

DUE PROCESS RESTORATION ACT OF 2015

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JULY 21, 2016.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. HENSARLING, from the Committee on Financial Services,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3798]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3798) to amend the Securities Exchange Act of 1934 to permit private persons to compel the Securities and Exchange Commission to seek legal or equitable remedies in a civil action, instead of an administrative proceeding, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Scott Garrett on October 22, 2015, H.R. 3798, the Due Process Restoration Act of 2015, provides respondents in Securities and Exchange Commission (SEC) enforcement cases with the ability to have their case removed from the SEC's administrative or "in-house" proceedings to a federal district court. H.R. 3798 would accomplish three things: (1) grant a defendant in a SEC administrative proceeding against whom a cease and desist order and a penalty may be issued the right to terminate the proceeding, not later than 20 days after receiving notice of such proceeding; (2) permit the SEC to bring the same action in federal court against that person who terminated the administrative proceeding and seek the same remedy that might have been imposed; and (3) raise the burden of proof for cases that remain in SEC ad-

ministrative proceedings to a higher “clear and convincing” standard.

#### BACKGROUND AND NEED FOR LEGISLATION

The SEC’s in-house tribunals have recently come under criticism for using procedures that favor the interests of the SEC, as respondents are not afforded the same protections as they would receive under the Federal Rules of Civil Procedure and the Federal Rules of Evidence that apply in federal district court. The respondents do not have the opportunity to have a jury trial, and any appeals of the administrative proceeding are first heard by the very same SEC Commissioners that authorized the enforcement action. Mr. Thomas Quaadman from the U.S. Chamber of Commerce’s Center for Capital Markets Competitiveness testified on H.R. 3798 on December 2, 2015, before the Subcommittee on Capital Markets and Government Sponsored Enterprises in support of the legislation and noted, “We believe that the Due Process Restoration Act of 2015 is an important step forward in restoring the balance between the appropriate uses of administrative proceedings and preserving the due process rights of defendants.”

The SEC possesses a wide array of enforcement authority to supplement and effectuate its penalty authority. Over the past six years, the SEC has increasingly turned to its own administrative law judges (ALJs)—rather than the federal courts—to adjudicate enforcement actions. This shift from litigation in federal court to administrative proceedings has occurred largely as a result of Section 929P of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which expanded the SEC’s authority to obtain civil penalties in administrative proceedings against any person or entity. SEC administrative proceedings are quasi-judicial proceedings in which ALJs appointed by the SEC adjudicate enforcement actions under SEC rules.

Notwithstanding the “home-field” advantage that the SEC receives from using its ALJs, the increased use of SEC in-house proceedings has also prompted at least one federal district court judge, Ned Rakoff, to express concerns in a November 2014 *Reuters* article that administrative proceedings, “could hinder “the balanced development of the securities laws.”<sup>1</sup> Judge Rakoff urged the SEC to “consider that it is neither in its own long-term interest, nor in the interest of the securities markets, nor in the interest of the public as a whole, for the SEC to become, in effect, a law unto itself.”<sup>2</sup> Additionally, Stanford University professor Joseph Grundfest testified before the Subcommittee on Capital Markets and Government Sponsored Enterprises on December 2, 2015, that the, “agency’s push to administrative proceedings raises a concern that it is on a mission systematically to substitute its interpretation of the federal securities laws for that of the federal judiciary.”

Publicly available data indicate that in FY 2014, the SEC’s Enforcement Division brought nearly half of its litigated actions as administrative proceedings, an increase of over 35% since 2012. Moreover, it has been reported that the SEC brought 82% of its en-

<sup>1</sup> U.S. judge criticizes SEC use of in-house court for fraud cases, *Reuters*, November 5, 2014, available at <http://www.reuters.com/article/us-sec-fraud-rakoff-idUSKBN01P2EG20141105>

<sup>2</sup> *Id.*

forcement actions as administrative proceedings, rather than federal-court cases, in the six months ending in March 2015, representing an increase from less than half of those matters a decade earlier. Senior officials in the Enforcement Division, including Andrew Ceresney, the Division's director, have praised the efficiency of these administrative proceedings and confirmed that they will be used more extensively in the future.

The Enforcement Division has developed a strong preference for administrative proceedings for two reasons. First, ALJs preside over all SEC administrative proceedings. The Administrative Procedure Act (APA) in 1946 created the ALJ function to ensure fairness in administrative proceedings before federal agencies. Despite the fact that SEC ALJs are not Article III judges with life tenure—they are hired from a pool of candidates who have met criteria developed by the Office of Personnel Management—they are supposed to serve as independent and impartial triers of fact in formal proceedings requiring a decision on the record after the opportunity for a hearing. ALJs rule on preliminary motions, conduct pre-hearing conferences, issue subpoenas, conduct hearings (which may include written and/or oral testimony and cross-examination), review briefs, and prepare and issue decisions, along with written findings of fact and conclusions of law. Notwithstanding the intent of the APA, there are significant differences between proceedings before ALJs and federal court litigation that advantage the agency:

Unlike in federal court cases seeking penalties, in which, following the opportunity to take full discovery (including depositions of all the key individuals), a defendant has a right to a jury trial presided over by a neutral federal judge, administrative proceedings are before an administrative law judge, a commission employee, who renders an initial decision that is subject to an appeal to his or her employer, the commission (which itself brought the administrative complaint), with an unfavorable commission decision being subject to appeal to a U.S. Court of Appeals.

ALJs follow other SEC procedural rules that also favor the agency's lawyers. For example, according to a former Enforcement Division official:

The rules give the accused only a few months to prepare a defense—after SEC prosecutors have typically spent years building the case—and they give administrative law judges only a few months after the hearing to evaluate the mountains of evidence presented and write detailed decisions that typically run several dozens of single-spaced pages. The rules also allow SEC prosecutors to use hearsay and other unreliable evidence, and they severely limit the kinds of pretrial discovery and defense motions that are routinely allowed in courts.

Professor Grundfest noted that H.R. 3798, “has many virtues. Simplicity is one. There is no ambiguity as to which causes action can be removed, how they can be removed, and the consequences of removal. Predictability is another.” The SEC has heard repeated criticism of administrative proceedings (1) from defendants who feel they weren't given adequate due process protections, (2) from

former SEC judges who felt pressure to rule in favor of the Commission, and (3) from U.S. District Judges who find the panels unconstitutional, H.R. 3798 will ensure that respondents in SEC enforcement actions can remove those actions to federal district court and receive all of their Constitutional due process protections.

#### HEARINGS

The Committee on Financial Services' Subcommittee on Capital Markets and Government Sponsored Enterprises held a hearing examining matters relating to H.R. 3798 on December 2, 2015.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 2, 2016, and ordered H.R. 3798 to be reported favorably to the House without amendment by a recorded vote of 32 yeas to 25 nays (recorded vote no. FC-105), a quorum being present. An amendment offered by Mr. Ellison was not agreed to by a recorded vote of 25 yeas to 32 nays (recorded vote no. FC-104), a quorum being present.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The amendment offered by Mr. Ellison was defeated by a recorded vote of 25 yeas to 32 nays (Record vote no. FC-104), a quorum being present. The second record vote in committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. That motion was agreed to by a recorded vote of 32 yeas to 25 nays (Record vote no. FC-105), a quorum being present.

## Record vote no. FC-104

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling		X		Ms. Waters (CA)	X		
Mr. King (NY)		X		Mrs. Maloney (NY)	X		
Mr. Royce		X		Ms. Velázquez	X		
Mr. Lucas		X		Mr. Sherman	X		
Mr. Garrett		X		Mr. Meeks	X		
Mr. Neugebauer		X		Mr. Capuano	X		
Mr. McHenry		X		Mr. Hinojosa			
Mr. Pearce		X		Mr. Clay	X		
Mr. Posey		X		Mr. Lynch	X		
Mr. Fitzpatrick		X		Mr. David Scott (GA)	X		
Mr. Westmoreland				Mr. Al Green (TX)	X		
Mr. Luetkemeyer		X		Mr. Cleaver	X		
Mr. Huizenga (MI)		X		Ms. Moore	X		
Mr. Duffy		X		Mr. Ellison	X		
Mr. Hurt (VA)		X		Mr. Perlmutter	X		
Mr. Stivers		X		Mr. Himes	X		
Mr. Fincher		X		Mr. Carney	X		
Mr. Stutzman		X		Ms. Sewell (AL)	X		
Mr. Mulvaney				Mr. Foster	X		
Mr. Hultgren		X		Mr. Kildee	X		
Mr. Ross		X		Mr. Murphy (FL)	X		
Mr. Pittenger		X		Mr. Delaney	X		
Mrs. Wagner		X		Ms. Sinema	X		
Mr. Barr		X		Mrs. Beatty	X		
Mr. Rothfus		X		Mr. Heck (WA)	X		
Mr. Messer		X		Mr. Vargas	X		
Mr. Schweikert		X					
Mr. Guinta		X					
Mr. Tipton		X					
Mr. Williams		X					
Mr. Poliquin		X					
Mrs. Love		X					
Mr. Hill		X					
Mr. Emmer		X					

## Record vote no. FC-105

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Waters (CA) .....		X	
Mr. King (NY) .....	X			Mrs. Maloney (NY) .....		X	
Mr. Royce .....	X			Ms. Velázquez .....		X	
Mr. Lucas .....	X			Mr. Sherman .....		X	
Mr. Garrett .....	X			Mr. Meeks .....		X	
Mr. Neugebauer .....	X			Mr. Capuano .....		X	
Mr. McHenry .....	X			Mr. Hinojosa .....			
Mr. Pearce .....	X			Mr. Clay .....		X	
Mr. Posey .....	X			Mr. Lynch .....		X	
Mr. Fitzpatrick .....	X			Mr. David Scott (GA) .....		X	
Mr. Westmoreland .....				Mr. Al Green (TX) .....		X	
Mr. Luetkemeyer .....	X			Mr. Cleaver .....		X	
Mr. Huizenga (MI) .....	X			Ms. Moore .....		X	
Mr. Duffy .....	X			Mr. Ellison .....		X	
Mr. Hurt (VA) .....	X			Mr. Perlmutter .....		X	
Mr. Stivers .....	X			Mr. Himes .....		X	
Mr. Fincher .....	X			Mr. Carney .....		X	
Mr. Stutzman .....	X			Ms. Sewell (AL) .....		X	
Mr. Mulvaney .....				Mr. Foster .....		X	
Mr. Hultgren .....	X			Mr. Kildee .....		X	
Mr. Ross .....	X			Mr. Murphy (FL) .....		X	
Mr. Pittenger .....	X			Mr. Delaney .....		X	
Mrs. Wagner .....	X			Ms. Sinema .....		X	
Mr. Barr .....	X			Mrs. Beatty .....		X	
Mr. Rothfus .....	X			Mr. Heck (WA) .....		X	
Mr. Messer .....	X			Mr. Vargas .....		X	
Mr. Schweikert .....	X						
Mr. Guinta .....	X						
Mr. Tipton .....	X						
Mr. Williams .....	X						
Mr. Poliquin .....	X						
Mrs. Love .....	X						
Mr. Hill .....	X						
Mr. Emmer .....	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 3798 will ensure fairness and protect substantive rights by enhancing procedural due process rights for defendants in Securities and Exchange Commission (SEC) enforcement matters.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 28, 2016.*

Hon. JEB HENSARLING,  
*Chairman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3798, the Due Process Restoration Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 3798—Due Process Restoration Act of 2015*

Summary: Under current law, the Securities and Exchange Commission (SEC) may bring legal actions against parties deemed to

have violated laws governing financial transactions and financial disclosures either through administrative proceedings heard by the SEC's in-house administrative law judges or by filing a civil action in a U.S. federal district court. H.R. 3798 would allow parties to administrative proceedings brought by the SEC to require the agency to terminate such proceedings. The SEC then would have the option to bring civil actions in a federal district court against the parties that terminated their administrative proceedings. The bill also would define the standard of proof that would apply in administrative proceedings.

CBO estimates that enacting H.R. 3798 would decrease revenues by \$553 million over the 2017–2026 period; therefore, pay-as-you-go procedures apply. Enacting the bill would not affect direct spending.

In addition, CBO estimates that implementing the bill would increase discretionary costs for the SEC by about \$4 million per year over the 2017–2021 period for administrative expenses related to the expected increase in the number of civil actions. However, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, CBO estimates that the net effect on discretionary spending would be negligible, assuming appropriation actions consistent with the legislation.

CBO estimates that enacting H.R. 3798 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 3798 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

If the SEC increases fees to offset the costs of implementing the bill, H.R. 3798 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the SEC, CBO estimates that the incremental cost of the mandate would be small and fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2016, adjusted annually for inflation).

**Estimated cost to the Federal Government:** The estimated budgetary effect of H.R. 3798 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—													
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017– 2021	2017– 2026		
DECREASES IN REVENUES <sup>a</sup>														
Penalties .....	–250	–253	–6	–6	–6	–6	–6	–6	–7	–7	–521	–553		

<sup>a</sup>In addition, CBO estimates that the net effect of the legislation on spending that is subject to appropriation would be negligible.

**Basis of estimate:** For this estimate, CBO assumes that the bill will be enacted late in fiscal year 2016, the necessary amounts will be appropriated near the start of each year, and spending will follow historical patterns for the SEC.

### *Revenues*

Current law authorizes the SEC to bring legal actions against parties deemed to have violated laws governing financial trans-

actions and financial disclosures using either in-house administrative proceedings or civil actions in federal district court. A portion of the amounts that parties found liable are ordered to pay as a result of either type of proceeding is remitted to the Treasury and recorded in the budget as revenue. Under current law, CBO estimates that revenues from those legal actions will total roughly \$700 million per year; approximately \$500 million of that amount stems from cases that will be handled through the SEC's administrative proceedings.

Based on information provided by the SEC, CBO expects that enacting H.R. 3798 would not affect the overall number of actions brought by the SEC or the total penalties resulting from such actions. However, CBO expects that under H.R. 3798, half of the cases that would have been handled by the SEC in administrative proceedings under current law would instead be handled in civil proceedings in federal district court. Civil proceedings take, on average, two years longer than SEC administrative proceedings. CBO estimates that moving more legal actions into district courts would delay by two years the collection of revenues related to civil proceedings that would otherwise have been settled as administrative proceedings. As a result, CBO estimates that enacting H.R. 3798 would reduce revenues by \$553 million over the 2017–2026 period; most of that reduction would occur in 2017 and 2018.

*Spending subject to appropriation*

On the basis of information provided by the SEC, CBO expects that the agency would need about 15 additional staff to handle the increased number of court cases that would occur under the bill—those cases require more staff than administrative proceedings. CBO therefore estimates that implementing H.R. 3798 would increase the SEC's costs by about \$4 million per year, assuming appropriation of those additional amounts. However, the SEC is authorized to collect fees sufficient to offset its funding; therefore, CBO estimates that implementing the bill would have a negligible effect on discretionary spending, assuming appropriation actions consistent with the legislation.

**Pay-As-You-Go considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3798, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON MARCH 2, 2016

	By fiscal year, in millions of dollars—														2016–2021		2016–2026	
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026							
NET INCREASE IN DEFICITS																		
Statutory Pay-As-You-Go Impact ....	0	250	253	6	6	6	6	6	6	7	7	521	553					

**In long term direct spending and deficits:** CBO estimates that enacting H.R. 3798 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

Estimated impact on state, local, and tribal governments: H.R. 3798 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimated impact on the private sector: If the SEC increases fees to offset the costs of implementing the bill, H.R. 3798 would increase the cost of an existing mandate on private entities required to pay those fees. Based on information from the SEC, CBO estimates that the SEC would need to increase fees by no more than \$5 million per year to cover costs associated with an increase in the number of civil court proceedings used in lieu of administrative proceedings. Therefore, the incremental cost of the mandate would fall well below the annual threshold for private-sector mandates established in UMRA (\$154 million in 2016, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Stephen Rabent; Impact on State, Local, and Tribal Governments: Rachel Austin; Impact on the Private Sector: Logan Smith.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

#### EARMARK IDENTIFICATION

H.R. 3798 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 3798 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 3798 contains no directed rulemaking.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1: Short title*

This section cites H.R. 3798 as the “Due Process Restoration Act of 2015”.

*Section 2: Private parties authorized to compel the Securities and Exchange Commission to seek sanctions by filing civil actions*

Amends the Securities Exchange Act of 1934 by adding “SEC. 40” to allow an individual who is a party to a proceeding brought by the Commission to terminate that proceeding within 20 days of receiving notice; to authorize the SEC to bring a civil action against the person if they terminate the proceeding; and, to allow for a legal or equitable penalty to be imposed upon the person, if the Commission provides clear and convincing evidence that the person violated the law.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**SECURITIES EXCHANGE ACT OF 1934**

\* \* \* \* \*

**TITLE I—REGULATION OF SECURITIES EXCHANGES**

\* \* \* \* \*

**SEC. 40. PRIVATE PARTIES AUTHORIZED TO COMPEL THE COMMISSION TO SEEK SANCTIONS BY FILING CIVIL ACTIONS.**

(a) *TERMINATION OF ADMINISTRATIVE PROCEEDING.*—*In the case of any person who is a party to a proceeding brought by the Commission under a securities law, to which section 554 of title 5, United States Code, applies, and against whom an order imposing a cease and desist order and a penalty may be issued at the conclusion of the proceeding, that person may, not later than 20 days after receiving notice of such proceeding, and at that person’s discretion, require the Commission to terminate the proceeding.*

(b) *CIVIL ACTION AUTHORIZED.*—*If a person requires the Commission to terminate a proceeding pursuant to subsection (a), the Commission may bring a civil action against that person for the same remedy that might be imposed.*

(c) *STANDARD OF PROOF IN ADMINISTRATIVE PROCEEDING.*—*Notwithstanding any other provision of law, in the case of a proceeding brought by the Commission under a securities law, to which section 554 of title 5, United States Code, applies, a legal or equitable remedy may be imposed on the person against whom the proceeding was brought only on a showing by the Commission of clear and con-*

*vincing evidence that the person has violated the relevant provision of law.*

## MINORITY VIEWS

H.R. 3798 is another example of Republicans protecting Wall Street criminals over investors and the public. Specifically, the bill would allow white collar defendants in administrative proceedings before the Securities and Exchange Commission (SEC) to either require the agency to bring the case in federal court or be subject to a higher burden of proof. These changes would hamper the ability of the SEC to hold bad actors accountable, protect investors, and maintain market integrity.

H.R. 3798 is based on a false premise: that the SEC is unfairly prosecuting Wall Street criminals by using the administrative process, rather than the federal court system. First, Congress has explicitly authorized the SEC, like other agencies, to utilize administrative proceedings, which conserve valuable agency resources and efficiently resolve enforcement actions. Whereas cases brought in federal court can drag on for years, cases brought before an administrative law judge allow the SEC to obtain a prompt hearing and remedies against bad actors who may otherwise remain in the industry every day.

Second, the administrative proceedings are appropriately used by the agency and are fair for defendants. The SEC chooses the forum that best serves the public interest and brings 70% of contested cases in federal court. In a recent investigation into allegations of bias, the SEC's Office of Inspector General did not find any evidence of improper influence on the Administrative Law Judges in favor of the SEC. Tellingly, the historical win-loss record for the SEC in administrative cases and in the courts are comparable. Last year, the SEC actually fared better in the courts, prevailing against 100% of defendants in contested cases, compared with only 70% of defendants in administrative proceedings.

Finally, as the courts have held, the SEC's administrative proceedings provide defendants with sufficient due process protections. If a defendant disagrees with the outcome of an administrative proceeding, he can appeal his case to the full Commission and, following that, to the federal courts.

Given these facts, it is clear that the real intent of the bill is to tip the scales in favor of Wall Street defendants and stymie the ability of the SEC to bring enforcement actions. This intent was made clear when Republicans rejected Mr. Ellison's amendment to afford consumers similar protections in mandatory arbitration cases. The state securities regulators, represented by the North American Securities Administrators Association, oppose the bill, stating "the likely impact of H.R. 3798 would be to cripple aspects of the SEC's ability to protect investors and police U.S. financial markets." The bill is also opposed by Americans for Financial Reform, Public Citizen, Center for Justice and Democracy, Consumer

Action, Consumers for Auto Reliability and Safety, Main Street Alliance, and National Association of Consumer Advocates.  
For all of these reasons, we oppose H.R. 3798.

MAXINE WATERS.  
JOYCE BEATTY.  
KEITH ELLISON.  
MICHAEL CAPUANO.  
WM. LACY CLAY.

