prerogatives. This legislation has the potential to damage federal and state court systems. H.R. 1115 will expand federal class action jurisdiction to include most state class actions. H.R. 1115 will dramatically increase the number of cases in the already overburdened federal courts.

For example, as of February 2, 2002, there were 68 federal judicial vacancies. Judicial vacancies mean other courts must assume the workload. Assuming this additional burden contributes to federal district court judges having a backlogged docket with an average of 416 pending civil cases. These workload problems caused Supreme Court Chief Justice Rehnquist to criticize Congress for taking actions that have exacerbated the courts' workload problem.

H.R. 1115 also raises serious constitutional issues because it strips state courts of the discretion to decide when to utilize the class action format. In those cases where a federal court chooses not to certify the state class action, the bill prohibits the states from using class actions to resolve the underlying state causes of action. Federal courts have indicated in numerous decisions that efforts by Congress to dictate such state court procedures implicate important Tenth Amendment federalism issues and should be avoided. The Supreme Court has already made clear that state courts are constitutionally required to provide due process and other fairness protections to the parties in class action cases.

H.R. 1115 also adversely impacts the ability of consumers and other victims to receive compensation in cases concerning extensive damages. The bill has the potential to force state class actions into federal courts which may result in increase litigation expenses. Corporate defendants may attempt to force less-financed plaintiffs to travel great distances to participate in court proceedings. There are also added pleading costs for plaintiffs. For example, under the bill, individuals are required to plead with particularity the nature of the injuries suffered by class members in their initial complaints. The plaintiff must even prove the defendant's ''state of mind,'' such as fraud or deception, to be included in the initial complaint. This is a very high standard to impose of plaintiffs who may not yet have had the benefit of formal discovery. If the pleading requirements are not met, the judge is required to dismiss the plaintiff's complaint.

Additionally, plaintiffs under H.R. 1115 will face a far more arduous task of certifying their class actions in the federal court system. Fourteen states, representing some 29 percent of the nation's population, have adopted different criteria for class action rules than Rule 23 of the federal rules of civil procedure. Plaintiffs may also be disadvantaged by the vague terms used in the legislation, such as ''substantial majority'' of plaintiffs, ''primary defendants,'' and claims ''primarily'' governed by a state's laws, as they are entirely new and undefined phrases with no precedent in the United States Code or the case law.

Mr. Chairman, H.R. 1115 is riddled with provisions that are burdensome to potential plaintiffs and that potentially infringe on the discretion of state courts. I urge all of my colleagues to reject H.R. 1115 as it is presently written. I commend my colleagues for proposing numerous amendments to this bill and I hope that these amendments will address the gross inequities in this legislation.

Mr. CONYERS. Mr. Chairman, I yield myself the balance of my time.

The SPEAKER pro tempore. The gentleman is recognized for 2½ minutes.

(Mr. CONYERS asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. CONYERS. Mr. Chairman, this bill is class warfare with a vengeance.

Here my conservative friends, Republicans, are supporting the bill that will help Enron, Ken Lay, that is right, Adelphia, WorldCom, Tyco, by making retroactive all the automatic appeal provisions. By the way, the Chambers of Commerce are enthusiastic that maybe the fourth time this will get through the Congress. The National Association of Manufacturers are for it, and so is the President of the United States. That is one side.

Now, who are the victims? All consumers groups are against the bill. All civil rights groups are against the bill. All environmental groups are against the bill. All health care groups are against the bill. All judges, Federal and State, including the Chief Justice of the Supreme Court, are against the bill.

Get the picture? We do. And so do the people in your districts from whom you are taking the right to be jurors in these trials away from.

□ 1315

Let us talk about the coupon business, because in the Democratic substitute, on page 12, section 1711, is the only corrective action to coupons, which have been cried about on this floor this morning. If there is any provision in the bill that is on the floor now about coupons that will eliminate it or make it harder to bring, I would sure like to hear about it in the closing comments; and I have a Detroit Free Press editorial that came out yesterday saying class action, the plan seems less about justice than helping business. And I will insert it and a letter from the NAACP for the RECORD at this point.

[From the Detroit Free Press, June 11, 2003]

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 thousand 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.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington, DC, June 11, 2003.

MEMBERS,
House of Representatives,
Washington, DC.

RE: OPPOSE H.R. 1115 CLASS ACTION LAWSUIT LEGISLATION

DEAR REPRESENTATIVE: on behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots civil rights organization, I urge you, in the strongest terms possible, to oppose H.R. 1115, the so-called ''Class Action Fairness Act of 2003'', legislation that would substantially

alter the constitutional distribution of judicial power and have a severely negative impact on the struggle for civil rights in this country.

Class action lawsuits are essential to the enforcement of our nation's civil rights and voting rights laws. They are often the only means by which individuals can challenge and obtain relief from systemic discrimination. Indeed, federal class actions were designed to accommodate, and have served as a primary vehicle for, civil rights litigation seeking broad equitable relief.

The proposed legislation, if enacted, would remove most state law class actions into federal court; clog the federal courts with state law cases and make it more difficult to have federal civil rights cases heard; deter people from bringing class actions; and impose barriers and burdens on settlement of class actions. The pending legislation would also discourage people from bringing class actions by prohibiting settlements that provide named plaintiffs full relief for their claims and would impose new, burdensome delay tactics for all class actions by automatically allowing a defendant to appeal any class certification in federal court and staying all the proceedings while the appeal is pending.

I urge you again, in the strongest terms possible, to oppose H.R. 1115, the so-called ''Class Action Fairness Act of 2003'' if and when it comes before you. If enacted, its impact would be profound, and it would result in new and substantial limitations on access to the courts for victims of discrimination. Should you have any questions about the NAACP position, please feel free to contact me at (202) 638–2269. Thank you for your attention.

Sincerely,

HILARY O. SHELTON,
Director.

My colleagues may get a Tyco and Enron out of jail with this delay, but they are not going to get this bill through the Federal legislative body.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, this country has a crisis in manufacturing. Particularly, small- and medium-sized manufacturing jobs are going overseas by the droves, particularly to China, and there are a whole lot of reasons for that; but one of the reasons is a judicial system that is out of control.

My colleagues can talk about business, but it is business that creates the jobs that hire our constituents who pay the taxes to make the government run; and by having court reform, which is what this bill does, it is not tort reform because nobody's rights to a jury trial or to get into a court are constricted by one iota. It is where this is done and how class actions get certified and protections for consumers such as the coupon settlements and the deficiency judgments that are entered against class members.

This is going to help keep America's economy vibrant. Pass the bill.

Mr. STARK. I rise today to oppose this misguided legislation. Don't be fooled by the title of this bill. It would lead some to believe that Congress is standing up for the average American—modifying certain inequities in our judicial system. Instead, it is a Republican sponsored hoax unfairly threatening the very people we are all elected to protect.

I don't think that the American public would be satisfied knowing that if H.R. 1115 passes, the accountability of such companies as Enron, WorldCom, and Arthur Anderson and pharmaceutical giants like Eli Lilly, Aventis Pasteur and Abbott laboratories would be held less responsible in pending class action cases againt them. This bill will adversely affect low-income groups and consumers to effectively assert their rights against large corporations.

Why should corporations reap the benefits of our judicial system by avoiding civil penalties? They are the ones committing crimes. The intent of pursuing a class action suit in court allows redress for average Americans financially unable to launch a judicial battle on their own. Class action suits empower consumers to challenge wrongdoings by wealthy corporations who would otherwise ignore their appeal.

We know that truthful law-abiding citizens are the ones who will lose if this bill becomes law. Apparently, in America today, you must contribute a significant amount to the Republican Party's campaign pocketbook to be considered protected under the law. This bill certainly protects major Republican campaign contributors—too bad for all the average working people who are left behind.

I ask my colleagues to stand up for real people and vote against H.R. 1115.

Mr. BLUMENAUER. Mr. Chairman, the pages of our newspapers have been filled with accounts of corporate abuse of investors and consumers. Part of the reason Oregon has the highest unemployment rate in America for over a year is the result of the Enron scandal and the California energy crisis. To make it harder for Oregonians who have been abused to seek legal redress is nothing short of outrageous.

This legislation would severely undermine the ability of Americans to seek relief from activities that harm consumers, the environment and public health. We should be working in Congress to help mend the relationship between corporations and the American public, rather than promote measures like this which will make it more difficult for injured consumers to bring class-action lawsuits.

By allowing 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 federal courts have fewer than 1,500 judges compared to more than 30,000 judges currently serving on state courts. Thousands of class actions lawsuits spending in state courts around the country would be added to the federal docket under H.R. 1115 because of its retroactivity provision.

This legislation would also dilute the right of consumers to bring class action lawsuits against the firearms industry. Firearms are one of the only consumer products not subject to federal consumer safety regulation. Citizen lawsuits—including class actions—are one of the only incentives for the firearms industry to act responsibly.

We should not take away this important tool for the American public to protect their rights and secure compensation for their injuries and losses.

Ms. SCHAKOWSKY. Mr. Chairman, I rise today in opposition to H.R. 1115, the so-called Class Action Fairness Act. This bill is actually unfair to consumers because it would make it more difficult, more expensive, and more time-consuming for Americans with legitimate claims to access justice in class-action lawsuits. Instead, this bill rewards corporate wrongdoers and companies that fail to avoid dangerous practices and refuse to remove faulty products from store shelves.

Class action suits are an invaluable asset to consumers and all who engage in business of any kind. No one is immune from potentially being treated unfairly, being discriminated against, being taken advantage of, or being cheated. However, those who are victims are often those with no voice and no resources to fight back. But class action suits allow them to join with hundreds of others who have suffered the same harm and, together, become a strong voice for justice. In many cases, class action lawsuits are the only way that those who have been harmed can be heard and have their day in court.

Unfortunately, this bill would make most class action suits and the empowerment they provide to consumers a thing of the past. We've seen this bill repeatedly in the past, and we're seeing it again today because the Republicans will stop at nothing to protect their big money corporate supporters—those who get them elected—from being held accountable for their actions. This is especially evident in the bill before us today which goes further than the Republican class action bills of the past by making the legislation retroactive! If passed, this bill would apply to pending class actions, including the cases against Enron and WorldCom for financial fraud, Dow Chemical for environmental damage, Wal-Mart for employment discrimination, and Eli Lilly, GlaxoSmithKline, Abbott Laboratories and others for autism and other neurological damage.

This bill would change the rules midstream. While a class action has been filed against Enron by retirees, this class has yet to be certified. Under this bill, Enron for the first time would be given the opportunity to make an immediate appeal of any court decision granting class certification. The result could be a hold on all proceedings, including investigations to make discoveries of evidence, while the appeal was pending. This is an unwarranted, expensive, and wasteful use of time, and all while Enron retirees sit and wait for a decision regarding their retirement funds. This is not compassionate and not fair.

This bill looks the other way as workers are taken advantage of by big corporations, as patients are abused by HMOs, and as the environment continues to suffer damage from big polluters. In such a claim, it is critical that people have access to justice. This bill takes away that access and protects those who will continue to do harm. Republicans are committing fraud against the American people by proposing this bill, and I urge my colleagues to oppose H.R. 1115.

Mr. POMEROY. Mr. Chairman, I rise in reluctant opposition to H.R. 1115, the Class Action Fairness Act.

Our system of class action litigation is in dire need of reform. Most class action cases are national in scope and should be heard in federal court, where like claims may be combined and uniform decisions rendered. Under the current system, however, these interstate suits are often filed in state or country court, where the decision of a local judge and jury may affect the laws of all 50 states. As a former state insurance commissioner, I am

deeply troubled that a jury panel in a class action case in Mississippi or New Mexico could effectively overturn state regulations in my home state of North Dakota.

In addition, by allowing interstate class action claims to be filed in any of the thousands of local courts across the country, the likelihood is increased that a plaintiffs lawyer will find at least one judge who is willing to entertain a claim that most people would consider to be without merit. Once a sympathetic judge is found, the plaintiffs' attorney can leverage nationwide settlements that all too often provide little benefit to the actual plaintiffs but enormous benefit to the attorney.

I support the amendment brought forward by Representatives SENSENBRENNER, BOUCHER, DOOLEY, STENHOLM, and TERRY, that incorporates the so-called ''Feinstein Amendment.'' Through this amendment, class action suits would be apportioned to federal or state courts depending on the domicile of the plaintiffs. I believe that the Feinstein Amendment addressed an important criticism to the bill in that it would leave lawsuits that are clearly of local concern, with state courts.

However, I was disheartened to learn that an amendment that would effectively strike the retroactivity provision in the bill was ruled out-of-order and will not be brought forward for a vote here today. This provision would unfairly apply the new law to cases already filed in state courts, but not granted class certification. It sets bad public policy because it changes the rules for injured Plaintiffs in the middle of the game. I understand that this provision was added during Committee debate of the bill and was added at the urging of a special interest. Such political favoring produces bad policy that I cannot support. Therefore, I cannot support class action reform that retroactively applies to active cases.

We have not heard the last of this issue. I look forward to continuing to work on this issue so that we can finally reform the class action system.

Mr. BACA. Mr. Chairman, I rise in opposition to H.R. 1115, the Class Action Fairness Act of 2003.

H.R. 1115 is just another attempt by Republicans to deny people their fair day in court. Once again, they are siding with Goliath at the expense of David. They are siding with the big corporate interests at the expense of the public interest. They are siding with their campaign contributors at the expense of the American people.

This legislation is unfair to consumers. It wrongly limits the authority of State courts, bogs down Federal courts, and makes it more difficult for consumer claims to be heard. This is a deliberate attempt b7 conservatives to protect big businesses like WorldCom, Arthur Andersen and Enron.

When a company violates the rights of consumers, consumers are entitled to have their claim go before a judge and jury in a timely manner. Republicans would love to be the judge and jury in these cases, siding with and protecting their corporate friends. But that's not the way it works.

In my home state, the University of California pension plan lost $353 million as a result of the WorldCom accounting scandal. Like many other Americans, they were victims of the fraudulent activities of Arthur Andersen.

Under H.R. 1115, the University of California would have been prevented from having their day in a State court. Instead, the suit would have been moved to Federal court, causing terrible delays and hurting those Californians who depended on their pensions.

The people of California and all across this nation deserve to have fair and easy access to a speedy judicial system.

This legislation places huge barriers in the path of consumers. It limits the rights of consumers, undermines the authority of state courts, and increases the burden on federal courts.

That sound you hear is the sound of big business applauding this legislation. They appreciate the additional time this bill would give them to shred documents, destroy evidence and cause harm to hard-working Californians and to all Americans.

It simply isn't fair and we must do more to protect our consumers.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 1115

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Class Action Fairness Act of 2003''.

(b) REFERENCE.—Whenever in this Act reference is made to an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; reference; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Consumer class action bill of rights and improved procedures for interstate class actions.
Sec. 4. Federal district court jurisdiction of interstate class actions.
Sec. 5. Removal of interstate class actions to Federal district court.
Sec. 6. Appeals of class action certification orders.
Sec. 7. Enactment of Judicial Conference recommendations.
Sec. 8. Effective date.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds as follows:

(1) Class action lawsuits are an important and valuable part of our legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce; and

(C) undermined public respect for the judicial system in the United States.

(3) Class members have been harmed by a number of actions taken by plaintiffs' lawyers, which provide little or no benefit to class members as a whole, including—

(A) plaintiffs' lawyers receiving large fees, while class members are left with coupons or other awards of little or no value;

(B) unjustified rewards being made to certain plaintiffs at the expense of other class members; and

(C) the publication of confusing notices that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Through the use of artful pleading, plaintiffs are able to avoid litigating class actions in Federal court, forcing businesses and other organizations to defend interstate class action lawsuits in county and State courts where—

(A) the lawyers, rather than the claimants, are likely to receive the maximum benefit;

(B) less scrutiny may be given to the merits of the case; and

(C) defendants are effectively forced into settlements, in order to avoid the possibility of huge judgments that could destabilize their companies.

(5) These abuses undermine the Federal judicial system, the free flow of interstate commerce, and the intent of the framers of the Constitution in creating diversity jurisdiction, in that county and State courts are—

(A) handling interstate class actions that affect parties from many States;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(6) Abusive interstate class actions have harmed society as a whole by forcing innocent parties to settle cases rather than risk a huge judgment by a local jury, thereby costing consumers billions of dollars in increased costs to pay for forced settlements and excessive judgments.

(b) PURPOSES.—The purposes of this Act are—

(1) to assure fair and prompt recoveries for class members with legitimate claims;

(2) to protect responsible companies and other institutions against interstate class actions in State courts;

(3) to restore the intent of the framers of the Constitution by providing for Federal court consideration of interstate class actions; and

(4) to benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

''CHAPTER 114—CLASS ACTIONS

''Sec.
''1711. Judicial scrutiny of coupon and other noncash settlements.
''1712. Protection against loss by class members.
''1713. Protection against discrimination based on geographic location.
''1714. Prohibition on the payment of bounties.
''1715. Definitions.

''§ 1711. Judicial scrutiny of coupon and other noncash settlements

''The court may approve a proposed settlement under which the class members would receive noncash benefits or would otherwise be required to expend funds in order to obtain part or all of the proposed benefits only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members.

''§ 1712. Protection against loss by class members

''The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court

makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

"§ 1713. Protection against discrimination based on geographic location

''The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

"§ 1714. Prohibition on the payment of bounties

''(a) IN GENERAL.—The court may not approve a proposed settlement that provides for the payment of a greater share of the award to a class representative serving on behalf of a class, on the basis of the formula for distribution to all other class members, than that awarded to the other class members.

''(b) RULE OF CONSTRUCTION.—The limitation in subsection (a) shall not be construed to prohibit any payment approved by the court for reasonable time or costs that a person was required to expend in fulfilling his or her obligations as a class representative.

"§ 1715. Definitions

''In this chapter—

''(1) CLASS ACTION.—The term 'class action' means any civil action filed in a district court of the United States pursuant to rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class.

''(2) CLASS COUNSEL.—The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

''(3) CLASS MEMBERS.—The term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

''(4) PLAINTIFF CLASS ACTION.—The term 'plaintiff class action' means a class action in which class members are plaintiffs.

''(5) PROPOSED SETTLEMENT.—The term 'proposed settlement' means an agreement that resolves claims in a class action, that is subject to court approval, and that, if approved, would be binding on the class members.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

"114. Class Actions ..... 1711".

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION OF INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d)(1) In this subsection—

''(A) the term 'class' means all of the class members in a class action;

''(B) the term 'class action' means any civil action filed pursuant to rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by one or more representative persons on behalf of a class;

''(C) the term 'class certification order' means an order issued by a court approving the treatment of a civil action as a class action; and

''(D) the term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

''(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interest and costs, and is a class action in which—

''(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

''(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

''(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

''(3) Paragraph (2) shall not apply to any civil action in which—

''(A)(i) the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed; and

''(ii) the claims asserted therein will be governed primarily by the laws of the State in which the action was originally filed;

''(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

''(C) the number of proposed plaintiff class members is less than 100.

''(4) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $2,000,000, exclusive of interest and costs.

''(5) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

''(6)(A) A district court shall dismiss any civil action that is subject to the jurisdiction of the court solely under this subsection if the court determines the action may not proceed as a class action based on a failure to satisfy the requirements of rule 23 of the Federal Rules of Civil Procedure.

''(B) Nothing in subparagraph (A) shall prohibit plaintiffs from filing an amended class action in Federal court or filing an action in State court, except that any such action filed in State court may be removed to the appropriate district court if it is an action of which the district courts of the United States have original jurisdiction.

''(C) In any action that is dismissed under this paragraph and is filed by any of the original named plaintiffs therein in the same State court venue in which the dismissed action was originally filed, the limitations periods on all reasserted claims shall be deemed tolled for the period during which the dismissed class action was pending. The limitations periods on any claims that were asserted in a class action dismissed under this paragraph that are subsequently asserted in an individual action shall be deemed tolled for the period during which the dismissed action was pending.

''(7) Paragraph (2) shall not apply to any class action brought by shareholders that solely involves a claim that relates to—

''(A) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

''(B) the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

''(C) the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).

''(8) For purposes of this subsection and section 1453 of this title, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

''(9) For purposes of this section and section 1453 of this title, a civil action that is not otherwise a class action as defined in paragraph (1)(B) of this subsection shall nevertheless be deemed a class action if—

''(A) the named plaintiff purports to act for the interests of its members (who are not named parties to the action) or for the interests of the general public, seeks a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general; or

''(B) monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact.

In any such case, the persons who allegedly were injured shall be treated as members of a proposed plaintiff class and the monetary relief that is sought shall be treated as the claims of individual class members. The provisions of paragraphs (3) and (6) of this subsection and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (A). The provisions of paragraph (6) of this subsection, and subsections (b)(2) and (d) of section 1453 shall not apply to civil actions described under subparagraph (B).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting ''(a) or (d)'' after ''1332''.

(2) Section 1603(b)(3) is amended by striking ''(d)'' and inserting ''(e)''.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

"§ 1453. Removal of class actions

''(a) DEFINITIONS.—In this section, the terms 'class', 'class action', 'class certification order', and 'class member' have the meanings given these terms in section 1332(d)(1).

''(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with this chapter, without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed—

''(1) by any defendant without the consent of all defendants; or

''(2) by any plaintiff class member who is not a named or representative class member without the consent of all members of such class.

''(c) WHEN REMOVABLE.—This section shall apply to any class action before or after the entry of a class certification order in the action, except that a plaintiff class member who is not a named or representative class member of the action may not seek removal of the action before an order certifying a class of which the plaintiff is a class member has been entered.

''(d) PROCEDURE FOR REMOVAL.—The provisions of section 1446 relating to a defendant removing a case shall apply to a plaintiff removing a case under this section, except that in the application of subsection (b) of such section the requirement relating to the 30-day filing period shall be met if a plaintiff class member files notice of removal within 30 days after receipt by such class member, through service or otherwise, of the initial written notice of the class action.

''(e) REVIEW OF ORDERS REMANDING CLASS ACTIONS TO STATE COURTS.—The provisions of section 1447 shall apply to any removal of a case under this section, except that, notwithstanding the provisions of section 1447(d), an order remanding a class action to the State court from which it was removed shall be reviewable by appeal or otherwise.

''(f) EXCEPTION.—This section shall not apply to any class action brought by shareholders that solely involves—

''(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 and section 28(f)(5)(E) of the Securities Exchange Act of 1934;

''(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

''(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 and the regulations issued thereunder).''.

(b) REMOVAL LIMITATION.—Section 1446(b) is amended in the second sentence by inserting ''(a)'' after ''section 1332''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

''1453. Removal of class actions.''.

SEC. 6. APPEALS OF CLASS ACTION CERTIFICATION ORDERS.

(a) IN GENERAL.—Section 1292(a) is amended by inserting after paragraph (3) the following:

''(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order.''.

(b) DISCOVERY STAY.—All discovery and other proceedings shall be stayed during the pendency of any appeal taken pursuant to the amendment made by subsection (a), unless the court finds upon the motion of any party that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE RECOMMENDATIONS.

Notwithstanding any other provision of law, the amendments to Rule 23 of the Federal Rules of Civil Procedure which are embraced by the order entered by the Supreme Court of the United States on March 27, 2003, shall take effect on the date of the enactment of this Act or on December 1, 2003 (as specified in that order), whichever occurs first.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall apply to—

(1) any civil action commenced on or after the date of the enactment of this Act; and

(2) any civil action commenced before such date of enactment in which a class certification order (as defined in section 1332(d)(1)(C) of title 28, United States Code, as amended by section 4 of this Act) is entered on or after such date of enactment.

(b) FILING OF NOTICE OF REMOVAL.—In the case of any civil action to which subsection (a)(2) applies, the requirement relating to the 30-day period for the filing of a notice of removal under section 1446(b) and section 1453(d) of title 28, United States Code, shall be met if the notice of removal is filed within 30 days after the date on which the class certification order referred to in subsection (a)(2) is entered.

The CHAIRMAN. No amendment to the committee amendment is in order except those printed in House Report 108–148. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 108–148.

AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. SENSENBRENNER:

In section 1332(d) of title 28, United States Code, as proposed to be inserted by section 4(a)(2) of the bill—

(1) in paragraph (2), strike ''$2,000,000'' and insert ''$5,000,000'';

(2) redesignate paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

(3) strike paragraph (3) and insert the following:

''(3) A district court may, in the interests of justice, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of the following factors:

''(A) Whether the claims asserted involve matters of national or interstate interest.

''(B) Whether the claims asserted will be governed by laws other than those of the State in which the action was originally filed.

''(C) In the case of a class action originally filed in a State court, whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction.

''(D) Whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States.

''(E) Whether 1 or more class actions asserting the same or similar claims on behalf of the same or other persons have been or may be filed.

''(4) Paragraph (2) shall not apply to any class action in which—

''(A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed;

''(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

''(C) the number of members of all proposed plaintiff classes in the aggregate is less than 100.'';

(4) in paragraph (5), as so redesignated, strike ''$2,000,000'' and insert ''$5,000,000''; and

(5) in paragraph (10), as so redesignated—

(A) in the third sentence, strike ''paragraphs (3) and (6)'' and insert ''paragraph (7)''; and

(B) in the last sentence, strike ''(6)'' and insert ''(7)''.

The CHAIRMAN. Pursuant to House Resolution 269, the gentleman from Wisconsin (Mr. SENSENBRENNER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bipartisan amendment is intended to mirror the amendment offered by Senator FEINSTEIN over in the other body. It is in keeping with the spirit and intent of the bill and would slightly broaden the category of class action cases that would remain in State court in two ways.

First, the amendment raises the aggregate amount and controversy required for Federal jurisdiction from $2 million to $5 million. Second, it allows Federal courts discretion to return intrastate class actions in which local law governs the State courts after weighing five factors to determine the case is appropriately of a local character.

This discretion would come into play when between one-third and two-thirds of the plaintiffs are citizens of the same State as the primary defendants. If less than one-third are citizens of the same State, the case would automatically be eligible for Federal court jurisdiction under the new diversity rules in the bill. Likewise, if more than two-thirds are citizens of the same State, the case would not be subject to the new rules in this bill and would remain in State court.

I urge my colleagues to adopt this amendment to help speed passage of this important legislation.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Who seeks time in opposition to the amendment?

Mr. CONYERS. Mr. Chairman, I do.

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes.

Mr. CONYERS. Mr. Chairman, I yield myself 2 minutes.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, this is to celebrate the gentlewoman, the Senior Senator from California Day in addition to Attorney Bashing Day. We have a letter from the senior Senator of California, which says she is opposed to the bill and why she is. So what we have here is a Feinstein-lite or a fake Feinstein here.

I do not know what we are trying to do here, but this attempt to fix the class action bill creates, as I expected, more confusion and does not deal with the real defects in the bill.

Her letter says: ''As I said in committee before this amendment was adopted, I will not support any class action legislation that moves those suits to Federal court.''

So we have the senior Senator from California saying that this is a class action bill, and there has been general agreement that we need reform on class actions; but these provisions in the bill do not relate to class actions.

This is far from a done deal. I do not think we correct the basic defects in the bill; and since this is Feinstein-lite, I am going to reject the amendment that I am sure is made in good faith by the chairman of the Committee on the Judiciary.

I include the letter from Senator FEINSTEIN in the RECORD at this point.

JUNE 11, 2003.

Hon. RICK BOUCHER,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN BOUCHER: I wanted to clarify several issues with regard to S.274, the Class Action Fairness Act, and two

Amendments I offered to it in the Senate Judiciary Committee. During House consideration of H.R. 1115, there has been some misunderstanding about my position. I thought a clarification might be helpful to you in your deliberations.

During Committee consideration of S.274, I offered an amendment to raise the amount in controversy to $5 million and to set specific criteria based on a percentage formula to determine whether certain intrastate cases should be heard in state or federal court. This is what has popularly become known as the ''Feinstein Amendment.'' It is my understanding that Chairman Sensenbrenner and a number of Democrats plan to offer this as an amendment to H.R. 1115 on the House floor, and of course, I support its inclusion.

I also co-authored an amendment with Senator Specter to strike a provision from the bill that would have made certain citizen suits and ''private attorney general'' actions removable to Federal Court as well. I felt strongly then, and I feel strongly now, that such suits—particularly those brought under Section 17200 of the California Business and Professional Code—properly belong in state court and should not be classified as class actions under the bill. As I said in Committee before this amendment was adopted, I will not support any class action legislation that moves those suits to federal court.

Senators Specter's amendment also, however, struck a provision from the bill that would make so-called ''Mass Actions'' subject to the same removal provisions in the bill that apply to class actions. That was not my concern, and in fact I believe that truly national ''Mass Actions'' should be removable to Federal Court under the same procedures as class actions.

I hope this clarifies some of my views on this matter. I appreciate your concerns about this important legislation and welcome you to contact me or to have your staff contact my Chief Counsel, David Hantman, at 224–4933 if you have further questions.

Sincerely,

DIANNE FEINSTEIN.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 15 seconds.

What the gentleman from Michigan is saying is this is a good amendment but not good enough. I think if it is a good amendment, it ought to be supported; and I know my cosponsor, the gentleman from Virginia (Mr. BOUCHER), will tell us it is a very good amendment.

Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Wisconsin for yielding me the time and for his willingness to accept the amendment that was drafted by Senator FEINSTEIN of California, which was approved by the Committee on the Judiciary of the other body when that committee reported class action fairness legislation.

We are joined in offering this amendment by the gentleman from Virginia (Mr. GOODLATTE), the gentleman from Virginia (Mr. MORAN), the gentleman from California (Mr. DOOLEY), the gentleman from Texas (Mr. STENHOLM), and the gentleman from Nebraska (Mr. TERRY); and I thank them for their cosponsorship as well.

Under the approach of the bill, only cases that are filed as State class actions which are national in scope will be removable to Federal court, notwithstanding the absence of complete diversity of citizenship. Cases that are local in nature will remain in the State courts where they are filed.

Senator FEINSTEIN's amendment, which is the same as the amendment we are now offering, gives Federal judges clear directions in determining which cases are national in character and which are local. Under this test, if two-thirds of the members of the plaintiff class reside outside of the State and at least one of the primary defendants resides outside of the State, the case is deemed to be national in scope and can be removed to Federal court. By contrast, if two-thirds of the plaintiffs and the primary defendants are residents of the foreign State, the case is local and will remain in State court.

There is a middle category of cases in which more than one-third and less than two-thirds of plaintiffs are residents of the foreign State, and in these instances the amendment directs the Federal judge to weigh five specific criteria that will be set forth in the statute in order to determine whether the case is national or local in character. This approach will promote a higher degree of uniformity among the Federal districts in the application of the new law and assure that local class actions remain in State courts.

The amendment also raises from $2 million to $5 million the aggregate jurisdictional amount for removals under the bill, assuring that cases which are of lesser value remain in the State courts.

The amendment is a useful addition to the bill, and I urge its adoption.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, the name of the senior Senator from California, Ms. FEINSTEIN, has been bandied about on both sides of the aisle; and she has sent a letter to the gentleman from Virginia (Mr. BOUCHER), which says in part: ''It is my understanding that Chairman SENSENBRENNER and a number of Democrats plan to offer this as an amendment to H.R. 1115 on the House floor, and of course, I support its inclusion.''

Mr. Chairman, I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. DOOLEY).

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, I rise in support of the amendment and the bill.

Mr. Chairman, over the last decade, elements of the class action litigation system have gone terribly wrong. H.R. 1115 is a moderate, sensible measure. This bill is not tort reform. This legislation makes a common sense correction in Federal law so that large, multistate class action lawsuits can be heard in Federal court. Cases that are national in scope should be decided by courts that represent the nation at large, not individual county courts, where oftentimes, judges are elected by the very trial lawyers who are bringing suits to their courtroom.

This bill does not take away anyone's right to file a class action. This bill does not cap damages. This bill is a process improvement.

Chairman SENSENBRENNER has worked with Democrats to improve the bill and make key changes to include a provision crafted by Senator DIANNE FEINSTEIN that keeps a single state case in that state's courts, not Federal court.

On February 10th 2003, the American Bar Association's House of Delegates overwhelmingly endorsed a resolution of the ABA's Class Action Task Force, voicing qualified support for the principle of expanded Federal jurisdiction over class actions.

That is precisely what this bill accomplishes.

H.R. 1115 is the only proposal on the table that will curb abuse.

Vote ''yes'' on Final Passage. Vote ''yes'' on the Sensenbrenner, Boucher, Moran, Dooley, Stenholm, Terry amendment.

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to my good friend, the gentleman from Texas (Mr. STENHOLM).

(Mr. STENHOLM asked and was given permission to revise and extend his remarks.)

Mr. STENHOLM. Mr. Chairman, I rise in support of this amendment, and I commend the gentleman from Wisconsin (Chairman SENSENBRENNER) and the gentleman from Virginia (Chairman GOODLATTE) and the gentleman from Virginia (Mr. BOUCHER) for their work on this bill and the amendment.

Mr. Chairman, I rise in support of this amendment and the underlying bill. As one who often comes to this well to express frustration at the unwillingness of the other side of the aisle to work with members on this side, I am extremely pleased to come to the floor in support of this bipartisan amendment which reflects the input of several members on this side of the aisle.

I want to thank Chairman SENSENBRENNER and Mr. GOODLATTE for working with me and other members on this side of the aisle to develop a balanced approach on this issue that deserves strong bipartisan support. I also want to comment Mr. BOUCHER for his hard work on this legislation.

This legislation is based on a simple, common sense principle that class action lawsuits that affect several states should be considered in federal courts. It does not make sense to allow state judges in a few local jurisdiction to make decisions that will affect businesses and consumers nationwide. Cases that are brought on behalf of folks from across the country and will have consequences in many states should be heard in the federal court.

The amendment before us, which was the product of bipartisan negotiations in the other body, clarifies the line between class actions that may be handled by federal courts and class actions that should be resolved by state courts. It ensures that class actions of predominantly local concern remain in state court, while allowing federal courts to handle larger cases that are national or interstate in character. In other words, if a class action lawsuit

is primarily a multi-state lawsuit, it goes to federal court and if it is a primarily a single state lawsuit it stays in state court.

The legislation before us is much stronger because of the commitment of Chairman SENSENBRENNER to deal with this issue in a truly bipartisan manner. The legislative process and the American people are served best when we work together across party liens to find a reasonable middle ground on legislation. I hope that the process by which Chairman SENSENBRENNER has handled this legislation is a model for other legislation in this body.

Mr. CONYERS. Mr. Chairman, I yield the balance of the time to the gentleman from Texas (Mr. SANDLIN).

Mr. SANDLIN. Mr. Chairman, I thank my friend for yielding me the time.

Mr. Chairman, we have heard some very charming stories about this amendment, but how about a little truth in advertising. The Sensenbrenner amendment that we are considering today is not Feinstein. While it is true that a rose by any other name is still a rose, calling a dandelion a rose do not make it so. Yet that is precisely the hoax that is being perpetrated by the Sensenbrenner amendment.

In a desperate attempt to make H.R. 1115 appear moderate, trying to hide that it is really a radical expansion of Federal authority and away from the States, the proponents of the Sensenbrenner amendment want the House to believe that adopting this amendment makes H.R. 1115 the same proposal advanced by Senator FEINSTEIN last month in the Senate Committee on the Judiciary.

Mr. Chairman, that is just not so. The Feinstein amendment was only about class actions, period. That is it. It was not meant to apply, nor does it apply, to mass tort cases, consolidated cases, joinder cases or State Attorney General actions; and as my friends on the other side of the aisle are so prone to say, why do they not read their own darn amendment.

Let us get real on this. Here is what the proponents of the Sensenbrenner amendment will not tell my colleagues and do not want us to know:

In the Senate, committee passage of the bill, including adoption of the Feinstein amendment, was tied to the passage of another amendment, the Feinstein-Specter amendment that narrowed the scope of the bill so that it applied only to class action. Now Sensenbrenner is more extreme in other ways, of course. That is what we are about here, extremist policy.

There are three very important ways that it is more extreme. Feinstein does not apply to joinder or consolidated cases or attorney general actions. Sensenbrenner does. Feinstein does not apply retroactively to pending cases such as ongoing actions against Enron and WorldCom. Sensenbrenner does. We know who they are protecting. We know what they are doing.

Feinstein does not allow defendants to remove cases into a Federal settlement and give those same defendants the right to delay proceedings, appeal intelocutory orders, and stay discovery. Sensenbrenner does.

It is time to tell the truth about the Sensenbrenner amendment. We know what it does. We know what it says. We know who it protects. We have read the thing.

In closing, I have brought a chart to explain this amendment. If my colleagues can understand it, they are wasting their time in the House. They should be confirmed as the Chief Justice of the United States Supreme Court if they can go over the Sensenbrenner amendment and the Feinstein wording and make any sense whatsoever of it. It is poorly drafted, it does not have definitions, it does not allow one to remain in Federal court or State court. It bumps a person back and forth on a jurisdictional merry-go-round that never ends, that protects corporate wrongdoers. It is bad for America.

The CHAIRMAN. All time having expired, the question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 108–148.

□ 1330

AMENDMENT NO. 2 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Ms. JACKSON-LEE of Texas:

In section 1332(d) of title 28, United States Code, as proposed to be inserted by section 4(a)(2) of the bill—

(1) in paragraph (9), strike the quotation marks and second period at the end; and

(2) add after paragraph (9) the following:

''(10)(A) For purposes of this subsection and section 1453 of this title, a foreign corporation which acquires a domestic corporation in a corporate repatriation transaction shall be treated as being incorporated in the State under whose laws the acquired domestic corporation was organized.

''(B) In this paragraph, the term 'corporate repatriation transaction' means any transaction in which—

''(i) a foreign corporation acquires substantially all of the properties held by a domestic corporation;

''(ii) shareholders of the domestic corporation, upon such acquisition, are the beneficial owners of securities in the foreign corporation that are entitled to 50 percent or more of the votes on any issue requiring shareholder approval; and

''(iii) the foreign corporation does not have substantial business activities (when compared to the total business activities of the corporate affiliated group) in the foreign country in which the foreign corporation is organized.''.

The CHAIRMAN. Pursuant to House Resolution 269, the gentlewoman from Texas (Ms. JACKSON-LEE) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 5 minutes.

The Chair recognizes the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rose earlier today and said this is a personal conflict. This is a personal issue. This is the issue of some powerful lawyers who have lost cases in the courts of America against those who have stood for those individuals who could find no way to enter into the court of justice except to join together as many plaintiffs on behalf of their issue.

The issue today is whether or not we can ensure that whatever happens in this legislation, if a corporation that has a class action against them decides to abscond by being purchased by a foreign corporation, that that class action lawsuit will not be null and void.

Specifically, Mr. Chairman, the language says ''a foreign corporation which acquires a domestic corporation in a corporate repatriation transaction shall be treated as being incorporated in the State under whose laws the acquired domestic corporation was organized.''

Let me give an example, Mr. Chairman. The example is as follows. Just remember the case that dealt with the parent company of Jack-in-the-Box restaurants that agreed to pay $14 million in a class action settlement. The class involved 500 people, mostly children. They had to come in a class represented by an attorney. They became sick in 1993 after eating undercooked hamburgers tainted with E. coli bacteria. The children did not go to Jack-in-the-Box to fake injury or to fake sickness. They did not go to the place they enjoyed to eat a hamburger that was tainted. Just imagine that Jack-in-the-Box subsequently had been bought by a foreign corporation. That would have quashed or could have quashed both the settlement and the judgment that was obtained on behalf of sick children.

So this is an amendment that protects consumers, it protects the innocent, it is not a personal amendment; it is an amendment that rids itself of a personal conflict between allegedly defense lawyers who have lost and those plaintiff attorneys who may have won a class action case once in awhile. If we pass this class action litigation, it will inhibit those individuals from being heard.

Mr Chairman, I propose this amendment to H.R. 1115, to prevent domestic corporations from escaping liability from class action lawsuits by incorporating abroad. I ask the Rules Committee to make my amendment in order.

Under this amendment, ''a foreign corporation which acquires a domestic corporation in a corporate repatriation transaction shall be treated as being incorporated in the State under whose laws the acquired domestic corporation was organized.''

Simply put, this amendment ensures that U.S. corporations cannot escape class action

liability or the jurisdiction of U.S. courts by repatriating or merging with a foreign-based corporation. Under this amendment if an American corporation is guilty of corporate crimes or malfeasance, and thereafter the corporation merges with a foreign corporation, the corporation will be deemed incorporated in the State where the corporation was domiciled before the merger.

This amendment prevents American companies from fleeing abroad to avoid liability in a class action lawsuit.

To see the benefit of this amendment one need only consider the hypothetical impact on Enron employees without this amendment. In the Enron collapse, corporate executives criminally failed to disclose corporate decision-making in pension plans, and in other financial decisions. In the Enron case, executives and senior management staff were fraudulently encouraging employees to buy company stock. At the same time, those same executives and senior managers were cashing out millions of dollars shortly before the company declared bankruptcy in December of 2001. As a result of the corporate executives crimes, 4,500 Enron employees lost their jobs in my home district alone.

Without my amendment, it would be possible for the bankrupt Enron corporation to agree to be acquired by a foreign company, relinquish their status as a company incorporated in the United States, avoid the jurisdiction of Federal courts, and avoid liability for their corporate crimes.

A result of this egregious would be a slap in the face to the 4,500 Enron employees who lost their jobs because of corporate wrongdoing and are undoubtedly entitled to damages. It would also be a slap in the face to the victims of tobacco companies, negligent automobile manufacturers, asbestos litigation clients, and any number of other class action plaintiffs who are opposed by well-finance, business and legal savvy defendants. This amendment would ensure that potential corporate defendants are unable to avoid liability.

Mr. Chairman, I urge my colleagues to support my amendment to protect victimized class action plaintiffs form runaway corporations.

Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, the problem that is presented in the bill that the Jackson-Lee amendment attempt to correct is the incredible ability of corporations doing business in this country to move offshore, Bermuda as an example, to do business and then escape coming into State court on class action by claiming they are a foreign corporation.

These are the same companies that are eager to put ''Made in the U.S.A.'' on their products, while they at the same time avoid United States taxes and attempt to minimize their legal liability by merely shuffling corporate documents. Support the Jackson-Lee amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I ask my colleagues to support this amendment. Think of the children playing on playgrounds and broken equipment with a class action lawsuit and ultimately the company is bought by a foreign corporation. This amendment makes this litigation better on behalf of the consumers and the people who need justice in America.

Mr. Chairman, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield such time as he may consume to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Chairman, I rise in opposition to this amendment. This is the ''if you cannot win the argument, try to change the subject'' amendment. This amendment would preclude companies opened by foreign or offshore companies from using the jurisdictional provisions in H.R. 1115. The amendment would make for bad policy, and I urge my colleagues to reject it.

Apparently the gentlewoman from Texas (Ms. JACKSON-LEE) believes that the State class action abuse problem is so bad that companies forced to litigate in State court will move back onshore. Well, I think that belief tells us a lot about how unfair some of these select magnet State courts are around the country where these abuses occur to defendants and to consumers in this country.

Nonetheless, this bill is not the proper vehicle for debating tax policy. Our goal today is to curb class action abuse, to stop coupon settlements that rip off consumers, and to make sure that county courts do not dictate our Nation's economic policies. If this body wants to debate the problems regarding foreign ownership of companies, let us do that in the appropriate context.

Let me add that one of the important things that we need to understand and that the other side of the aisle keeps trying to target here is that somehow there are certain companies that are bad actors, and that we should write Federal policy based on that rather than having one fair, across-the-board treatment of one type of lawsuit. That is exactly what this legislation is attacking and why they are objecting to it.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment I think can probably be referred to as the ''back-door erosion of the 14th amendment to the Constitution amendment'' to this bill because it erodes the concept of equal protection under the law, meaning everybody gets treated equally in court.

What the gentlewoman from Texas (Ms. JACKSON-LEE) is trying to do is to say for certain types of corporations, they would be treated under a different law than other types of corporations. That poses some really profound problems as far as I am concerned.

The crux of this whole matter is that this is an attempt to establish tax policy in a civil litigation procedure bill. It mixes up apples and oranges. It is not going to have the effect that the gentlewoman from Texas (Ms. JACKSON-LEE) is stating, and that is preventing corporations that wish to go offshore from going offshore. The amendment is not wrong, it just does not make any sense. It should be rejected.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

The question was taken; and the Chairman announced that the noes appeared to have it.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) will be postponed.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 108–148.

AMENDMENT NO. 3 OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Ms. LOFGREN:

In section 1332(d)(9) of title 28, United States Code, as proposed to be inserted by section 4(a)(2) of the bill—

(1) in the first sentence, strike ''if—'' and all that follows through ''(B) monetary relief'' and insert ''if monetary relief—'';

(2) strike ''The provisions of paragraphs (3) and (6)'' and all that follows through ''subparagraph (A).''; and

(3) in the last sentence, strike ''subparagraph (B)'' and insert ''this paragraph''.

The CHAIRMAN. Pursuant to House Resolution 269, the gentlewoman from California (Ms. LOFGREN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Chairman, I yield myself 2½ minutes.

(Ms. LOFGREN asked and was given permission to revise and extend her remarks.)

Ms. LOFGREN. Mr. Chairman, the question is not whether there have been problems with coupon-award cases; there have been. The question is whether this bill is the remedy for those problems. I have two concerns about the bill. One, it goes too far; and secondly, I do not see how the bill really addresses and solves the coupon settlement problem.

But what is really offensive to me is the scorched-earth approach of the bill does not just stop at class actions, it also targets California's prosecutors.

California has strong consumer protection, section 17200 of the Business and Professions Code, and it provides that not just AGs, but district attorneys, can sue in the public interest. District attorneys are not bringing abusive class actions to collect attorneys' fees; they are trying to protect their constituents.

For example, in People v. National Travel, two California DAs shut down an unscrupulous Florida travel agency. In People v. Providian Bank, the San Francisco district attorney stopped predatory credit card practices and recovered $300 million for California consumers. In People v. Rite-Aid, DAs stopped the sale of expired baby formula. In People v. Cook Brothers, DAs stopped an Illinois company from selling illegal weapons through a mail-order catalog. These are a few examples of how local DAs use consumer protection actions to safeguard Californians. Their ability to bring these cases in State court would be eliminated under this bill.

Put simply, if my amendment is not passed, this will have a chilling effect on local DAs, and that is why it is opposed by the California District Attorneys Association. I want to read from a letter I received from the California District Attorneys Association. They say, As currently written, H.R. 1115 would severely limit our ability to protect the public. Under the definition of class action, our consumer protection cases would be eligible for removal.

They wrote, That if these offenders remove our cases to Federal court, the cost of prosecution and inconvenience to the victims will make pursuit of many such cases a practical impossibility.

So the question is not whether there are problems with class actions, but whether this bill is the remedy. I say it is not.

CALIFORNIA DISTRICT
ATTORNEYS ASSOCIATION,
Sacramento, CA, June 11, 2003.

Re HR 1115, oppose unless amended.

Hon. ZOE LOFGREN,
House of Representatives, Cannon House Office Building, Washington, DC.

DEAR REPRESENTATIVE LOFGREN: The California District Attorneys Association (CDAA) has taken an Oppose Unless Amended position on HR 1115 (Goodlatte), the Class Action Fairness Act of 2003.

As you may know, District Attorneys in California and many other states are charged with protecting the public from unfair, unlawful, and predatory practices used by unscrupulous businesses. In California, our Business and Professions Code §17200 allows District Attorneys to bring civil actions against such businesses in the name of the People of the State of California, and thereby seek civil penalties, restitution, and injunctions on the People's behalf. This law has been successfully used by California's District Attorneys to protect the public from false advertising, predatory lending, fake cures for cancer, and other shameful scams perpetrated by out-of-state businesses.

As currently written, HR 1115 would severely limit our ability to protect the public from these wrongs. Under the definition of class action currently used by HR 1115, our consumer protection cases would be eligible for removal to Federal court. If these offenders remove our cases to Federal court, the cost of prosecution and the inconvenience to the victims will make pursuit of many such cases a practical impossibility.

We appreciate that HR 1115 currently exempts actions brought by Attorneys General from its provisions. For this reason, we are hopeful that the supporters of HR 1115 did not intend to extend its provisions to actions brought by District Attorneys and other public prosecutors. Therefore, we ask that the author considers amending page 15, line 20 to read ''. . . attorney general, state or local district attorney, other governmental prosecutor, or group thereof . . .'' We would also ask that the following text be inserted at page 13, between lines 6 and 7; ''(D) the action is brought by a State attorney general, state or local district attorney, other governmental prosecutor, or group thereof.'' With these amendments, HR 1115 would preserve the ability of California's District Attorneys, and those of many other states, to protect the public from unlawful, unfair, and predatory practices disguised as legitimate businesses.

We also appreciate the recent efforts of Senators Feinstein and Specter to address our identical concerns with S 274 (Grassley). We look forward to continuing to work with the Senators, and any other interested party, to resolve this issue. Please feel free to contact us if we can be of any further assistance.

Very truly your,

GILBERT G. OTERO,
President.
District Attorney, Imperial County.

Mr. SENSENBRENNER. Mr. Chairman, I claim the time in opposition to the amendment.

The CHAIRMAN. The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the gentlewoman from California (Ms. LOFGREN) has spent a lot of time referring to suits by local district attorneys being removed to Federal court under this bill because she believes they would not be covered by the exemption contained in the bill for State attorney generals.

I would say to the gentlewoman that we believe that suits by local elected district attorneys do fall within that exempted category, and are not covered by the bill. It is clearly the intent of the bill to exclude elected law enforcement officials like district attorneys.

If we need to work further with the gentlewoman from California (Ms. LOFGREN) as this bill moves forward to clarify that intent with regard to suits by local officials, I would offer her to do that. However, I do want to make it quite clear that private attorney general actions are another matter. If the gentlewoman will withdraw her amendment, we can work on clarification of this. Otherwise, I would urge the membership to vote against the amendment since the gentlewoman has rejected my offer.

Mr. Chairman, I reserve the balance of my time.

Ms. LOFGREN. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LINDA T. SÁNCHEZ), my colleague on the Committee on the Judiciary and a cosponsor of this amendment.

Ms. LINDA T. SÁNCHEZ of California. Mr. Chairman, I rise to speak in support of this amendment. I agree that there are some problems with our class action system, but the so-called Class Action Fairness Act is not the solution.

I am particularly concerned because the bill intrudes on a specific provision of California law, one which allows State laws to be enforced by district and city attorneys as well as private attorneys general. This California law has been used successfully to protect the public from false advertising, predatory lending, fake cures for cancer and other shameful scams perpetrated by out-of-State business.

For example, in People v. Life Alert, California's district attorney stopped Life Alert, the purveyors of the ''I have fallen and cannot get up'' advertisements from aggressive door-to-door sales tactics. Those tactics included refusing to leave elderly people's homes until they bought the product, and refusing to issue refunds to consumers who complained about such tactics.

□ 1345

Unfortunately, the Class Action Fairness Act takes away California's ability to protect consumers in this way. It does so by defining private attorney general actions as class actions and removing them to Federal court. Why does this matter? Because private attorney general lawsuits are less likely to proceed if they are deemed class action lawsuits. That would force the private attorney general to certify a class when in fact he or she is bringing the suit to protect consumers from harm. In addition, Federal court is more expensive and time consuming for plaintiffs, especially when it involves greater travel.

This bill is also an insult to States' rights. It usurps decisions made by States regarding their court system and their class action system. Some members of Congress talk about the importance of States' rights, but in the end it appears that that is only true when it is convenient for their purposes. Apparently federalism is not as important when consumer protections are at stake.

I urge my colleagues to support this amendment and to oppose the underlying bill. Voting for H.R. 1115 is like trying to address automobile fatalities by dumping gasoline into the ocean. It fails to do anything about the first problem while creating a second one. If we are going to fix the class action system, then let us do it right. This bill is not the way to do it.

Ms. LOFGREN. Mr. Chairman, I yield myself the balance of my time.

I wanted to quote from a letter I received from Senator FEINSTEIN. This amendment is identical to what Senator FEINSTEIN wrought in the Senate, and she has pointed out that she will not support this bill unless this amendment is adopted and that is to protect section 17200 of California's Business and Professions Code in its entirety. There is no rationale, no reason, there have been no problems with section 17200; and I would urge all members of

the House, and especially the Californians, to stand up for federalism and protect California State law.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I really regret that the gentlewoman from California was not interested in the compromise and clarification that I proposed, where we would allow elected district attorneys to continue to utilize the State court, but not private citizens with private attorney general actions which are authorized only in California and no place else. One of these private attorney general actions should not set national legal and economic policy. When you have an elected official like a district attorney or a State attorney general, that is one thing, because these people represent the public and it is their job to do this. When you have a private citizen in a procedure that has not been adopted by 49 out of the 50 States, they should not get a carve-out under this bill. Because there was no compromise that was agreed to, I would urge the rejection of this amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California (Ms. LOFGREN).

The question was taken; and the Chairman announced that the noes appeared to have it.

Ms. LOFGREN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by gentlewoman from California (Ms. LOFGREN) will be postponed.

It is now in order to consider amendment in the nature of a substitute No. 4 printed in House Report 108–148.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 4 OFFERED BY MR. SANDLIN

Mr. SANDLIN. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute No. 4 offered by Mr. SANDLIN:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Class Action Improvement Act of 2003''.

(b) REFERENCE.—Whenever in this Act reference is made to an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 28, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; reference; table of contents.
Sec. 2. Improved procedures for certain interstate class actions.
Sec. 3. Establishment of State Court Multidistrict Litigation Panel.
Sec. 4. Establishment of procedure for transferring certain actions to Federal court.
Sec. 5. Best practices study.

SEC. 2. IMPROVED PROCEDURES FOR CERTAIN CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

''CHAPTER 114—CLASS ACTIONS

''Sec.
''1711. Coupons and other noncash settlements.
''1712. Protection against loss by class member.
''1713. Protection against discrimination based on geographic location.
''1714. Additional requirements.
''1715. Protecting the integrity of the courts.
''1716. Interlocutory appeals.
''1717. Definitions.''.

''§ 1711. Coupons and other noncash settlements

''(a) CONTINGENT FEES.—If a proposed settlement in a class action provides for an award of a noncash benefit to a class member, and the attorney's fee to be paid to class counsel is based upon a portion of the recovery, then the attorney's fee shall be based on the value of the noncash benefit that is redeemed.

''(b) OTHER ATTORNEY'S FEE AWARDS.—If a proposed settlement in a class action includes a noncash benefit to a class member, and a portion of the recovery is not used to determine the attorney's fee to be paid to class counsel, then the attorney's fee shall be based upon the actual amount of time class counsel expended working on the action. Any attorney's fee under this subsection shall be subject to approval by the court. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees whenever appropriate under applicable law.

''(c) SETTLEMENT VALUATION EXPERTISE.—In a class action involving the awarding of noncash benefits, the court may in its discretion, upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value of the settlement.

''§ 1712. Protection against loss by class members

''The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court first makes a written finding that nonmonetary benefits to the class member outweigh the monetary loss.

''§ 1713. Protection against discrimination based on geographic location

''The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

''§ 1714. Additional requirements

''(a) SETTLEMENTS.—The court may not approve a proposed settlement of a class action unless the court determines that—

''(1) the settlement is fair, reasonable, and adequate to the plaintiff class; and

''(2) the settlement applies only to claims with respect to which the plaintiff class was authorized to represent class members.

''(b) NOTICE TO DEFENDANTS.—The court in a class action shall require that, before the class is certified, defendants receive notice of the action and be given an opportunity to respond to the complaint.

''(c) BLOCKING REMOVAL.—A defendant in a class action may not elect to block removal of the action to Federal court that is sought by other defendants if the court finds that plaintiffs named the defendant solely for purposes of blocking such removal.

''§ 1715. Protecting the integrity of the courts

''(a) OPEN RECORDS.—No order, opinion, or record of the court in a class action, including a record obtained through discovery, whether or not formally filed with the court, may be sealed or made subject to a protective order unless the court finds—

''(1) that the sealing or protective order is narrowly tailored and necessary to protect the confidentiality of a particular trade or business secret of one or more of the settling parties and is in the public interest; or

''(2) that—

''(A) the sealing or protective order is narrowly tailored, consistent with the protection of public health and safety, and is in the public interest; and

''(B) if the action by the court would prevent the disclosure of information, disclosing the information is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of such information.

''(b) DESTRUCTION OF DOCUMENTS PROHIBITED.—All parties filing or receiving service of a class action shall maintain all documents, including those in electronic format, related to the subject matter of the class action. Any person who knowingly alters, destroys, mutilates, conceals, or falsifies any record, document, or tangible object with the intent to impede, obstruct, or influence the outcome of a class action shall be fined not more than $5,000 for each record, document, or object destroyed, imprisoned not more than 5 years, or both.

''§ 1716. Interlocutory appeals

''A court of appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under Rule 23 of the Federal Rules of Civil Procedure if application is made to the court within 10 days after entry of the order. An appeal does not stay proceedings in the district court unless the district court or the court of appeals so orders.

''§ 1717. Definitions

''In this chapter—

''(1) CLASS ACTION.—The term 'class action' means—

''(A) any civil action filed in a district court of the United States pursuant to Rule 23 of the Federal Rules of Civil Procedure; and

''(B) any civil action that is removed to a district court of the United States that was originally filed pursuant to a State statute or rule of judicial procedure authorizing an action to be brought by one or more representatives on behalf of a class;

''(2) CLASS COUNSEL.—The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

''(3) CLASS MEMBERS.—The term 'class members' means the persons who fall within the definition of the proposed or certified class in a class action.

''(4) PROPOSED SETTLEMENT.—The term 'proposed settlement' means an agreement that resolves any or all claims in a class action, that is subject to court approval, and that, if approved, would be binding on each class member, except to the extent that a class member has requested to be excluded from the class action.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

''114. Class Actions ..... 1711''.

SEC. 3. ENACTMENT OF JUDICIAL CONFERENCE RECOMMENDATIONS.

Notwithstanding any other provision of law, the amendments to Rule 23 of the Federal Rules of Civil Procedure, relating to notice to members of a class, which are embraced by the order entered by the Supreme Court of the United States on March 27, 2003, shall take effect on the date of the enactment of this Act or on December 1, 2003 (as specified in that order), whichever occurs first.

SEC. 4. ESTABLISHMENT OF STATE COURT MULTIDISTRICT LITIGATION PANEL.

(a) CREATION OF MULTIDISTRICT LITIGATION PANEL.—The National Center for State Courts is authorized to develop and implement, in coordination with the Conference of Chief Judges, a State court multidistrict litigation panel for class actions, to be called the ''State Court Panel on Multidistrict Litigation'', in accordance with the following:

(1) CONSOLIDATION OF CLASS ACTIONS.—The SCPML shall allow State court judges, or parties with class actions pending in State courts, to seek to consolidate within one State court for pretrial proceedings related class actions pending in different States. No pending class action may be consolidated without the approval of the State court judge handling the pending action.

(2) FOR PRETRIAL PROCEEDINGS.—When class actions involving one or more common questions of fact are pending in the courts of different States, such actions may be transferred, with permission of the court, to any of these State courts for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the SCPML upon its determination that transfers for such proceedings will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the SCPML at or before the conclusion of such pretrial proceedings to the State court from which it was transferred unless it has been previously terminated, except that the SCPML may separate any claim, cross-claim, counter-claim, or third-party claim and remand any such claim before the remainder of the action is remanded.

(3) JUDICIAL ASSIGNMENTS.—Coordinated or consolidated pretrial proceedings under paragraph (2) shall be conducted by a judge or judges to whom such actions are assigned by the SCPML. With the consent of the transferee court or courts, such actions may be assigned by the SCPML to a judge or judges from any relevant State court. The judge or judges to whom such actions are assigned and the members of the SCPML may exercise the powers of a trial court judge of any of the relevant State courts for the purpose of conducting pretrial depositions in such coordinated or consolidated pretrial proceedings.

(4) COMPOSITION OF SCPML.—The SCPML shall consist of nine judges designated from time to time by the CCJ, no two of whom shall be from the same State. The concurrence of five members shall be necessary to any action by the SCPML. The members of the SCPML shall each serve for a term of three years. The CCJ is urged to develop a system to ensure that States from varying regions and States of different sizes are equitably represented on the SCPML.

(5) ESTABLISHMENT OF RULES.—The SCPML may prescribe procedural rules for the conduct of its business not inconsistent with Federal law and the Federal Rules of Civil Procedure, including rules establishing procedures for initiating the transfer of a class action under this section, providing notice to all affected parties, determining whether such transfer shall be made, issuing orders either directing or denying such transfer, and providing notice of and appealing any order of the SCPML under this section.

(b) AUTHORIZATION.—There are authorized to be appropriated to the National Center for State Courts for the establishment and administration of the State Court Panel on Multidistrict Litigation $1,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal year 2005 and thereafter.

(c) DEFINITIONS.—In this section:

(1) CLASS ACTION.—The term ''class action'' means any civil action that—

(A) is brought in a State court pursuant to a State statute or rule of judicial procedure authorizing an action be brought by one or more representatives on behalf of a class; and

(B) is not removed to a court of the United States.

(2) CCJ.—The term ''CCJ'' means the Conference of Chief Justices.

(3) NCSC.—The term ''NCSC'' means the National Centers for State Courts.

(4) SCPML.—The term ''SCPML'' means the State Court Panel on Multidistrict Litigation established pursuant to subsection (b).

SEC. 5. ESTABLISHMENT OF PROCEDURE FOR TRANSFERRING CERTAIN ACTIONS TO FEDERAL COURT.

(a) ESTABLISHMENT OF PROCEDURE.—The National Center for State Courts is authorized to develop and implement, in coordination with the Conference of Chief Judges, a procedure by which the applicable State court or the SCMPL shall have the authority to transfer a class action to the appropriate Federal court if the matter in controversy of the civil action exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(1) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(2) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(3) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(b) DISCRETION TO DECLINE TO TRANSFER JURISDICTION.—The applicable State court or the SCMPL may, in the interests of justice, decline to transfer jurisdiction under subsection (a) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed, based on consideration of the following factors:

(A) Whether the claims asserted involve matters of national or interstate interest.

(B) Whether the claims asserted will be governed by laws other than those of the State in which the action was originally filed.

(C) Whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction.

(D) Whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States.

(E) Whether one or more class actions asserting the same or similar claims on behalf of the same or other persons have been or may be filed.

(c) CASES IN WHICH JURISDICTION MAY NOT BE TRANSFERRED.—The applicable State court or the SCMPL shall not transfer jurisdiction under subsection (a) over a class action in which—

(A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed;

(B) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(C) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(d) JURISDICTION OF FEDERAL COURTS.—Any Federal court to which a class action is transferred under subsection (a) shall have, and exercise, jurisdiction of the case.

(e) DEFINITIONS.—In this section, the terms ''class action'' and ''SCMPL'' have the meanings given those terms in section 4.

SEC. 6. BEST PRACTICES STUDY.

The National Center for State Courts is authorized and requested to—

(1) conduct a study for the purpose of identifying problems that arise in the litigation of State class actions;

(2) develop recommendations on ways to address the problems so identified; and

(3) report to the Congress, within 1 year after the date of the enactment of this Act, on the results of such study and recommendations.

The CHAIRMAN. Pursuant to House Resolution 269, the gentleman from Texas (Mr. SANDLIN) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 10 minutes.

The Chair recognizes the gentleman from Texas (Mr. SANDLIN).

Mr. SANDLIN. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, my good friend, the gentleman from Virginia (Mr. GOODLATTE), mentioned earlier that we need fair, across-the-board reform in the area of class action. I agree with that; it needs to be fair, reasonable and workable. That is what we should pursue.

In typical fashion, our friends have cited isolated cases over a number of years that they say cry out for reform. However, they forgot to mention the case in Georgia at the Tri-State Crematory where they had been foregoing cremations for bodies received from funeral homes. Instead, they passed off wood chips and other substances as ashes. They forgot to mention the Ohio case wherein an Ohio neighborhood was filled with noxious gases when an 8,500-gallon resin kettle exploded at a Georgia Pacific plant. An employee was killed, 13 were injured, and 15 houses near the plant were evacuated. They forgot to mention the Foodmaker case which we heard earlier where the parent company of Jack-in-the-Box agreed to pay $14 million in a class action settlement in the State of Washington. That class included 500 people, mostly children, who became sick in early 1993 after eating undercooked hamburgers tainted with E coli. They forgot to mention the Indiana case, TRG Marketing LLC, who sold fraudulent health insurance policies to more than 5,000 Floridians who were left with several million dollars in unpaid medical bills.

As you might imagine, we could go on day after day, case by case, a tit for tat, going forward and comparing our

cases. But let us look at reasonable reform that protects business and consumers, that respects State law, that can be supported by both sides of the aisle. The Democratic alternative, importantly, is reasonable and, more importantly, it is not retroactive. If we change the law, let us do it properly. Let us do it from this point forward. There is no reason to pass a law that is retroactive. The Democratic alternative is not retroactive. The Democratic alternative does not contain compulsory appeal requirements to ultimately delay justice by years. Certainly the appeal is permissible. The appeal is available, just like it is in the law now. The Democratic alternative does not cede jurisdiction to the Federal courts. It says that we respect the State courts. The State courts are the ones where these cases were originally filed.

Class actions were originally founded in State court. Even when you go to Federal court, there is a requirement of the use and interpretation of State law. The Democratic substitute respects the sovereignty of State courts. The Democratic alternative provides substantial protection to consumers and other class action plaintiffs that could result in settlements; and we want to make sure that the settlements are fair, reasonable, and adequate to address the injuries of the parties and their claims. The Democratic alternative provides specific, reasonable reforms to address concerns about so-called magnet State adjudication of multistate class actions. This act does not preempt State attorney general mass tort cases as we mentioned earlier.

We also have protection on fees to make sure that they are reviewed by the courts to make sure that they are fair and reasonable. Any coupon settlements that we have heard all about today, which I notice that the Republicans did not ban, but any coupon settlements can be examined by a court and expert testimony can be received on the actual value of the settlement. Attorneys' fees under our bill would be determined and measured by the amount of the actual noncash benefit redeemed, not what was awarded, to make sure that that is fair and equitable.

Additional requirements on settlements. The courts can only approve the settlement of a class action if it determines the settlement is fair, reasonable and adequate, and it applies to only the claims that are currently before the court. We protect the integrity of the courts, we say that the primary authority should be in the State courts, we prohibit the destruction of documents. As I mentioned on interlocutory appeals, they are permissible, not mandatory. We create, much as the Federal courts have, a State multicourt litigation panel to operate as a panel in the States just as we do in the Federal. If we have a concern about Federal versus State and not having a panel, our legislation takes care of that. We have an establishment of procedure for transferring actions to Federal court, but it puts the discretion within the State courts. It says the State courts know best how to interpret State law for their State citizens.

Also, importantly, we have a best practices study. Let us let the National Center for State Courts conduct a study to identify problems that arise in the litigation of State class actions. Let us get them to recommend things to us that will cause us to pause and to make corrections. Let us let them report to Congress about problems that they see and potential corrections.

It just boils down to this: Do you want the States to decide or the Federal Government to decide? State courts, Federal courts. We feel like that our substitute and the summary that I have just gone on is a reasonable, fair way to address the problems.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this substitute amendment, I think, can probably be called the Madison County, Illinois, Judicial Protection Act of 2003, because what it does is it goes on for a long, long text, preserving essentially the status quo, and then throws a million dollars a year in for the next 2 fiscal years to have some kind of a study.

The most important sentence in the Sandlin amendment that demonstrates the author's true intent is tucked away in the middle of the legislation toward the top of page 8. For those Members who missed it, let me read this sentence to them: ''No pending class action may be consolidated without the approval of the State court judge handling the pending action.''

Let me tell my colleagues what this means. If you are a magnet State court judge and you want to keep running your class action factory, this bill will not affect you, because you do not approve any consolidation. You can continue to certify class action cases without considering the rules. You can continue to approve settlements, even if they do nothing for class members, even coupons. And you can continue to support the trial lawyers who got you elected to the bench.

It claims to offer better consumer provisions; but those provisions only apply to Federal court cases, of which there will be very few, if any, if this substitute is adopted. It is just a piece of paper for consumer protections. It claims to offer a proposal for consolidating State court class actions, but even if that proposal were constitutional, which it is not, it is completely discretionary. It claims to offer a proposal for transferring cases to Federal court, but it lets the State court judge where the suit was brought decide whether to take advantage of this procedure. This amendment is not worth the paper it is printed on.

The gentleman from Texas has given a few examples, and I think they came from a document that was originally circulated by the American Trial Lawyers Association. Let me respond to three of the examples he gave to show Members how much his bill misses the mark and ours addresses the problem. The Dow Chemical case he cited filed by Michigan residents alleging contamination at a Michigan plant likewise would not be affected by this bill. Because Dow and the proposed class members were all Michigan citizens, under our bill that suit would remain in State court.

The Tri-State Crematory cases actually present a perfect example of the benefits of our bill. Many Federal and State class actions have been filed in that matter. The Federal cases were consolidated in a multidistrict litigation proceeding where a Federal judge certified a class action in advance of any State court doing so. Finally, the TRG Marketing case, which is scattered amongst a number of State courts that are duplicating each other's work. Under our bill, all such cases would be removed to Federal court and handled by a single Federal judge. There is no reason to believe that consumers would fare worse under that scenario. Actually, under the substitute, duplicative litigation would end up being allowed, and the lawyers' meters are ticking. Studies show that State courts are much more likely to produce bad settlements, money for lawyers and no relief for consumers. And the Federal court would not be slower. Florida State court judges are each assigned four times the number of new cases annually than each Florida Federal court judge.

This amendment in the nature of a substitute is having the fox watch the hen house. The foxes are the plaintiffs' lawyers. They are the ones that the USA Today poll believes benefit disproportionately under this bill. It is time to send the fox packing. Defeat the substitute, pass the bill and the fox can go back to the woods.

Mr. Chairman, I reserve the balance of my time.

Mr. SANDLIN. Mr. Chairman, I yield myself 15 seconds. I think it is important that the other side read the Federal rules and be familiar with Federal procedure. If they would look on page 8, first paragraph, where it says: ''No pending class action may be consolidated without the approval of the State court judge handling the pending action.'' That is consistent and completely accurate with Federal practice as it currently exists.

Mr. Chairman, I yield such time as he may consume to the gentleman from Maryland (Mr. HOYER), the distinguished minority whip.

Mr. HOYER. I thank the gentleman for yielding me this time.

Mr. Chairman, I rise in support of this substitute and reiterate what the distinguished gentleman from Texas said.

□ 1400

Obviously, adversely affecting pending cases, in my opinion, is extraordinarily bad policy and precedent that we should not follow. Have we done it from time to time? We have. Have I opposed it? I have. I think that is not the way we ought to go.

Now, I think that legislation in this area is appropriate. The gentleman from Texas (Mr. SANDLIN) I think has offered an appropriate substitute. Are there abuses in our system of civil justice specifically regarding class action lawsuits? I want to tell the gentleman that I believe there are, and we need to write legislation that addresses and remedies those problems.

However, the bill offered on the floor today, if not amended, in my opinion, does not do that. Instead, its provisions would apply to pending class actions, making it more difficult for shareholders, retirees, and former employees frankly to hold companies such as Enron, WorldCom and Arthur Andersen accountable for their alleged wrongdoing. We ought not to, because of our desire to protect those cases, therefore not address other corporate citizens who are responsible and who are doing a good job and who want to be ought to be subject, obviously, to suits, but ought to be subject to suits that are legitimate.

The addition of this retroactivity provision is a major change. Let me stress that, Mr. Chairman. This is a major change from the class action bill considered in the last Congress. I do not know who it is in there to protect. I do not know who came forward and said we need protection; it is not a question of reform in the future, but we need protection.

We have seen a few reports of that, from people who want protection. Maybe that is what that retroactivity is for. As matter of fact, invariably in my plus-30 years of service in legislative bodies, when retroactive provisions are included in the bill, invariably it is there to protect somebody. And it is very bad policy. Congress should not be changing the rules that govern this resolution of civil disputes in midstream.

Furthermore, this legislation would give defendants in class actions vast new opportunities to delay cases for 2 years or more and stay discovery during the same period. Again, these rule changes would apply retroactively to pending cases.

H.R. 1115 also would force our Federal courts to handle State class actions, in addition to their large caseload and judicial vacancy rate. Thus, it is not surprising, I tell my colleagues, that both Federal and State judges oppose this measure. In fact, the Federal Judicial Conference, which is headed by Chief Justice Rehnquist, recently wrote a letter in which it ''strongly cautions Congress to uphold principles of federalism and to not increase the workload of the already overburdened Federal courts.''

In sharp contrast to this overreaching GOP bill, Democrats have offered legislation that, among other things, would base attorneys' fees on the amount redeemed by class members rather than the amount of the settlement. I think that is appropriate.

I understand the concerns of corporate leaders when they say the attorneys get all the money, and the aggrieved parties get a piece of paper saying that they may get something prospectively if they buy another product. That is a legitimate concern. This substitute speaks to it.

Our bill would require courts to determine that a class action settlement is fair, reasonable and adequate to the class. That is a protection against specious suits and those who would misuse the system.

This substitute would bar litigants from sealing court records and documents under protective orders unless a court finds that it is necessary to protect a trade or business secret and it is in the public interest.

Mr. Chairman, I urge my colleagues to support this substitute and then support its passage. We need reform. This is the appropriate step for us to take.

The CHAIRMAN pro tempore (Mr. GILLMOR). The time of the gentleman from Texas (Mr. SANDLIN) has expired.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I would like to commend my friend from Maryland and my friend from Texas for being very consistent on the issue of retroactivity. Retroactivity is in here to prevent a race to the courthouse to avoid the new rules that are contained in this bill, should it be enacted into law. But, then again, they were against the retroactive tax cut. The tax cut that was enacted into law just a little while ago is retroactive to the first of January and, as a result of that retroactivity, there is going to be a reduction in withholding rates beginning the first of July that would be twice the amount if it were not retroactive.

So I guess they are against providing benefits of good legislation retroactively to anybody, because they are against good legislation.

Mr. Chairman, I yield the balance of my time to the gentleman from Virginia (Mr. GOODLATTE).

The CHAIRMAN pro tempore. The gentleman from Virginia is recognized for 4 minutes.

Mr. GOODLATTE. Mr. Chairman, I rise in strong opposition to the substitute bill. This substitute bill commissions studies, creates new advisory panels, and even allows State court judges to voluntarily consolidate class actions. However, the substitute bill fails to accomplish one thing: to prevent the current abuses in the class action system.

Welcome to Madison County, Illinois. It is hard to imagine why the bizarre system of delegations, panels and transfers in the substitute system is preferable to a system allowing parties to utilize the existing Federal removal procedure to have their cases heard in Federal Court through a process that has existed and served this country well for over 200 years.

The substitute bill authorizes a group of State court judges to think about the class action problem and to propose a solution, if they wish. The bill, however, H.R. 1115, offers real change. It moves large interstate class actions to Federal courts, which have a better track record of dealing with these cases and more resources to handle them efficiently, and it offers real consumer benefits that will apply to real cases and makes sure that lawyers do not sell their clients short and take home all the money.

Like the Blockbuster case, where the plaintiffs got $1 coupons and the plaintiffs' attorneys got $9.2 million in attorneys' fees.

Like the Bank of Boston case, where the lawyers got $8.5 million and the plaintiffs paid money. They did not get anything.

Like the frequent flier case, where the lawyers got $25 million, and the plaintiffs got coupons for discount air fares on the same airlines that the plaintiffs' attorneys alleged had performed some sort of wrongdoing.

Like the Coca-Cola sweetener case, the lawyers got $1.5 million. That was a real sweetener for them. The plaintiffs only got 50-cent coupons for their sweetener.

That is what is wrong. That is what the substitute does not cover.

The transfer provision in the substitute bill is meaningless. The substitute would also authorize State courts to develop a procedure for transferring certain cases to Federal courts. But, once again, State courts that do not want to participate do not have to. It is a safe bet that the courts, like the ones in Madison County, are not going to exercise that option. They are giving class actions a bad name, and they are not going to voluntarily send their class actions to Federal Court.

Thus, this provision is a sham, and I urge my colleagues to defeat the substitute and support the underlying bill.

The CHAIRMAN pro tempore. All time having expired, the question is on the amendment in the nature of a substitute offered by the gentleman from Texas (Mr. SANDLIN).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. SANDLIN. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas (Mr. SANDLIN) will be postponed.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 2 offered

by Ms. JACKSON-LEE of Texas, Amendment No. 3 offered by Ms. LOFGREN of California, and Amendment No. 4 by offered by Mr. SANDLIN of Texas.

The first electronic vote will be conducted as a 15-minute vote, and the remaining votes will be conducted as 5-minute votes.

AMENDMENT NO. 2 OFFERED BY MS. JACKSON-LEE

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from Texas (Ms. JACKSON-LEE) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 185, noes 238, not voting 11, as follows:

[Roll No. 268]

AYES—185

Abercrombie
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Bereuter
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Clay
Clyburn
Conyers
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Duncan
Edwards
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Hall
Hastings (FL)
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Slaughter
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Wamp
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—238

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—11

Ackerman
Cubin
Eshoo
Filner
Flake
Gephardt
Johnson (CT)
Jones (OH)
Rothman
Smith (WA)
Solis

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The CHAIRMAN pro tempore (Mr. GILLMOR)(during the vote). There are 2 minutes remaining in this vote.

□ 1430

Ms. HARRIS and Messrs. NUNES, WELLER, DEAL of Georgia, BOOZMAN, KINGSTON, WICKER, HYDE, ENGLISH, TURNER of Ohio, EHLERS, and PICKERING changed their vote from ''aye'' to ''no''.

Ms. LOFGREN and Messrs. HOLDEN, WAMP and DOGGETT changed their vote from ''no'' to ''aye''.

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Chairman, on rollcall No. 268, I was caught in traffic and missed the vote. Had I been present, I would have voted ''aye.''

Ms. SOLIS. Mr. Chairman, during rollcall vote No. 268 on the Jackson-Lee amendment to H.R. 1115, I was unavoidably detained. Had I been present, I would have voted ''aye.''

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, the remainder of this series will be conducted as 5-minute votes.

AMENDMENT NO. 3 OFFERED BY MS. LOFGREN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentlewoman from California (Ms. LOFGREN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 186, noes 234, not voting 14, as follows:

[Roll No. 269]

AYES—186

Abercrombie
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Clay
Clyburn
Conyers
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Filner
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Hall
Harman
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Lee

Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—234

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Bonilla
Bonner
Bono
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—14

Ackerman
Barton (TX)
Boehner
Cubin
Delahunt
Eshoo
Ford
Gephardt
Johnson (CT)
Jones (OH)
Marshall
Rothman
Smith (WA)
Solis

□ 1438

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Ms. SOLIS. Mr. Chairman, during rollcall vote No. 269 on the Lofgren/Sánchez amendment to H.R. 1115 I was unavoidably detained. Had I been present, I would have voted "aye."

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 4 OFFERED BY MR. SANDLIN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment in the nature of a substitute offered by the gentleman from Texas (Mr. SANDLIN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment in the nature of a substitute.

The Clerk redesignated the amendment in the nature of a substitute.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 170, noes 255, not voting 9, as follows:

[Roll No. 270]

AYES—170

Abercrombie
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Clay
Clyburn
Conyers
Crowley
Cummings
Davis (AL)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doyle
Edwards
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Hall
Hastings (FL)
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Lynch
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—255

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Culberson
Cunningham
Davis (CA)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doggett
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emanuel
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Majette
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mollohan
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)

Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Ackerman
Berkley
Cubin
Eshoo
Gephardt
Johnson (CT)
Rothman
Smith (WA)
Solis

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1447

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated for:

Ms. SOLIS. Mr. Chairman, during rollcall vote No. 270 on the Sandlin amendment to H.R. 1115 I was unavoidably detained. Had I been present, I would have voted "yea."

Ms. BERKLEY. Mr. Chairman, I was under the impression that I had voted on rollcall vote No. 270. In reviewing the record, my vote did not register. If the vote had registered, I would have voted "aye" on rollcall vote No. 270.

The CHAIRMAN. There being no other amendments, the question is on the committee amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Accordingly, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. OSE) having assumed the chair, Mr. GILLMOR, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 1115) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, to outlaw certain practices that provide inadequate settlements for class members, to assure that attorneys do not receive a disproportionate amount of settlements at the expense of class members, to provide for clearer and simpler information in class action settlement notices, to assure prompt consideration of interstate class actions, to amend title 28, United States Code, to allow the application of the principles of Federal diversity jurisdiction to interstate class actions, and for other purposes, pursuant to House Resolution 269, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. WEINER

Mr. WEINER. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. WEINER. I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. WEINER moves to recommit the bill H.R. 1115 to the Committee on the Judiciary with instructions that the Committee report the same back to the House forthwith with the following amendments:

Strike section 8 (EFFECTIVE DATE) and insert the following:

SEC. 8. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of the enactment of this Act.

Strike section 6 (APPEALS OF CLASS ACTION CERTIFICATION ORDERS) and redesignate the succeeding sections accordingly.

Conform the table of contents accordingly.

Mr. WEINER (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. WEINER) is recognized for 5 minutes in support of his motion.

Mr. WEINER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me begin by offering a word of apology and concern for the many lawyers in this Chamber. This has been a very bad afternoon for all of the lawyers who have seen their reputations dragged through the mud. And those of us who are not lawyers, the seven or eight of us here, will be meeting later in a phone booth off the cloakroom to discuss how badly we feel for all of these horrible lawyers who have been flogging themselves on the floor all afternoon.

I should also express my sorrows to those victims who use the courts to try to find redress. Now, most Americans are thankfully not lawyers and they are not victims. And we are grateful and thank God for that. But for the organizations who do represent victims, this has been a very bad day, whether it is the American Cancer Society that opposes this legislation because they represent victims of cancer. A bad day for them. It has been a bad day for those who advocate against water pollution like Clean Water Action. It has been a very bad day because they oppose this bill.

This bill is also a setback for those who advocate for seniors who have been victims, for those who advocate on behalf of women who have been victims. All of these groups are against this bill.

This has also been a very bad day for anyone in this Chamber who calls themselves a conservative. This has been a very bad day for you, because for all of the efforts that you put in to returning power to the States, returning power to individuals, this bill does the exact opposite. It says that the people in our local States, the people in our State courts are simply not smart enough to handle these cases. They are simply not sophisticated enough. We trust them to put them in charge of choosing their Congressman, but we do not trust them on a jury. No, that is too big a mistake. So we take out of the hands of about the 50,000 State courts and give them to about 1,500 Federal judges.

This is a huge setback for all of you who support stronger State government.

This has also been a very bad day for anyone who wants to be intellectually consistent. Was it not about 2 weeks ago you voted on putting a cap on the amount that victims can get, and now you come up here with your charts saying, oh, it is terrible how little victims are getting.

There is a reason victims are getting 35 cents, 40 cents, $1, $2.50. It is because there are millions and hundreds of thousands of victims in these cases all chopping up the 5-, 6-, 7-, $8 million claims. So it is a very bad day if you want to be consistent.

Although, any of those who claim about how low the amount that victims are getting, I look forward to a bill on this floor sometime in the near future putting a minimum amount that victims have to get in these cases. By the way, I will vote for that. You can sign me up as a cosponsor.

While I cannot improve the day for those groups, if there are some of you in this body who see that this is a terrible power grab, for those of you who do not mind the power grab against the States, who do not mind sticking it to victims, who do not mind flogging yourself as a lawyer, who do not mind being inconsistent conservatives, there are a couple of ways to improve the bill in case you do not want to be a pig.

If you do not want to be a pig about it, there are two things in this bill that no one asked for, were not in the original version of the bill, and really are an affront to our basic elements of fairness. One is the element that says you can have retroactive effects of this bill, meaning taking things that are presently going through the process, even if they are due to be judged tomorrow, and sending them back; and the second

is the provision that gives mandatory appeal on the certification of a class.

What that will have the effect of doing is that at any point in the process, if someone wanted to challenge the certification of a class, whether it be Enron or WorldCom, if they are in the case right now, even if it is in the Federal court, this will allow them to stop everything in its tracks and go back on appeal.

By the way, for those of you who think that the lower courts get overturned a lot on appeal, it has never happened. It has never happened.

So these are two minor ways for those of you who spend so much time flogging yourself because you are such evil lawyers to be able to vote for this bill and improve it in a minor way. This does not make this a good bill. That is too much to hope for in this Congress in this day and age. But what it will do is make it a little less offensive to those victims who are now waiting for some redress to that grievance.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think it is unfortunate that the gentleman from New York (Mr. WEINER) did not spend more time talking about his motion to recommit. And I can understand why he did not do it. Because it opens up two big loopholes in this bill to allow the minority of the bar that abused the class action laws to continue to be on the gravy train.

I will tell you how he proposes to do it. First of all, he changes the effective date of the bill. What the bill says is that any class action where the class has not been certified will go under the new rules.

The motion to recommit changes that. It says that the new rules become effective as of the date of enactment of the bill. And this will result in a rush to the courthouse in Madison County, Illinois and the other class action mills to get cases filed so that they will be exempt from the modest civil action court reforms that are contained in H.R. 1115.

Now, the other red herring that is in this motion to recommit is that it takes away the so-called interlocutory appeal. This has nothing to do with Enron or WorldCom or any other firm or individual that is in bankruptcy. They are already in the Federal bankruptcy court, and all civil litigation against them in State or Federal courts is stayed and the bankruptcy court decides those claims. But interlocutory appeals are not the bad things that we hear from the gentleman from New York (Mr. WEINER).

The average time to decide an appeal for all types of cases nationwide is 10.7 months. The average time for a merits ruling and class certification appeals in the Seventh Circuit, which includes Illinois, is only 3.2 months. So you are not talking about having justice be unduly delayed. These appeals are decided promptly, even in a very busy circuit. This motion is a red herring. It should be defeated.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. WEINER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of final passage.

The vote was taken by electronic device, and there were—ayes 185, noes 240, not voting 9, as follows:

[Roll No. 271]

AYES—185

Abercrombie
Alexander
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Clay
Clyburn
Conyers
Cooper
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Duncan
Edwards
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Hastings (FL)
Hill
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Majette
Maloney
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—240

Aderholt
Akin
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Dreier
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Ackerman
Cubin
Eshoo
Gephardt
Johnson (CT)
Markey
Payne
Royce
Smith (WA)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. OSE) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1516

Mr. HOEKSTRA changed his vote from ''aye'' to ''no.''

Mr. BLUMENAUER changed his vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. OSE). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 253, nays 170, not voting 11, as follows:

[Roll No. 272]

YEAS—253

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doyle
Dreier
Duncan
Dunn
Ehlers
Emanuel
Emerson
Everett
Feeney
Ferguson
Flake
Fletcher
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Janklow
Jenkins
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Majette
Manzullo
Matheson
McCarthy (NY)
McCotter
McCrery
McInnis
McKeon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—170

Abercrombie
Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Clay
Clyburn
Conyers
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doolittle
Engel
English
Etheridge
Evans
Farr
Fattah
Filner
Frank (MA)
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Hastings (FL)
Hinchey
Hinojosa
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (NY)
Kleczka
Kucinich
Lampson
Langevin
Lantos
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lynch
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCollum
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—11

Ackerman
Cubin
Edwards
Eshoo
Gephardt
Johnson (CT)
McDermott
McHugh
Smith (WA)
Tiahrt
Watson

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1523

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. TIAHRT. Mr. Speaker, in rollcall No. 272 I was unavoidably detained. Had I been present, I would have voted, ''yea.''

Stated against:

Mr. EDWARDS. Mr. Speaker, I missed rollcall No. 272. Had I been present, I would have voted, ''nay.''

CONFERENCE REPORT ON S. 342, KEEPING CHILDREN AND FAMILIES SAFE ACT OF 2003

Mr. BOEHNER submitted the following conference report and statement on the Senate bill (S. 342) to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under that Act, and for other purposes:

CONFERENCE REPORT (H. REPT. 108–150)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 342), to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under that Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

(a) SHORT TITLE.—This Act may be cited as the ''Keeping Children and Families Safe Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CHILD ABUSE PREVENTION AND TREATMENT ACT

Sec. 101. Findings.

Subtitle A—General Program

Sec. 111. National clearinghouse for information relating to child abuse.
Sec. 112. Research and assistance activities and demonstrations.
Sec. 113. Grants to States and public or private agencies and organizations.
Sec. 114. Grants to States for child abuse and neglect prevention and treatment programs.
Sec. 115. Grants to States for programs relating to the investigation and prosecution of child abuse and neglect cases.
Sec. 116. Miscellaneous requirements relating to assistance.
Sec. 117. Authorization of appropriations.
Sec. 118. Reports.

Subtitle B—Community-Based Grants for the Prevention of Child Abuse

Sec. 121. Purpose and authority.
Sec. 122. Eligibility.
Sec. 123. Amount of grant.
Sec. 124. Existing grants.
Sec. 125. Application.
Sec. 126. Local program requirements.
Sec. 127. Performance measures.
Sec. 128. National network for community-based family resource programs.