terrorism, efforts to undermine Middle East peace, and acquisition of weapons of mass destruction and the means to deliver them, that led to the declaration of a national emergency on March 15, 1995, has not been resolved. These actions and policies are contrary to the interests of the United States in the region and pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to continue the national emergency declared with respect to Iran and maintain in force comprehensive sanctions against Iran to respond to this threat.

GEORGE W. BUSH.
THE WHITE HOUSE, *March 13, 2002.*

PERIODIC REPORT ON NATIONAL EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 107–188)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9(c), I transmit herewith a 6-month periodic report prepared by my Administration on the national emergency with respect to Iran that was declared in Executive Order 12957 of March 15, 1995.

GEORGE W. BUSH.
THE WHITE HOUSE, *March 13, 2002.*

CLASS ACTION FAIRNESS ACT OF 2002

The SPEAKER pro tempore. Pursuant to House Resolution 367 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. 2341.

□ 1220

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. 2341) 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. LINDER 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. 2341, the Class Action Fairness Act of 2002. Last August, The Washington Post Editorial Board wrote that ''no portion of the American civil justice system is more of a mess than the world of class actions. None is in more desperate need of policymakers' attention.''

Mr. Chairman, the Post almost got it right, except that the world of class action litigation is not a mess, it is a joke. The examples speak for themselves:

An airline price-fixing settlement produced $16 million in attorneys' fees that only provided a $25 credit for class members, if they purchased an additional airline ticket for more than $250.

The Bank of Boston accounting settlement, which resulted in $8.5 million in attorneys' fees but actually cost class members around $80 apiece. And if that was not bad enough, the plaintiffs' attorneys in this settlement actually sued the class members for an additional $25 million.

In Mississippi, an asbestos settlement rewarded class members from Mississippi as much as 18 times more than class members from other States. In another case, a class action settlement against Cheerios over food additives produced $2 million in attorneys' fees and class members only received coupons for more Cheerios.

While these settlements are a disgrace to the American legal system, H.R. 2341 takes important steps to restore its dignity. First, it would implement necessary safeguards against these and other unwieldy settlements that give lawyers millions of dollars in fees and individual class members a small fraction of any settlement or award. Secondly, it would expand Federal diversity jurisdiction over interstate class actions to help curb the serious abuses that continue to take an enormous toll on our society.

A quick examination of the class action world reveals that the scales of justice are unable to balance the interests of class action lawyers and their clients. Currently, attorneys lump thousands and sometimes millions of speculative claims into one class action and then race to any available State courthouse in the hopes of a rubber stamp settlement. Too often these settlements result in millions of dollars of attorneys' fees and a mere pittance or coupons for class members in exchange for an agreement not to sue in the future.

While these class actions serve no public policy or benefit to class members, they are an enormous windfall for their attorneys. In addition, because most State and Federal procedural rules require the class members affirmatively opt out of the lawsuit, there are many instances where people are dragged into class actions and do not know how to get out. The only available advice is supposedly contained in extremely complicated class action notices. Mr. Chairman, this system does not protect the interests of class members.

While case after case demonstrates how greedy attorneys use abusive class action settlements to game the system at the expense of their clients, this bill provides long-needed protections to prevent this from happening in the future. A consumer class action bill of rights would prohibit the payment of bounties to class representatives, bar the approval of unreasonable net-loss settlements, and establish a plain-English requirement for settlement notices which clarify class members' rights. Additionally, H.R. 2341 would require greater scrutiny of coupon settlements and settlements involving out-of-state class members.

With the filing of State court class actions having increased a thousand percent over the last 10 years, the current system has transformed certain State courts into the epicenter for class action abuse. It is widely known that there are a handful of State courts notorious for processing even the most speculative of class actions. These courts end up rendering judgments that make national law and bind people from all 50 States. This is exactly what diversity jurisdiction in our Federal courts was intended to prevent.

The bill would rectify this situation by updating antiquated Federal jurisdictional rules and providing our Federal courts with jurisdiction over large interstate class actions. Currently, the Federal Rules provide Federal court jurisdiction for disputes dealing with Federal laws and disputes based upon complete diversity. That means that all plaintiffs and defendants are residents of different States and that every plaintiff's claim is valued at $75,000 or more. As a result, Federal courts have jurisdiction over lawsuits between people from two different States for just over $75,000 but do not have jurisdiction for national class actions worth billions of dollars. Instead, these massive lawsuits are being processed in various county courts throughout the country.

The bill establishes a new minimal diversity standard for class actions, requiring that any plaintiff and any defendant are residents of different

States and that the aggregate of all claims is at least $2 million. While the bill does not require that all interstate class actions be filed in Federal court, those that do satisfy this minimal diversity requirement may be removed to Federal court. However, the bill also excludes class actions dealing with one State, that are against a State, or consist of less than 100 class members, and all securities and corporate governance litigation.

Mr. Chairman, the Federal court is where these cases belong. The Federal courts are equipped and practiced in handling complex, interstate cases, unlike many of the county courts that have been the source of rampant class action abuse. In addition, Federal courts are trained to balance various State laws in similar complex legislation. This Congress has already endorsed this notion when it designated a single Federal district court to resolve all litigation relating to the September 11 attacks and possible future litigation under the terrorism reinsurance legislation.

Finally, Mr. Chairman, it is important to note that the cost of class action abuses are not limited to the parties of these settlements. They are shared by the American consumer. Because potential liability of a class action is so enormous and unpredictable under the current system, most defendants are willing to settle regardless of the merit. The cost is then passed off to the consumer in the form of higher prices for goods and services. This burdens the American economy and creates unneeded threats against America's ingenuity.

Also, Mr. Chairman, these lawsuits pose a threat to the security of America's retirement plans. While class action liability can be enormous, news of these lawsuits on Wall Street can drive down a particular stock by as much as 8 to 10 points in a day. For someone depending upon a steady return on their invested retirement plan, this drop should be extremely alarming.

□ 1230

The bottom line is that H.R. 2341 is a common-sense approach to promote national litigation efficiency and fairness to all potential plaintiffs. I urge my colleagues to support this legislation.

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

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. BOUCHER), although he is not opposed to the action but supports this bill, and we on this side do not.

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

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time.

Cases that are truly national in scope are being filed as State class actions before certain judges who employ an almost ''anything goes'' approach that renders virtually any controversy subject to certification as a class action. In such an environment, defendants and even plaintiff class members are routinely denied their range of normal rights as there is a rush to certify classes and then a rush to settle the cases.

Plaintiffs suffer a range of horrors. In order to prevent removal of the case to Federal court, the amount sued for is sometimes kept artificially below the $75,000 Federal jurisdictional amount even if individual plaintiffs would be entitled to recover more.

In another effort to avoid removal to Federal court, the class action complaint will sometimes not assert Federal causes of action that could legitimately be raised, denying plaintiffs an opportunity for these Federal claims to be heard.

Sometimes in the settlement of these cases, the plaintiffs get coupons while their lawyers receive millions. And in at least one case, the plaintiff class members at the end of the settlement had a debit of $91 posted to their mortgage escrow account while their lawyers received $8.5 million for their services. The plaintiffs had a net loss because of the suit. They were worse off after the class action than before it was filed.

Our legislation addresses these problems by permitting cases that are truly national in scope to be removed to the Federal courts even if the diversity of citizenship requirements of current law are not strictly met. Instead, we look to the center of gravity of the case.

The target of these cases is usually a large out-of-State corporation. The plaintiffs are usually consumers who reside in many States. These cases are national in character and our bill would permit removal to Federal court even if a local defendant has been sued for the purpose of destroying complete diversity of citizenship.

Our reform is truly modest. The procedural remedy it contains narrowly addresses a broad procedural abuse. I am pleased this afternoon to urge its passage by the House.

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

My friend from Virginia has suggested, I thought I heard him say that this is a consumer-friendly piece of legislation. In the interest of all the Members knowing about the objections to this bill, I bring to them communications from the Consumer Federation of America, which urges that we oppose the measure, indicating that this bill will create numerous barriers to participating in class actions by permitting defendants to remove most State class action suits to Federal court and will clog the already-crowded Federal court system.

In addition, we have a letter from Public Citizen sent to myself and the gentleman from Wisconsin (Mr. SENSENBRENNER) which writes to comment about the importance of class actions and how these so-called ''procedural changes'' will do great damage to groups of consumers who, in trying to bring action against corporate defendants, would be forced either to bring individual suits or to remove themselves to a Federal docket for reasons that are not quite clear to most of us that are not happy about the bill. Some of these notions are not in the public interest.

I hope that, first of all, everybody voting on this bill will not think that this is a consumer-supported bill. It is opposed by consumer organizations and would clearly be damaging to consumers trying to get into the court.

PUBLIC CITIZEN,
Washington, DC, March 5, 2002.

Hon. JAMES SENSENBRENNER,
Hon. JOHN CONYERS, Jr.,
Committee on the Judiciary, House of Representatives, Washington, DC.

Re H.R. 2341, Class Action Fairness Act.

DEAR CHAIRMAN SENSENBRENNER AND RANKING MEMBER CONYERS: We are writing to comment on H.R. 2341 relating to class actions. This bill would give the federal courts jurisdiction over most class action lawsuits, and add a ''Consumer Bill of Rights'' for members of a class.

Public Citizen has a long history of working to make class actions fairer and more beneficial to plaintiffs. We have participated in nearly forty cases to advocate for more equitable settlement terms for consumers, oppose excessive attorneys fees, and ensure that the class action vehicle is not weakened. For the reasons stated in our testimony on an earlier version of this bill, which is attached, we strongly oppose this bill. We ask that you include these comments and our earlier testimony in the hearing record.

THE IMPORTANCE OF CLASS ACTIONS

Proponents of this bill have expressed concerns that businesses are being unfairly targeted by class action litigation. We recognize that most businesses are working hard to provide good products to American consumers. But the fact is that many of the business enterprises that are being sued are really no different from the old-fashioned flim-flam men, taking the corporate guise for the legitimacy it bestows, and also for its insulation from liability.

This is illustrated best by the tremendous problem of predatory lending. There are lenders who pay bribes and kickbacks to mortgage brokers, to induce them to sell out their clients and sign them up for higher rather than lower interest rate loans. There are mortgage companies accepting kickbacks from overpriced title insurance companies. There is also nickel-and-dime chiseling, turning $85 recording fees into $100 recording fees, $325 appraisal fees into $500 appraisal fees, and the like. There are $10,000 credit life insurance policies being packed on to loans, which have little if any value to the consumer. The defendants in most class actions are not acting like legitimate businesses, but are simply fast-buck artists and con men.

In other cases, the businesses are legitimate and are trying to provide valuable services, but corner-cutting or overreaching has prevailed. These problems may be caused by ambitious individual managers, a bean-counter mentality, a chainsaw-CEO, groupthink, or just plain greed. As the Enron scandal has demonstrated, in some cases you find that the moral compass has failed.

In many of these cases, it is only the class action lawsuit that can protect the victim. In some instances, the amount of money stolen is too small on a per-person basis to support an individual lawsuit; in others, there

are vulnerable, unsophisticated consumers, who are unable to recognize that they have been fleeced. The class action device permits aggregation of cases and a more efficient disposition of claims.

FEDERALISM AND CLASS ACTIONS

When Congress perceives a problem in an area that is traditionally handled by state and local government, it has five legislative options. You can provide (1) grants or (2) technical assistance to state and local governments to help them solve the problem; (3) you can exercise concurrent jurisdiction; (4) you can mandate state and local compliance with your standards; or (5) you can pre-empt state law with federal law.

Obviously, as you move down this list, you are usurping local control to increasingly greater degrees. So it seems odd that here, broad federal preemption has been the first impulse, rather than the last resort, of those who suggest that class action changes are needed.

We believe that this issue calls for the least onerous federal intervention, for a number of reasons.

First, proponents of the legislation have argued that some rural counties in a few states have become magnets for class actions and invite abuse. If that is the case, the appropriate response is at the state level, not in Washington. Responding to due process and forum shopping concerns expressed by corporate defendants, the Alabama Supreme Court acted to abolish the practice of ex parte certifications of class actions. We are confident that any local problems will be resolved by state governments.

Second, the basic premise behind the bill, that federal judges are ''better equipped'' to monitor cases (to quote Senator Grassley) and ''likely to give closer scrutiny'' to settlements (in the words of Senator Kohl) is untrue.

With regard to the ''better equipped'' proposition, it is argued that federal judges have more ''complex litigation experience'' than state judges. In fact, less than 1 percent of the federal courts' caseload is class actions. Moreover, of the 2,393 class actions filed in the entire federal system in 2000, only 321 involved state law claims. The vast majority of the cases involved uniquely federal law questions, such as securities, civil rights, or antitrust. Only 105 of the cases involved consumer fraud-type claims, which are the mainstay of state court class actions. That's about one consumer fraud claim per federal district, not per judge. If a federal judge has experience with this sort of class action, it is probably because he or she was a state court judge before elevation to the federal bench.

The authors of this bill acknowledge that certain state court judges have expertise in particular areas—the bill makes an exception for corporate governance cases to be heard in Delaware. We believe that expertise among state judges is not limited to Delaware chancery judges. The state court bench in Arizona is perhaps the most innovative in the nation, and has been at the forefront of reforms that have spread to other states and to the federal system. In responding to horror stories from a few rural counties, this bill could take cases away from well-qualified state judges in places like Phoenix or Chicago.

As to the claim that federal judges would do a better job scrutinizing class action settlements, we believe that is, unfortunately, not true. A number of attorneys have alleged that a federal judge in Chicago recently approved an unfair ''reverse auction'' settlement, whereby defendants settled with plaintiffs' firm that accepted the least benefits for the class members. This case involved competing state and federal class actions over ''refund anticipation loans.'' The attorneys intervening to stop the settlement allege that the plaintiff's attorneys accepted a mere $25 million in return for releasing a nationwide class' claims worth a billion dollars. We have no way of knowing the actual value of the claims, but the incident leaves one important question unanswered: If it is true that federal judges are more likely to give close scrutiny to settlements, why did the defendants choose to settle a federal court case rather than one of six identical state court cases? If the premises underlying this bill are correct, shouldn't they have settled one of the state court cases instead? The fact that the federal judge here had law clerks did not deter this settlement.

Moreover, we note also that the RAND Institute's report was very clear in finding no empirical evidence to support the argument that federal judges are better able to manage class actions than state judges. Public Citizen's own experience shows that federal judges can err just as often in approving abusive settlements.

PROCEDURAL CHANGES

H.R. 2341 also contains several ''Consumer Bill of Rights'' provisions. Some of these ideas have merit and some plainly do not. However, we believe Congress should refrain from making adjustments to Rule 23 and leave such changes to the federal judiciary's Advisory Committee on Civil Rules. The Rules Advisory Committee consists of judges, academics, and practicing lawyers who are among the nation's top experts on civil procedure. Pursuant to the Rules Enabling Act, the Advisory Committee is empowered to review the current rules, study problems, and propose amendments. The Advisory Committee solicits and carefully considers input from the bar and from interest groups in formulating changes.

Class actions have been the subject of their attention in recent months, and they are currently considering extensive changes to Rule 23. We respect the expertise that the Congress and its Judiciary Committees have on civil procedure matters. Nonetheless, we feel that these contentious issues are best resolved outside the heated political process.

FINDING A SOLUTION

Sound congressional policymaking must take account of the advantages and disadvantages of our federal system. Achieving good federalism means understanding the competing values of local control and national uniformity, and striking the appropriate balance between these values in individual policy areas.

Unfortunately, the dispersion of authority among 50 states can sometimes create perverse incentives. The reverse-auction phenomenon in overlapping class actions is an example of this. Narrowly tailored federal legislation could fix this problem without upsetting the delicate state/national balance by bringing most state class actions into federal court. But that in no way resembles the legislation that the sponsors of H.R. 2341 have proposed.

Another avenue to explore is RAND's suggestion that one way to improve judicial scrutiny would be to allow judges to seek assistance from neutral experts and auditors to assess the value of settlements. Congress could use its spending power to assist judges, both state and federal, by increasing the resources available to them to manage class actions. A grant program through which individual courts could secure funding for neutral experts and special masters would exemplify cooperative, rather than coercive federalism. Such a program could be administered by the Justice Department, the National Center for State Courts, or the Administrative Office of the U.S. Courts.

As an organization that vigorously opposes abusive class action settlements, we can only conclude from H.R. 2341 that the business community wants this legislation not to end such practices, but because they perceive an advantage to defending class actions in federal court. We urge you not to move forward with this bill.

Sincerely,

JOAN CLAYBROOK,
President, Public Citizen.
FRANK CLEMENTE,
Director, Public Citizen's Congress Watch.

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

Mr. SENSENBRENNER. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. GOODLATTE) who is the author of the bill.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman from Wisconsin for yielding me this time and for his leadership in bringing this legislation forward.

I was pleased to introduce this legislation along with the gentleman from Virginia (Mr. BOUCHER). This much-needed bipartisan legislation corrects a serious flaw in our Federal jurisdiction statutes. At present, those statutes forbid our Federal courts from hearing most interstate class actions, the lawsuits that involve more money and touch more Americans than virtually any other litigation pending in our legal system.

Class actions of national importance should be heard in Federal court by a Federal judge, not by a State or county court judge in one region of the country. Why? Because the plaintiffs' attorneys choose from a very select number of courts around the country where the judges are known to be very favorable to class action lawsuits.

Let me cite on example of a class action horror story. After being named in 23 class action lawsuits, Blockbuster agreed to provide class members with only $1-off coupons, buy-one-get-one-free coupons and free Blockbuster Favorites video rentals. Attorneys are reported to receive around $9.2 million in attorneys' fees.

Cheerios, the gentleman from Wisconsin mentioned this recently, without any allegation of any harm to any of the plaintiffs in the case related to the ingredients of a box of Cheerios, the case was settled. For what? The opportunity for the customers to go out and get another box of Cheerios while their attorneys got $2 million.

This is one of my favorites. In this case against Chase Manhattan Bank, the trial lawyers took $4 million in attorneys' fees and the plaintiffs in the case got, you can read it here, 33 cents. If you cannot read it, we will blow it up for you, 33 cents, while the plaintiffs' attorneys got $4 million in attorneys' fees. What does that amount to?

There is a catch actually for getting your 33 cents. Because it took a 34-cent postage stamp to mail in the acceptance of the settlement. So actually you came up a penny short. But the trial lawyers did not. 4 million bucks.

The Washington Post has it exactly right: ''Having invented a client, the lawyers also get to choose a court. Under the current absurd rules, national class actions can be filed in just about any court in the country. The lawyers cash in while the clients get coupons for product upgrades. It is a bad system, one that irrationally taxes companies in a fashion all but unrelated to the harm their products do and that provides nothing resembling justice to victims of actual corporate misconduct.''

The Rocky Mountain News put it even more to the point:

''Your lawyers have one more surprise for you after they bring these suits. You aren't eligible for the full settlement unless you also agree to spend some of your own money on those stores' products.'' That is exactly what happened in the Blockbuster case. That is exactly what happened in the airline case where the plaintiffs got a $25 coupon against a more-than-$250 airline ticket.

In other words, you must reward the company that supposedly swindled you in order for it to be punished. It makes absolutely no sense except to the trial lawyer taking a very large attorney's fee.

The Washington Post sums it all up with this statement:

''That it is controversial at all reflects less on its merit,'' referring to this legislation, ''as a proposal than on the grip that the trial lawyers have on many Democrats.''

I am pleased that many Democrats are going to vote for this legislation. I would invite the rest of them to come over and join us to make sure that we resolve this inequity where trial lawyers receive millions of dollars and American families receive pennies. That is what this legislation is all about. It is designed to make sure that the most complex litigation in the country is brought in the court where it belongs.

Vote for this legislation.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 3½ minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE), a member of the Committee on the Judiciary.

(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 for yielding me this time.

I would offer to say to my good friend and colleague from Virginia, if we wanted to address the question of attorneys' fees, then why do we not legislate an attorney's fee bill on the floor of the House? That is not what this legislation is all about. We might have some common agreement that there needs to be some equity in how we assess a formula in those instances.

This is clearly a knock against corporate responsibility. Coming from Houston, Texas, I can assure you, ex-Enron employees, existing Enron employees, those who are trying to reconstruct Enron know one thing: Corporate responsibility is a key element to moving this country forward and reinvesting, if you will, reestablishing our faith in the corporate structure here in America. We do not have that now.

What is so insulting by this legislation is that this legislation will move a class action lawsuit from the State courts on the basis of partial diversity. That means that we could have 400 Texans in the local State court, familiarity, the ability to access the court, and one person from Chicago, Illinois, and we have to go into the Federal court.

Everyone knows that the Federal courts are far more burdensome with their rules, far more complex and far more difficult for those plaintiffs who have less resources to be able to access justice. And so I am a little shocked and surprised when this Congress has had any number of hearings on corporate irresponsibility, and now we bring to the floor of the House, on a fast track, legislation that will not help.

When we who oppose this bill simply asked for information, data, to show us that we are log-jamming the courts, no one could provide that. I can assure you our overburdened Federal courts with empty seats all across the country, drug cases beyond their ability to handle, cannot handle any more legislation.

This does not make any sense. That means those plaintiffs who are in desperate need of accessing the justice system will be standing on a bus line waiting and waiting and waiting and waiting to get into Federal courts.

I would simply argue that we understand what these courts and class actions are supposed to do. We also realize that my colleagues on the other side of the aisle have been large and strong proponents that the State should be given the opportunity to decide for their own citizens what is best for them, keep the Federal Government out of their business as much as possible.

But H.R. 2341 goes against Republican philosophy and broadens Federal jurisdiction over State class action lawsuits. In fact, it is clear that in light of events such as asbestos, the Love Canal and tobacco disasters, and now Enron, this bill benefits not consumers but large corporate interests.

I would ask my colleagues and I would ask this House, let us pause for a moment and understand the message that we are sending to America. America now wants corporate responsibility, and we are not doing that.

Class actions were initially created in State courts, based on equity and common law. They permit one or more parties to file a complaint on behalf of themselves and all other people who are similarly situated suffering from the same problem. Love Canal was basically neighbors who lived in New York. If you had some far-reaching opportunity for some person by chance to either have moved to another State and then you put it in Federal court, you are, therefore, denying equity, if you will, and the use of common law.

This is a bad legislative initiative. I would ask my colleagues to defeat this, but I would ask them to likewise consider our amendments that we will offer.

Mr. Chairman, Chairman SENSENBRENNER and Ranking Member CONYERS. I oppose this legislation, H.R. 2341, for several policy reasons.

My colleagues on the other side of the aisle have always held that States should be given the opportunity to decide for their own citizens what is best for them—keep the Federal government out of their business as much as possible. But H.R. 2341 goes against Republican philosophy and broadens Federal jurisdiction over state class action lawsuits. In fact, it is clear that in light of events such as asbestos, the Love Canal, and tobacco disasters, and now, Enron, this bill benefits, not consumers, but large corporate interests.

Class actions were initially created in state courts based on equity and common law. They permit one or more parties to file a complaint on behalf of themselves and all other people who are ''similarly situated'' (suffering from the same problem). A class action is often used when a large number of people have comparable claims. They are an efficient means of seeking justice for a large group of people.

Class actions to help bring justice for many people—the innocent victims. Historically, class actions were brought against huge corporate giants who impact a large percentage of the population.

Take asbestos. They used it on ceilings of gyms and classrooms where our children played and learned. It is of no fault of our children that they unknowingly contracted cancer. Someone should be held accountable for causing irreparable damage, and death, to these innocent victims.

The paradoxical similarity in all of these class actions is that the corporate giant was unaware that their actions could cause cancer. Evidence during litigation showed that the tobacco giants were aware that nicotine was addictive and caused cancer.

It is no different with Enron. The loyal employees of Enron that were terminated lost their life savings, their retirement, their child's college tuition, their second honeymoon, their first home. Top executives were aware allegedly of their spiraling financial situation and yet misrepresented themselves, or had their accounting firm do so, to their stockholders—their employees.

The allegedly barred these employees from selling their shares, while at the same time, allowing only top executives to sell any shares they wanted to. Enron gave out tens of thousands of retention bonuses, while also terminating the ''rank and file''.

I know this because these victims are my constituents and I have heard their stories and accounts. If these accounts are true, these people have been robbed of savings that they were entitled to.

A favorable vote on H.R. 2341 would take away the means by which innocent victims of corporate giants can find justice.

As a threshold matter, I believe that before even considering legislation, Congress should insist on receiving objective and comprehensive data justifying such a dramatic intrusion into state court prerogatives. This legislation potentially damages federal and state court systems. Expanding federal class action jurisdiction to include most state class actions, as H.R. 2341 does, will certainly result in a significantly increase in the already overtaxed workload of our federal courts. For example, it is no surprise that the 68 judicial vacancies that existed as of February 2, 2002 contributed to the average federal district court judge docket backlog of 416 pending civil cases. It is because of these and other workload problems that Chief Justice Rehnquist took the important step of criticizing Congress for taking actions which have exacerbated the courts' workload problem.

H.R. 2341 also has the ability to significantly impact state courts. This is because in cases where the 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.

It is important to recall the context in which this legislation arises—a class action has been filed in state court involving numerous state law claims, each of which if filed separately would not be subject to federal jurisdiction (either because the parties are not considered to be diverse or the amount in controversy for each claim does not exceed $75,000).

H.R. 2341 also has the potential to raise serious constitutional issues. For one, it unilaterally strips the state courts of their ability to use the class action procedural device to resolve state law disputes. The courts have previously indicated 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.

It is also important to note that as fears of local court prejudice have subsided and concerns about diverting federal courts from their core responsibilities increased, the policy trend in recent years has been towards limiting federal diversity jurisdiction.

Thirdly, as the legislation is currently written, it assumes a defendant will be automatically subject to prejudice in any state where the corporation is not formally incorporated (typically Delaware) or maintains its principal place of business. In so doing, it can be said the bill ignores the fact that many large businesses have a substantial commercial presence in more than one state through factories, business facilities or employees.

H.R. 2341 adversely impacts the ability of consumers and other victims to acquire compensation in cases concerning extensive damages. The bill possess the potential to force state class actions into federal courts resulting in expensive litigation and allowing defendants to potentially compel plaintiffs to travel distances to participate in court proceedings.

Essentially, the extensive pleading requirements of the federal court will virtually make it impossible for individuals to bring a class actions case. 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.

To meet this criteria is virtually impossible in most instances that the plaintiff is able to provide this information prior to discovery. If the pleading requirements are not met, the judge is required to dismiss the plaintiff's complaint.

Additionally, consumers under H.R. 2341 can be expected to have a far more complicated and time consuming problem in trying to certify class actions in the federal court system. Fourteen states, representing some 29% of the nation's population, have adopted different criteria for class action rules than Rule 23 of the federal rules of civil procedure.

Consumers 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, this bill is plagued with problems that cheat consumers of their rights under law and under the Constitution. I oppose it, and I urge my colleagues to joining me.

□ 1245

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

Unfortunately, my colleague, the gentlewoman from Texas (Ms. JACKSON-LEE), has missed the boat on a lot of the points. First of all, I wonder how her Texas constituents would feel if the Enron class action lawsuit was filed in the Mississippi court that acted like the hometown umpire in one class action suit and gave residents of Mississippi who are members of the class 18 times more recompense than residents of other States? I think she would be the first one to come into this Congress and say that that is an outrage and that we ought to provide the protection of the Federal court for people who live outside of Mississippi. This bill does that.

Secondly, the plaintiffs in the Enron class action lawsuit chose Federal Court to file their class action lawsuits. What is the beef?

Thirdly, because Enron has filed for bankruptcy, all claims against Enron are heard in the Federal Bankruptcy Court under the constitutional provision that the Congress adopts a bankruptcy law.

Mr. Chairman, I yield 1½ minutes to the gentleman from Arizona (Mr. FLAKE).

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

Mr. Chairman, a lot of disinformation is being spread about this bill. We heard a bit of it just a minute ago when the opponents talked about Federal caseload and how that would be increased too much. Well, let us look at the numbers, and we find a different story.

According to the administrative office of the U.S. Courts and the 1998 Court Statistics Project, last year only 2,393 class actions were filed in Federal district courts. Since 1997, there has been an 8 percent decrease in the number of cases pending in Federal district courts nationwide.

Meanwhile, civil filings in State trial courts have increased 28 percent since 1984. In most jurisdictions, each new State court judge is assigned an average of between 1,000 and 2,000 new cases every year. In contrast, Federal court judges are assigned an average of fewer than 500 cases every year.

I would submit that the opponents of this bill and those who argue about Federal caseloads ought to get busy and help those approve Federal judges who are waiting. There are over 100 waiting at the moment. That represents about 10 percent of the caseloads that could be handled in Federal Court.

So on one side, the caseload is too heavy; on the other side, we are not approving, we are holding up, Federal judges who could help with that caseload.

What this has become, as has been mentioned before, is a racket involving invent a client, choose a court, browbeat a company into compliance and settlement, and then watch the money roll in. We need to stop this.

Mr. Chairman, I would urge my colleagues to support the bill.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, let me say to my distinguished colleague from Wisconsin that the question that he raises does not give credence to the fact that the plaintiffs chose where they wanted to file their cases. This legislation bars individuals from making the choice as to whether or not they are in State court, because if there is partial diversity, they are forced to go into Federal courts, which undermines those individuals' access to justice.

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

Mr. Chairman, for the benefit of my distinguished chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), who referred to the infamous airline cases where the plaintiffs were given airline coupons, and he illustrates this as really something that is not good, that we should not do it, that occurred in a Federal Court. That was a Federal district court case that the gentleman I think is trying to use as an argument against keeping the law the same way that it is.

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

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

Mr. SENSENBRENNER. The gentleman from Michigan knows that there are several features of the bill. One involves jurisdiction on where cases can be filed and removal of cases filed in State court. But there are other provisions that require increased judicial scrutiny of coupon settlements. That would call into play when

you get a coupon to buy more of the product or service that is sold by the corporation that did it to you.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 5 minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, it is always great to come to the floor and engage in a debate with members of the Committee on the Judiciary, because all of them were good lawyers before they came to Congress, so you know that they will try to build their case in the way that they would litigate a case if they were in court, and they will sometimes fudge the facts and obfuscate and do whatever is necessary to prove a point. We have had a lot of that happening already.

The gentleman from Virginia (Mr. GOODLATTE), of course, knows that one of the purposes for class action suits is that sometimes the amount that an individual member of the class would gain from that suit is so small that he or she cannot afford to litigate it without the benefit of putting that claim with other claims of other people who are similarly situated, so the gentleman has done a great job of making it appear that the lawyers in the cases got disproportionate amounts of money to the members of the class.

What the gentleman did not tell you in each of these cases was the total amount that was going to the class members in each one of those cases, whether they were litigated in State court or Federal court, and that is the primary reason that you have class actions.

I want to point out a couple of things. I want to acknowledge that there are abuses in the class action system, and anybody who gets up here and tells you that there are not abuses in the class action system probably does not know anything about litigating cases. The real question, though, is will this bill eliminate those abuses, or will this bill make it possible for other abuses to take place that are worse than the abuses that are taking place now? I would submit that this bill will not eliminate abuses, and that the bill will, in fact, add to the number of abuses in the system.

The one abuse that I think is first and foremost I talked about in 1999 when we first had this bill on the floor. This is not the first time this bill has been here. This is the way I described it back then.

I practiced law for a number of years before I ever got to Congress, and I raised this basic fairness argument. If a plaintiff is injured, he goes and hires a lawyer. That lawyer cultivates, researches, puts together the case, decides where the appropriate place to litigate that case is, spends months and months preparing for the case; and then, 2 days before he is getting ready to go in and start the real processing of the case, somebody from the outside, a member of the class, comes and hijacks that case and moves it to a Federal court.

There is something to me that is basically unfair about that. That is what this bill will allow to happen, one of those abuses that I am talking about.

The second point I want to make is that the proponents of this bill are the same people who in 1994, 1995, I guess, when they came riding into Congress and took the majority, came in talking about that they supported the notion of removing things from the Federal level and returning them to the local level. Decentralized government, they said they believed in. The whole system of federalism was in jeopardy, they said, and we needed to return power to the States.

So, now, why are we on the floor today with a group of people saying to me, well, this is inefficient and this is too time consuming?

Well, democracy is inefficient and time consuming. Federalism is inefficient and time consuming. But we have decided in our Constitution that some things should be done at the State level and some things should be done at the Federal level, and just because we find it convenient to bring something into Federal court should not be the rationale on which we do that.

I think the same people who are out there giving lip service to States' rights should not be in here talking about let us take the whole field of tort law and federalize it and put it in the Federal courts.

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

Mr. Chairman, one of the most intriguing documents, legal documents, that has arisen in the American continent was the Constitution of the Confederacy, which was basically based on the whole notion of States' rights. It allowed States through their legislative bodies to nullify decisions made by the Federal courts and their effect within their boundaries, and even to remove Federal officials like Federal judges and postmasters and the like.

Listening to the gentleman from North Carolina, I think he would have done quite well in their Congress.

Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I thank the chairman for yielding me time and bringing this bill to the floor, because I was the original sponsor of this bill; and I am very appreciative of our colleagues, the gentleman from Virginia (Mr. BOUCHER) and the gentleman from Virginia (Mr. GOODLATTE), who have gotten this out of committee to the floor, because it is a good bill; and it should be passed, and it should be passed in a bipartisan fashion.

The class action device is an important part of our legal system that allows wrongdoers to be held accountable for harm they have inflicted upon a large number of people. Unfortunately, there are too many lawyers who have abused this tool for their own monetary profit.

Our current system allows cases of national importance to be heard in local courts and allows abuses to take place unchecked because of something called diversity jurisdiction. The Framers of the Constitution created diversity jurisdiction to allow large multi-state lawsuits to be heard in Federal court. However, when they drafted statutes in the 1790s to implement it, no one foresaw class action lawsuits. No one ever could have guessed that large multi-state suits would have been heard in local courts and it was certainly not their intention to create such a situation so vulnerable to abuse.

H.R. 2341, this bill, simply corrects this problem and rationalizes the system by updating the law. Class actions of national importance, affecting people all over the country, should be heard in Federal court by a Federal judge, not by a State or county court judge in one region of the country. No one can rationally say that a large national class action belongs in local courts.

The Washington Post, not the Washington Times, the Washington Post said it best in this weekend's editorial. It said: ''Nowhere is the need for civil justice reform greater than in the high stakes arena of class actions where irrational rules have allowed trial lawyers to enrich themselves . . . without benefit to the lawyers' supposed clients.''

Clearly there is a serious crisis in our court system. Some counties have seen an increase of over 1,000 percent, because once a local court shows a willingness to ignore its own State's rules and constitutional due process, that court and judge becomes a magnet for many national class actions.

Cases heard in State courts have skyrocketed, where Federal cases have only gone up by about 8 percent. So that addresses the argument that there is not enough time or docket space in Federal courts. Federal court is where these cases belong, because the trial lawyers can have these cases heard in a hand-picked court the way it works now.

There is gaming of the diversity rules to keep these cases in State court just by finding one retail outlet or point of sale and one customer in one State. That does not make sense. With over 9,000 State and county courts and 50 States to choose from, there is inevitably at least one court that will certify a class, even in the most egregious class action suits.

Actually, it occurs in courts where judges are invariably elected; and, frankly, they are elected with a substantial amount of trial lawyers' financial and political support. That is one of the biggest problems we are facing. These abusive suits brought in hand-

picked courts do not compensate victims; they do not encourage more responsible corporate behavior. And they are paid for by consumers with higher costs of goods and services.

□ 1300

Simply put, our current system which governs class actions too often works for no one except the lawyers. Most plaintiffs only get coupons to assist them in buying more of the product which caused the injury in the first place, and that is if they are lucky.

When the Bank of Boston was sued in a southern state for their delay in posting mortgage escrow accounts, the attorneys were awarded $8 million, while all their clients got was $9; and then their clients got a bill for $91 for the lawyers' fees, and many of the clients were not even notified that they were plaintiffs in the case. Unbelievable.

This abuse has to be stopped and this is the best vehicle for stopping it. That is why I urge that it be passed, and it ought to be passed in a bipartisan fashion. This is moderate, needed reform. It should not be a partisan issue.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from Texas (Mr. GONZALEZ), himself a judge, a former judge, and a former lawyer as well.

Mr. GONZALEZ. Mr. Chairman, I thank the gentleman from the great State of Michigan for yielding me this time.

Having been a State district court judge, I think I can appreciate some of the facts and some of the arguments that are being advanced today. The importance of it is that hopefully I will be able to distinguish fact from fiction.

I do want to address some comments made earlier about the rising numbers of civil actions, class actions, and otherwise in the State courts. That is historical, that is tradition. The truth is that the Federal courts on the civil side handle a mere fraction of the litigation that is going on out there in the civil courts throughout the United States. They do not handle as many cases as the traffic court in San Antonio handles throughout the whole United States, all the Federal system. We have to look at those numbers as to what they are really doing out there.

They are overburdened. They have to give precedence and priority to criminal cases. Do we see a Federal court that is designated civil in nature and only handles a civil docket? But we see that at the State level, day in and day out, because they are specialized, recognizing the efficiency that it lends to a civil court system.

Judicial appointments. Of course we should fill all vacancies in a most deliberate and efficient manner, but not with just any judge.

We complain of abuses. How we stop the abuses is to make sure that we have qualified and fair individuals to fill those judicial roles.

I will tell my colleagues, as an opponent, this is what I will give the proponents. I will give them everything they are asking for. I will give the proponents everything that they ask for in this bill, save and except for one thing, and that is moving it to the Federal system. I will not have a taker. I will not have a taker, because what this is all about is not giving individual litigants choice. What this is all about is getting it into the Federal court system.

This is not a class action bill, this is a class inaction bill. It is designed, its true motive is to stall, is to obstruct and to delay all class actions, regardless of merit, regardless of merit.

Do we have abuses? Of course we do. But the alternative, the alternative that they seek here today in this House is not a step forward, it is not a positive improvement. It sets us back.

Are our State courts more efficient than Federal courts? I am here to say yes. What I hear from my Federal judges is, Charlie, please do not federalize everything out there. You are doing it on the criminal side, and you want to do it on the civil side. You cannot do it.

The certification process in most State courts, the majority of the State courts, and I know that my colleagues cite the aberrations and the abuses; but where do I find them citing those cases in the State court where we have State district court judges that are responsible, mature, and deliberative in classifying? I myself had the great privilege of having class action lawsuits filed in my district court, and I know how we handled them in Texas.

What happened to States' rights? What I say is, let us work together. Let us come up with something where maybe it can be adopted on a State level addressing the abuses that we all agree exist in today's system. But what my colleagues propose is basically doing away with the class action lawsuit. That is the end result of the proposed legislation.

My colleagues are assuming, and wrongly, that the quantity and quality of the Federal judiciary is superior to the State courts; and if my colleagues want to go out there and talk in a confidential manner with all of the trial attorneys, they will tell us what is going on out there in the system.

All I will say is, this is ill-advised, it is ill-proposed, and it is not a workable alternative.

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

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

I would say to the gentleman from Texas that he has mischaracterized this legislation. This legislation creates the kind of choice that he is talking about, because right now if a plaintiff or a defendant wants to have these cases heard in Federal court, they cannot be heard in Federal court simply because of a Federal rule, even though these are the most complex cases in the country.

As to the case load, more than 12 percent of our Federal judges are awaiting appointment in the other body right now. Help us get our colleagues in the Senate to appoint President Bush's nominees, and we will easily have the ability to handle these cases in the jurisdiction that was actually created in our Constitution in article 3 for the very purpose of handling diversity cases, disputes among folks from many different States.

It is wrong to allow the current system to persist where the plaintiffs' attorney can choose from more than 4,000 jurisdictions in the country, and whatever judge they know is the most favored judge gets the case; and then nobody has the option to have it heard in a fair and neutral court. That is what this legislation is all about.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute before yielding to the gentleman from Washington.

Mr. Chairman, sometimes we have to look to see where the interest is in these bills. Are the consumer organizations supporting this legislation? Answer: No.

Is the Firestone Corporation supporting this legislation? Answer: Yes.

Is Monsanto supporting this legislation? Answer: Yes.

Is W.R. Grace Corporation supporting this legislation? Answer: Yes.

Are the tobacco companies supporting this legislation, all of them? Answer: Yes.

Are the asbestos people, Johns Manville formerly, supporting this legislation? Answer: Yes.

Are the mining companies, the results of the black lung class action cases, supporting this legislation? Answer: Yes.

Are the Pintos, the airbag cases? Answer: Yes.

All the corporations are supporting this. But I am being told by my friends on the other side that this is a consumer-friendly bill.

Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Washington (Mr. INSLEE).

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

Mr. INSLEE. Mr. Chairman, it takes real chutzpah to bring this bill at this time. It takes real chutzpah, after we have thousands of Enron employees having lost their life savings, to bring a bill to diminish the rights of Americans to be compensated for their losses. It takes chutzpah to bring a bill to the floor of the House at this time to the benefit of the Ken Lays and the Mr. Skillings of the world.

Now, think about the timing of this. Think about the timing of this.

The very first bill that comes to the floor of the House after Enron takes the life savings away from Americans is to make it easier for people to do that and harder for people to get compensation when it happens to them.

Now, before we go home for spring break, when we go home and talk to

our constituents and they ask us, Joe, Mr. Congressman, What did you do about the Enron situation, I do not think the first thing we should say is, We made it hard for Americans to get compensation for their losses.

In fact, that is what this is about, because when we strip away the verbiage and the philosophical language that we have all sincerely engaged in here today, this is about one thing. Some people who have been burned because they got caught with their hands in the cookie jar in class action litigation want to make it harder for Americans to bring class action litigation. That is what this is about because they know a simple thing. The Federal courts do not have room for any more class action litigation. They will go to the end of the line. This simply will result in making it more difficult for people to have their cases get a day in court.

If my colleagues do not believe me, listen to Chief Justice Rehnquist who said, and this is in 1998: ''I also criticize Congress and the President for their propensity to enact more and more legislation which brings more and more cases into the Federal court system. This criticism received virtually no public attention. If Congress enacts and the President signs new laws allowing more cases to be brought into the Federal courts, just filling the vacancies will not be enough. We will need additional judgeships.''

The fact of the matter is, as the proponents of the bill and those who advocate this bill know very well, there is a pipeline that is this big in our Federal court system. Now we want to take cases out of State courts and try to jam it through a pipeline with that pipeline getting no bigger, they will not go. They will not go. That is why this bill has sought the support of those like Jack-in-the-Box Corporation who served E. coli with their hamburgers, the result of which was a young girl and many hundreds in the State of Washington ending up with kidney damage. They used the State courts class action for compensation.

Now, I do not think I should go home and tell them that we are reducing our ability to have a fair day in court in our State courts. For that reason, we should reject this.

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

I deeply regret my friend from Washington has not read the bill. This bill has nothing to do with Enron, and it specifically states that claims like the Enron claim are not covered by the differing jurisdictional provisions of this. The Enron claim involves tax law, Federal tax law where the jurisdiction is in the Federal courts. It involves securities law, Federal securities law where the jurisdiction is in the Federal courts.

On page 14 of the amendment in the nature of a substitute, this bill's jurisdictional aspect is exempt from the internal affairs or governance of a corporation that arises under or by virtue of the laws of a State in which such corporation or business enterprise is incorporated or organized. So everything that the gentleman from Washington has said relating to Enron is simply not true under the terms of the bill.

Now, finally, that would be the case if Enron were not in bankruptcy. Because they are in bankruptcy, all claims are presented to the Federal bankruptcy court.

Mr. Chairman, I would say to the gentleman from Washington, please read the bill.

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

Mr. SANDLIN. Mr. Chairman, our friends on the other side have had some pretty charts, but they have had some very misleading stories.

Let us talk about the effects of class actions and how it helps normal Americans. A class action in Texas forced Turn of the Century Adventure, Inc., and Travelbridge International, Inc, to stop defrauding consumers. If we want to talk about coupons, let us talk about the coupons that they gave folks, giving thousands of dollars in coupons in return for false discount promises. It took a class action suit to cure that.

My friend from Washington brought up the suit against Foodmaker, Inc. Three children died and 500 people were injured as a result of eating E. coli. It took a class action suit to take care of that.

Are we are going to complain about attorneys' fees all day? Is that what we are going to talk about in class action?

Why do we not complain about Beech-Nut? Do we know what those folks did? They sold sugar water labeled as pure apple juice for infants. They gave it to parents and parents all across America fed it to their children as nutrition. It took a class action to make that corporation back down and say, We are going to sell you apple juice if we charge you for apple juice.

□ 1315

Native Americans in San Juan County, Utah, 52 percent of the residents there were Native Americans. None served on juries from 1932 to 1960. It took a class action to make people stand up for the Constitution of the United States and get them access to the courts.

How about promoting accountability? A group of homeless students and their parents brought a class action suit against the Chicago Board of Education and the Illinois State Board of Education because the defendants turned away homeless children from the Chicago public school system because they could not show proof of permanent residency. Twelve thousand homeless students in Chicago were denied schooling. It took a class action to cure that, and we are going to complain about pennies?

It took a class action when UDC Homes filed for bankruptcy in 1995 and 15,000 shareholders were left holding worthless stock certificates. They had been artificially inflating profits. Does that sound familiar? Does that sound like Enron? I can tell the Members this, when they say it walks like a duck and quacks like a duck, it is a duck. When they say it is not about Enron, it is not about Enron, it is not about Enron, it is about Enron.

They want to put all of America, everyone watching us today and everyone on this floor, in the same position that they have put Enron. They want to tie our hands, not give us access to the court, not let us go to State court, not use the State law, not use the State procedure. They say everyone in America has to be in the position that the Enron pensioners and employees and stockholders are in. That is what they want to do.

Support States' rights, use State law, use State procedure. Let us remember that, and protect consumers against wrongdoing corporations.

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

Mr. Chairman, this bill does not take away a cause of action that any member of a class has. All of the class action suits that the gentleman from Texas has talked about could still be filed and litigated, but litigated fairly.

Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. COX).

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

Mr. Chairman, this debate is difficult to understand for me because on the one hand people are talking about putting multistate claims with plaintiffs all over the country into the form that the Founding Fathers described in article III of the Constitution, a Federal form; and on the other hand, people are saying that class actions help normal Americans, class actions are good, and class actions can bring about good results. Those two things are hardly incompatible.

What we are talking about is making sure that class actions, which involve the whole country and not just local issues, are resolved in the jurisdiction that the Framers had in mind, Federal jurisdiction in a Federal court.

We do not have a problem in this Congress, I do not believe, in appreciating the work that our State courts do. Indeed, one prolific source of the people who serve on the Federal bench is the State courts themselves.

The problem is not with State courts; the problem is with lawyers trying to manipulate the system who pick not the State court system but a particular place, a particular forum, where they shop for where they know, because of their connections with that particular forum, that they can put their thumb on the scale of justice and they can skew the result so the facts and the evidence and the law do not matter.

The leading treatise on Federal civil procedure has declared that the current rules for deciding when admittedly nationwide class actions are

heard in Federal court make no sense: ''The traditional principles in this area have evolved haphazardly and with little reasoning. They serve no apparent policy.''

An 11th circuit case recently had the judge apologizing to litigants because they could not have a Federal forum because the rules as presently written for diversity are so easily defeated by lawyers trying to manipulate the system.

Judge John Nangel, who was for many years the Chair of the Federal Judicial Panel on Multidistrict Litigation, said this: ''Plaintiffs' attorneys are increasingly filing nationwide class actions in various State courts, carefully crafting language . . . to avoid . . . the Federal courts. Existing Federal precedent . . . [permits] this practice . . . although most of these cases . . . will be disposed of through 'coupon' or paper settlements,'' that is, through extortion, at settlements at which the lawyers are paid to go away and the plaintiffs in the case, in most cases who have never even met the lawyers, get sent pennies on the dollar.

In an opinion by Judge Anthony Scirica, the chairman of the Federal Judicial Conference's Standing Committee on Rules and Procedure, the U.S. Court of Appeals for the Third Circuit observed that ''national (interstate) class actions are the paradigm for Federal diversity jurisdiction. . . .'' That is what the Federal courts are telling us; that is what the Federal judiciary is telling us.

Former Solicitor General Walter Dellinger, someone who most Democrats, I would think, would be happy to learn from, testified before the Committee on the Judiciary: ''If Congress were to start over and write a new Federal diversity statute, interstate class actions would be the first kind of cases'' that we would put within that diversity jurisdiction.

This is good for litigants, good for defendants, good for plaintiffs, good for fairness, good for America, and good for the American consumers, which is why The Washington Post has supported it: ''That it is controversial reflects less on its merit as a proposal than on the grip that trial lawyers have on many Democrats.'' I do not believe that would be true, and I think many Democrats will support this legislation.

Mr. CONYERS. Mr. Chairman, I am pleased to yield the balance of my time to the gentlewoman from California (Ms. WATERS).

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

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. WATERS. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I know Enron is not a nice word to bring up on the floor with our conservative friends. I raise the name Enron reluctantly, because it is offensive to some of our colleagues.

But several of the employees in the Enron case, if they were suing Mr. Lay, affectionately known as ''Kenny boy'' in some parts of the government, for breach of an employment contract, they would be brought, under this bill, into Federal court. We need that, do we not? I do not think so, and I thank the gentlewoman for yielding to me.

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

Mr. Chairman, I beg to differ with the gentleman from Wisconsin (Chairman SENSENBRENNER). This has everything to do with Enron.

As a matter of fact, I think the American public must know and understand the difference between this side of the aisle and that side of the aisle. We are about the business of protecting consumers, and we are about the business of allowing the average person to have their day in court.

This bill would make it more difficult. It would put obstacles in the way. It would send class action lawsuits to the Federal court, which are overjammed. We do not have enough judges there. We have the big drug cases there. These cases would be backlogged, and they know it. They are creating obstacles to people getting their fair day in court.

Members heard some of the cases referred to, where class action lawsuits are the only way people can get any justice. Let me remind Members of just a few of them.

As a matter of fact, the average person would not be able to go into court and get any justice against Enron. It would only be through class action lawsuits.

Remember Firestone? They knowingly sold defective tires, where tread separation caused more than 800 injuries and 271 deaths. They failed to recall and replace defective tires in a timely manner.

What about Monsanto? They hid 40 years' worth of dumping of toxic PCBs, mercury, lead, and mustard gas in Anniston, Alabama. They continued dumping toxic chemicals even after dangers were known.

It goes on and on and on. Without class action lawsuits brought in State courts, we would never be able to get at this kind of injustice.

People on the other side said do not charge them with wanting to protect big corporations when they have done something bad, but they speak for themselves. They speak for themselves with this bill. What they are saying is, Poor consumers, working class people, we know you cannot afford to hire a lawyer. We know the only way you can get some justice is through class action, but we are going to make it tougher for you. We are going to make it more difficult for you. We are going to send you to the Federal courts, because you will never get there.

As a matter of fact, people may go in the State courts under this bill and find out in the middle of the trial that it is going to be sent to the Federal court, another big obstruction.

Well, it is very difficult for my friends on the other side of the aisle to claim to be for working people, for consumers, with this kind of action. This really tells who they really are and who they care about.

Mr. SENSENBRENNER. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan (Mr. ROGERS).

Mr. ROGERS of Michigan. Mr. Chairman, I thank the chairman for his great work, and I thank the gentleman from Virginia (Mr. GOODLATTE) for a great bill. I think it finally brings justice back to the American people. We are hearing a lot about judges, lawyers, technicalities, which is exactly why I think we have the problem of litigation in America as it stands now.

As simply as I can put it, something we all experience when Americans get to the end of the roll of toilet paper, they find aggravation. When our friends, the trial lawyers, get to the end of the roll of toilet paper, they find a pot of gold.

What am I talking about, Mr. Chairman? There is a class action suit in California that is suing because there is a roll of premium toilet paper that only has 340 sheets as opposed to the regular that has 400. That is not justice. Justice is fairness. Justice is logic. Justice is a case heard by a jury of one's peers.

Do not let what happens in California cost my constituents in Michigan more money for everyday living expenses. Because what happens here, Mr. Chairman, is that Cheerios go up and milk goes up and toilet paper goes up.

Enron will get its day in court, and the people who are abused by Enron will get their day in court. Let us stand united about this. Let us stand for that fairness and that justice. Let us stand for a court system that will represent all Americans, when it comes to asking me and my family and my neighbor's family and the working families of Michigan to pay more for the goods they need to survive.

The people who make out in this, Mr. Chairman, are the trial lawyers. Let us stand up for justice. Let us stand up for families. Let us pass this bill.

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

Mr. Chairman, there has been an awful lot of hyperbole that is floating around this Chamber from those who are opposed to this legislation.

First of all, the legislation does not diminish any cause of action that anybody may have, either as an individual or member of a class. So if they have a cause of action and the right to sue now, if this bill becomes law, they will still have that cause of action and that right to sue. So what is the beef?

What this bill does do is it provides fairness. I think the biggest example of how unfair the State court system can be involves the Mississippi case that has been referred to several times previously, where the hometown judge in Mississippi approved a class action settlement that gave Mississippi residents

as much as 18 times more than residents of other States. That is what the Federal court diversity citizenship jurisdiction that was put into the Constitution was designed to prevent.

This bill changes the way diversity is defined so that the abuses that the Framers were concerned about in 1787 can be prevented in class action lawsuits that they never thought would ever arise in this country. So that is what we are dealing with here.

What we are dealing with here also is a better way of having the courts review the fairness of noncash settlements. We have heard an awful lot about the coupons, where people end up having to buy the same product of the company that injured them, or the same service of the company that injured them.

It seems to me that if somebody injured me enough to go to court and file a lawsuit and try it, if I won my lawsuit, I ought not to be forced to go back to the same company that caused the problem to begin with. This bill provides for increased scrutiny to protect consumers against that.

Mr. Chairman, I think that the hyperbole we are hearing from the people who are opposed to this bill really is designed to try to get the attention of this body and the American public away from what is in the bill.

□ 1330

All I would ask while we continue debating this bill and the amendments is for the opponents to read the bill, because most of the complaints that they have are really not present in this legislation.

Ms. SCHAKOWSKY. Mr. Chairman, I rise in strong opposition to H.R. 2341, the ''Class Action Fairness Act.'' The Republican sponsors of this legislation falsely claim that it will rein in ''frivolous lawsuits.'' This bill is not about lawyers and lawyers' fees; it is about whether consumers will have legal rights when corporate wrongdoing, dangerous practices or faulty products injure them. This bill would take away legal rights that consumers need. Class action lawsuits are one of the few protections consumers have against corporate fraud and abuse.

In fact, anyone who wants to lower the cost of health care for consumers should oppose this bill. Class action suits are an important tool for health care consumers who have been forced to pay exorbitant prices for prescription drugs and medical bills. For example, in Iowa, Blue Cross/Blue Shield negotiated ''secret discounts'' with hospitals and providers but charged the full amount to consumers, pocketing the difference. Many policyholders ended up paying 10 to 20 percent more than they should have.

In response, three state court class action lawsuits were filed against Blue Cross/Blue Shield. Eventually Blue Cross/Blue Shield agreed to pay $14.6 million to settle the claims. The tens of thousands of consumers affected by the lawsuit received reimbursements for all claims over $50. Since the settlement agreement, Blue Cross has changed its billing practices to lower the cost for consumers. The money lost was not enough for any one policyholder to bring suit on his or her own. But through a class action lawsuit, all policyholders were able to be protected against this practice.

This case would have never seen the light of day if the bill before us today were the law of land. This legislation will take money out of people's pockets and will make consumers even more vulnerable to abuses by HMOs. For the sake of everyone who relies on health care insurance please join me in opposing this ill-conceived piece of legislation.

Mr. KNOLLENBERG. Mr. Chairman, I rise in strong support of H.R. 2431, the Class Action Fairness Act of 2002.

I do so because this bill represents common sense reforms that will make our civil justice system simpler and fairer while curtailing the abusive and frivolous lawsuits that cost us so much.

Lawsuit abuse is a serious problem. I should know—back when I was running my insurance company, lawsuit abuse was one of the principal reasons that insurance premiums kept rising each year. And that rise has not stopped.

And we do not just pay for lawsuit abuse through higher insurance premiums. We pay for it through higher health care costs, higher prices for consumer items, higher taxes, and fewer jobs. In fact, according to a study by the Public Policy Institute in New York, people in my home state of Michigan pay a hidden lawsuit tax of $574 per year. I know many families who could put that money to good use, but cannot.

Not all lawsuits are abusive, but I believe there are reforms that can be made that will protect the rights of businesses and consumers alike. Today's bill strikes that balance.

When the federal government acts, it too often does so to detriment of our economy. The Class Action Fairness Act is an excellent chance for us to remove some of the drag on our economy by curtailing costly, abusive lawsuits.

I urge all my colleagues to support this legislation and return the legal system to the individuals who it is supposed to benefit—the average American.

Mr. UDALL of New Mexico. Mr. Chairman, I rise today in opposition to final passage of H.R. 2341, laughingly called the Class Action Fairness Act. I say ''laughingly'' because there is nothing fair about this bill, unless your idea of fair means changing the tort system to benefit corporate polluters, monopolistic enterprises, and irresponsible groups at the expense of everyday Americans. If enacted, this bill will change the rules to make it easier than ever for corporations to move important class action lawsuits from state courts—the courts that are most in touch with and responsible to our constitutents—to federal courts. While this change may not sound like a very big change at first, the impact will actually be enormous.

Every corporate defender in this country knows that federal courts are the most desirable venue in which to try class action cases because federal court rules disadvantage plaintiffs and ordinary citizens. As they attempt to defend their wealthy clients, corporate lawyers try every trick in the book to have important cases moved from local courts to federal courts, and this bill will only make their job easier! I cannot imagine why we would want to make the enormous challenges faced by the plaintiffs in class actions cases even harder, but the leadership of this body had made it a priority!

At a time when our armed forces are defending this country across the ocean, when millions of Americans are out of work, and when we face serious threats to Social Security and Medicare, it is amazing to me that this body would decide to address the issue of class action ''fairness'' instead of addressing the most serious issues facing this country. I urge my colleagues to join me in opposing this bill and ask that this body move forward in addressing real problems.

Mrs. CAPITO. Mr. Chairman, today I rise in support of H.R. 2341, the Class Action Fairness Act of 2002. This legislation will streamline our judicial system, making it more consistent, fair and efficient.

First, H.R. 2341 will cut down on and discourage so-called forum shopping, where trial attorneys file lawsuits based on which state's law is most favorable to their claim. This practice results in a small handful of state courts, whose laws are most favorable to plaintiffs, exerting their jurisdiction over other states and creating precedent for entire national industries across the Nation.

Second, there's the issues of fairness. We all have heard stories of lawsuit abuse. There are the so-called ''coupon settlements,'' where class action members receive coupons from a sued business while the attorneys reel in millions. You get a coupon, and they get a fortune! In fact, many business are coerced into settling meritless claims, believing their defense is too costly to litigate.

This system cannot be allowed to go on. There are too many small business out there, surviving on thin margins as it is. And there are too many class action members, people who have been wronged, who deserve compensation, but watch their attorneys take the lion's share of the award.

Finally, Congress needs to pass real class action reform because it will make our federal courts more efficient. Class action lawsuit filings have increased by 1,000 percent over the past decade. Businesses and consumers need protection from these runaway lawsuits and frivolous cases that clutter the courts. This backlog of excessive suits hurts the economy by closing down businesses and costing people their jobs.

Remember, it is the consumer who has to ultimately pay for these transferred liability costs to businesses. It comes out of the pockets of hard working men and women when someone decides that they want to take the local business for a ride.

Mr. Chairman, let's restore the true intent of the Constitution and allow federal courts to hear large interstate class action lawsuits. It is the right thing to do so that we can protect class action members and businesses from unscrupulous trial lawyers. We owe it to our citizens, our country and our economy.

Mr. ISSA. Mr. Chairman, I rise in support of H.R. 2341, ''The Class Action Fairness Act of 2002.'' I thank Congressman BOB GOODLATTE, author of this bill, House Judiciary Committee Chairman JAMES SENSENBRENNER and the Judiciary Committee staff for their leadership on this bill.

Class action lawsuits serve a very important role, but the legal system is being compromised because attorneys have been the benefactors of class action lawsuit settlements, not the plaintiffs. These lawsuits should

be weighed on their own merits. The decision to file in a certain state or region should not be based on the possibility of the courts having favorable attitudes toward certifying class action suits against out-of-state corporations. Many times, attorneys find a topic or angle for a class action lawsuit and then begin to seek plaintiffs, sometimes in a different region than where the problem occurred. When they register a large number of plaintiffs, the lawyers file a class action suit in a favorable state forum and modify the case so that it will be exempt from federal jurisdiction. These attorneys then are not beholden to any one individual, allowing them to broker a settlement that provides minimal benefits to the class members, but may reward the attorneys handsomely. Additionally, lawyers in other states can bring forward an identical ''copy cat'' lawsuit, forcing companies to defend the same case in another court, with potentially different results. Ultimately, the cost is passed on to consumers in the form of higher prices for their products.

H.R. 2341 brings fairness to the class action arena by providing a federal forum for out-of-state defendants and out-of-state plaintiff class members. Instead of having plaintiffs in multiple states bring forward the same lawsuit. This bill will only allow one lawsuit and it must be handled at the federal level. It emphasizes efficiency by ensuring only one bite at the apple. The current system has judges from one state deciding the fate of plaintiffs from other states, and binding them to whatever decision the judge brings down or the lawyers reach in a settlement. This legislation will provide the plaintiff an opportunity for settlements that benefit them.

H.R. 2341 protects the rights of the plaintiffs or class members with inclusion of a Consumer Class Action Bill of Rights. It will begin to address reform on an issue and at a time where numbers of class action suits have skyrocketed.

I thank you for the opportunity to speak on this bill and I urge all my colleagues to vote in favor of this legislation.

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

The CHAIRMAN pro tempore (Mr. SWEENEY). All time for general debate has expired.

Pursuant to the rule, the 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. 2341

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 2002''.

(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. 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 harmed class members with legitimate claims and defendants that have acted responsibly, and that have thereby undermined public respect for our judicial system.

(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 our Federal system 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

''§ 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. Clearer and simpler settlement information

''(a) PLAIN ENGLISH REQUIREMENTS.—Any court with jurisdiction over a plaintiff class action shall require that any written notice concerning a proposed settlement of the class action provided to the class through the mail or publication in printed media contain—

''(1) at the beginning of such notice, a statement in 18-point Times New Roman type or other functionally similar type, stating 'LEGAL NOTICE: YOU ARE A PLAINTIFF IN A CLASS ACTION LAWSUIT AND YOUR LEGAL RIGHTS ARE AFFECTED BY THE SETTLEMENT DESCRIBED IN THIS NOTICE.'; and

''(2) a short summary written in plain, easily understood language, describing—

''(A) the subject matter of the class action;

''(B) the members of the class;

''(C) the legal consequences of being a member of the class;

''(D) if the notice is informing class members of a proposed settlement agreement—

''(i) the benefits that will accrue to the class due to the settlement;

''(ii) the rights that class members will lose or waive through the settlement;

''(iii) obligations that will be imposed on the defendants by the settlement;

''(iv) the dollar amount of any attorney's fee class counsel will be seeking, or if not possible, a good faith estimate of the dollar amount of

any attorney's fee class counsel will be seeking; and

''(v) an explanation of how any attorney's fee will be calculated and funded; and

''(E) any other material matter.

''(b) TABULAR FORMAT.—Any court with jurisdiction over a plaintiff class action shall require that the information described in subsection (a)—

''(1) be placed in a conspicuous and prominent location on the notice;

''(2) contain clear and concise headings for each item of information; and

''(3) provide a clear and concise form for stating each item of information required to be disclosed under each heading.

''(c) TELEVISION OR RADIO NOTICE.—Any notice provided through television or radio (including transmissions by cable or satellite) to inform the class members in a class action of the right of each member to be excluded from the class action or a proposed settlement of the class action, if such right exists, shall, in plain, easily understood language—

''(1) describe the persons who may potentially become class members in the class action; and

''(2) explain that the failure of a class member to exercise his or her right to be excluded from a class action will result in the person's inclusion in the class action or settlement.

''§ 1716. 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. 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.

The CHAIRMAN pro tempore. No amendment to that amendment is in order except those printed in House Report 107–375. 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.

The Chair has been informed that Amendment No. 1 will not be offered.

It is now in order to consider Amendment No. 2 printed in House Report 107–375.

AMENDMENT NO. 2 OFFERED BY MR. NADLER

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. NADLER:

Page 9, insert the following after line 20 and redesignate the succeeding section accordingly:

''§ 1716. Sunshine in court records

''No order, opinion, or record of the court in the adjudication of a class action, including a record obtained through discovery, whether or not formally filed with the court, may be sealed or subjected to a protective order unless the court makes a finding of fact—

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

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

Page 6, in the matter preceding line 1, strike the item relating to section 1716 and insert the following:

''1716. Sunshine in court records.
''1717. Definitions.''.

MODIFICATION TO AMENDMENT NO. 2 OFFERED BY MR. NADLER

Mr. NADLER: Mr. Chairman, I ask unanimous consent to modify the amendment and further request that such modification be considered as read.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The text of the amendment, as modified, is as follows:

Page 10, insert the following after line 4 and redesignate the succeeding section accordingly:

''§ 1716. Sunshine in court records

''No order, opinion, or record of the court in the adjudication of a class action, including a record obtained through discovery, whether or not formally filed with the court, may be sealed or subjected to a protective order unless the court makes a finding of fact—

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

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

Page 6, in the matter preceding line 7, strike the item relating to section 1716 and insert the following:

''1716. Sunshine in court records.
''1717. Definitions.''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, the gentleman from New York (Mr. Nadler) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from New York (Mr. NADLER).

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

I am pleased to offer this amendment along with the gentleman from Massachusetts (Mr. DELAHUNT) and the gentlewoman from Texas (Ms. EDDIE BERNICE JOHNSON).

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

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

Mr. SENSENBRENNER. Mr. Chairman, I think this is a very constructive amendment, and we are pleased to support it.

Mr. NADLER. Mr. Chairman, in that case, let me never take yes for an answer. I appreciate the comments of the gentleman, and I urge everyone to vote for it and I suppose, aside from saying that this deals with the question of shielding records in settlements.

Mr. Chairman, I am pleased to offer this amendment with the gentleman from Massachusetts, Mr. DELAHUNT and gentlewoman from Texas, Ms. JOHNSON.

Mr. Chairman, this amendment is designed to prevent the sealing of information regarding settlements of class action lawsuits—information that would protect the health and safety of others.

I have been concerned for a number of years about agreements to seal the information about settlements of lawsuits that affect public health and safety.

More often than not, a class action suit is filed because a number of people have been harmed by the actions of a large corporation. They come together to seek to recover damages by providing that a company behaved in a way that resulted in foreseeable harm to public health and safety. Often, the company settles the lawsuit, pays the people it harmed who sued, and then tells them to be quite. But the company may never change its dangerous practices. They simply regard the lawsuits as the cost of doing business, and ignore the underlying problem. Since the companies force the plaintiffs never to discuss the problems with anyone else, more people end up getting hurt by the companies. This is reprehensible.

The Firestone Tire situation is a case in point. One of the main reasons why there was not timely public disclosure of the dangers of Firestone tires is because Firestone insisted on a series of gag orders when settling product liability lawsuits.

An article in the September 25, 2000, edition of the Legal Times points out that:

One of the principal roadblocks to timely public disclosure of the danger of Firestone tires has been a series of gag orders the company insisted on as a condition of settling product liability lawsuits in the early 1990s.

Simply put, Firestone made a calculated determination that they would compensate victims so long as the plaintiffs agreed not to share their stories with other victims or the public. Congress was given the opportunity to address this very problem in 1995 when an amendment was offered that would prevent such gag orders if the public safety need outweighed the privacy interests of the litigants. Unfortunately, the amendment was defeated, with opponents arguing that the information was proprietary information that does not belong in the public domain.

The reality is that the release of such information in the Firestone case 7 or 8 years ago potentially could have saved scores of human lives. We can't blame the people who settled their case for recovering damages and agreeing to the gag orders as a condition of getting the money. But as a result, the public is kept in the dark, and many more people are injured. This should not happen again.

It is important for the people to be aware of the health and safety hazards that may exist so that other people can make informed choices about their lives, and, I might add, so that public agencies, perhaps, can crack down on such dangers. To often critical information is sealed from the public and other people may be harmed as a result.

Let me add that this amendment is very reasonably drafted. The amendment is written in such a way that the judge must make a finding of fact where a gag order is requested. If the judge finds that the privacy interest is broader than the public interest, then the judge must issue the gag order. If the judge finds that the public interest in the health and safety outweighs the primary interests asserted, the judge may not issue the gag order. The judge also has to make sure the gag order is drafted as tightly as possible. This will prevent the unnecessary disclosure of confidential information, but will not allow the sealing of information that may harm the public.

When it comes to health and safety, public access to class action lawsuit materials is absolutely essential. I urge my colleagues to support the Nadler/Delahunt/Johnson Amendment.

Mr. KUCINICH. Mr. Chairman, today Congress is considering a bill to make it easier for corporations to avoid compensating victims for injuries corporations and their products cause. But current law is already heavily skewed toward their interests, and the public health suffers as a result.

Case in point is the gag order on victims who receive a settlement. Under current law, victims receiving compensation under a settlement of a class action suit can be required not to disclose the dangers, evidence and admissions made by the corporate criminal as a condition of settlement. As a result, dangerous products remain on the market and able to do harm to an unknowing public.

In a society dedicated to safety and security, there is no place for these gag orders. Safety and security cannot be realized with secrecy agreements. The Nadler/Delahunt/Johnson amendment is narrowly drafted to clear the way for disclosure of information unearthed in settled class action cases that would benefit the public health.

It is a fact that enforcing the Nation's product liability laws rests in part on citizen-suits brought as class actions. But prevention is worth a pound of cure. If we repeal the gag rule on evidence of dangerous products, we will make society a safer, more secure place for the Nation's citizens. Vote ''yes'' on Nadler.

Mr. DELAHUNT. Mr. Chairman, I urge a ''yes'' vote on this amendment.

It is simple and straightforward. And it's been well-presented and fully explained by previous speakers. It outlaws a practice that has cost the lives of hundreds, if not thousands, of Americans—the sealing of court records in class action settlements where the health and safety of the public are at risk.

And if you have any doubts about the consequences of this practice, just ask the families of those who lost loved ones who were driving Ford Explorers outfitted with Firestone tires. At last count, 271 people had died.

The company knew about the problem. But insisted on secrecy as a condition of settlement. And just kept on selling those tires to an unsuspecting public who were unaware of the danger.

In committee, the lead sponsor of the bill stated that publicizing the details of settlement agreements would deter people from entering into them. Let's be clear. There is absolutely no evidence to support that claim.

And he further suggested that the amendment would eliminate an effective negotiating tool for plaintiffs. His concern for plaintiffs and hard-working American families is noble. But I can't quite believe that the U.S. Chamber of Commerce and the National Association of Manufacturers, who support this bill, share that same concern. I believe that would be a real stretch, Mr. Chairman.

But even if it were true, I submit that the price of secrecy is too high if it costs a single human life.

Consumers are entitled to know when there are dangerous and defective products on the market. They are entitled to the information that will protect them and their families from the unconscionable conduct that we witnessed in the Firestone case.

Well, let's exercise our collective conscience and do the right thing. Let's remember those families, who were the victims of corporate secrecy and greed. It's time to let the sunshine in, before more innocent people are hurt.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I urge members of this body who care about the health and safety of the public to support the Amendment I offer today with my colleagues Mr. DELAHUNT and Mr. NADLER.

This amendment will require a judge to look at the facts and determine whether the plaintiff's interest in privacy outweigh the public's need and right to know. Often plaintiffs who find themselves in difficult circumstances will agree to seal documents in order to obtain a settlement. These plaintiffs and their attorneys are looking out for their own interests. This is understandable. When faced with the prospect of not obtaining a settlement or going along with the defendant's demands to seal the documents and forever keep them secret, few people will jeopardize their own recovery. And that is why the interests of justice demand that a judge review these agreements. The parties involved in the suit are consumed with pursuing their own interests. Only a judge is required to keep the public interests in mind and to look down the road and determine what effect secrecy will have on future litigants. Florida, Texas and Washington all have rules prohibiting secrecy in cases involving defective products. And several states, including California and Illinois, through their court rules require that a judge review any secrecy deal. Mr. Speaker, the public needs this protection and this body should not refuse to provide ordinary people with the means to pursue justice in the courts of this land.

Let me just outline a few instances in which these secret agreements have endangered the public health and safety:

My colleagues have discussed the Firestone Tire case in which plaintiffs in over 50 cases all over the country were required to agree to secret settlements before the problems with these tires finally came to light. We have all heard of the injuries that resulted from people unwittingly continuing to drive on these defective tires.

In 1999 alone, about 300 asbestos lawsuits were settled for $200 million in Cook County Illinois. That deal kept secret not only the dangers uncovered but also the exact number of plaintiffs, their injuries and the amount received by each.

In 2000, BP Amoco reached an out of court deal with one former employee and the estates of four others, settling lawsuits that claimed the five developed brain tumors as a result of working at Amoco's Naperville research center. The company insisted that the amount it paid be kept secret. But two of the settlements were revealed when a Judge insisted that wrongful death benefits be made public.

Mr. Chairman, we must follow the lead of Texas and several other states. We must assure that the secrecy which has become so fashionable lately not overtake our judicial system and deny justice to ordinary people who have been harmed by the negligence of others or defectively made products. I urge my colleagues to support this amendment.

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

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentleman from New York (Mr. NADLER).

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

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

The SPEAKER pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New York (Mr. NADLER) will be postponed.

It is now in order to consider Amendment No. 3 printed in House Report 107–375.

AMENDMENT NO. 3 OFFERED BY MR. CONYERS

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

The CHAIRMAN pro tempore. Is the gentleman from Michigan (Mr. CONYERS) a designee of the gentlewoman from California (Ms. WATERS)?

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman from Wisconsin will state it.

Mr. SENSENBRENNER. Mr. Chairman, I believe that the rule that was adopted, House Resolution 367, requires that amendments may be offered only by the Member designated in the report and not by a designee. Am I correct?

The CHAIRMAN pro tempore. That is not correct. A designee may offer the amendment.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to offer an amendment and present it on behalf of the gentlewoman from California (Ms. WATERS).

The CHAIRMAN pro tempore. That unanimous consent request is not in order in the Committee of the Whole.

Mr. CONYERS. Mr. Chairman, may I ask unanimous consent that we move to the next amendment and reserve the opportunity to bring it up later?

The CHAIRMAN pro tempore. That request is also not in order in the Committee of the Whole.

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, under the rule, which amendment may be offered now?

The CHAIRMAN pro tempore. Right now, Amendment No. 3 by the gentlewoman from California (Ms. WATERS) is in order.

POINT OF ORDER

Mr. CONYERS. Mr. Chairman, a point of order. Can the gentlewoman from California (Ms. WATERS) offer her amendment at a later time?

The CHAIRMAN pro tempore. Only by unanimous consent granted by the House. That unanimous consent request is not in order in the Committee in the Whole. Under the rule, amendments only may be offered printed in the report.

Mr. SENSENBRENNER. Mr. Chairman, I call for regular order.

The CHAIRMAN pro tempore. Is the gentleman from Michigan (Mr. CONYERS) a designee of the gentlewoman from California (Ms. WATERS)?

Mr. CONYERS. Mr. Chairman, I am.

The CHAIRMAN pro tempore. If the gentleman from Michigan (Mr. CONYERS) is a designee of the gentlewoman from California (Ms. WATERS), the gentleman from Michigan is recognized to offer Amendment No. 3.

Mr. CONYERS. Mr. Chairman, I offer Amendment No. 3.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. CONYERS:

Page 9, insert the following after line 20 and redesignate the succeeding section accordingly:

"§1716. Withholding or destruction of material

''If the court in a class action issues a discovery order and a party to which the order is directed withholds or destroys material subject to the order or makes a misrepresentation with respect to the existence of such material, such action by that party shall be deemed an admission of any fact with respect to which the order was issued.

Page 6, in the matter preceding line 1, strike the item relating to section 1716 and insert the following:

''1716. Withholding or destruction of material.
''1717. Definitions.''.

PARLIAMENTARY INQUIRY

Mr. SENSENBRENNER. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman from Wisconsin will state his inquiry.

Mr. SENSENBRENNER. Mr. Chairman, I have the text of House Resolution 367 before me, and the relevant part says each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report and shall be divided and controlled by the proponent and opponent. The words ''or a designee'' is not in the rule. It is not in the text of the summary provisions of the resolution in House Report 107–375, but is in a head note.

The CHAIRMAN pro tempore. House Resolution 367 says ''a Member designated in the report'' and House Report 107–375 designate ''the gentlewoman from California (Ms. WATERS), or designee.'' Under those circumstances, the gentleman from Michigan (Mr. CONYERS) is recognized as a designee.

Does the gentleman from Michigan (Mr. CONYERS) wish to withdraw his offering of the amendment as the designee of the gentlewoman from California?

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

AMENDMENT NO. 3 OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer Amendment No. 3.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Ms. WATERS:

Page 9, insert the following after line 20 and redesignate the succeeding section accordingly:

"§1716. Withholding or destruction of material

''If the court in a class action issues a discovery order and a party to which the order is directed withholds or destroys material subject to the order or makes a misrepresentation with respect to the existence of such material, such action by that party shall be deemed an admission of any fact with respect to which the order was issued.

Page 6, in the matter preceding line 1, strike the item relating to section 1716 and insert the following:

''1716. Withholding or destruction of material.
''1717. Definitions.''.

MODIFICATION TO AMENDMENT NO. 3 OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I ask unanimous consent to modify the amendment and further request that such modification be considered as read.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

The text of Amendment No. 3, as modified, is as follows:

Page 10, insert the following after line 4 and redesignate the succeeding section accordingly:

"§1716. Withholding or destruction of material

''If the court in a class action issues a discovery order and a party to which the order is directed withholds or destroys material subject to the order or makes a misrepresentation with respect to the existence of such material, such action by that party shall be deemed an admission of any fact with respect to which the order was issued.

Page 6, in the matter preceding line 7, strike the item relating to section 1716 and insert the following:

''1716. Withholding or destruction of material.
''1717. Definitions.''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, the gentlewoman from California (Ms. WATERS) and a Member opposed each will control 10 minutes.

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

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

My amendment seeks to prevent a disgraceful action taken by some defendants. Specifically, it addresses the problems of withheld or shredded documents. We have recently heard allegations that Enron and Arthur Andersen have engaged in document shredding. Those documents were being sought by lawyers for the company's former employees, by Members of Congress and by government investigators.

In any lawsuit involving shredded documents, the information those documents contain may be lost forever. So while a court may sanction a party that shreds documents, other parties will never be able to use the documents to prove their case.

Under my amendment, any party that withholds or destroys material related to a court discovery order would be deemed to have admitted to any fact relating to the discovery order. Before that can happen, it would have to be proven that the party did, in fact, destroy or withhold those documents or that the party made a misrepresentation as to their existence; but once that has been proven, the party that engaged in illegal activity would have essentially admitted to the facts relating to the discovery order. That party would no longer have the option of arguing that it did not do the facts alleged under that order.

Keep in mind that this amendment would not impact on the facts of the case. It only addresses the facts directly related to the discovery order that was violated.

All this amendment does is to ask that parties comply with court orders. It says if they have broken the law by destroying or withholding evidence, then they cannot deny the allegations under the discovery request; we are going to rule that they are guilty with regard to the information destroyed or withheld.

This amendment provides a commonsense approach to a very serious problem. We should provide a strong disincentive to companies that think destroying documents is a way to save their case.

Mr. Chairman, I know that there are a lot of people who are tired of hearing about Enron, but Enron is not going to go away. The collapse of Enron represents the largest corporate failure in American history. At its height, Enron's total market capitalization was over $90 billion while today it trades at less than 25 cents a share. Enron's collapse resulted in tens of billions of losses for individual investors and pension funds.

Mr. Chairman, I am absolutely surprised that even with all of us knowing and understanding what took place at Enron, and each day we continue to learn more, I am surprised that we still have efforts anywhere to try and protect our corporations that not only are involved in wrongdoing, such as Enron, but Enron has gone beyond wrongdoing. It has tried to cover its tracks by shredding documents, and they did not just shred, get caught and stop. After it was discovered that they were shredding documents, they shredded more documents. It is absolutely unbelievable what we are learning about Enron.

We not only wish to protect our consumers against the Enrons and the Global Crossings of the world and others that we are going to find out about, we want to create statutes that will to help to shine the light on these corporations in every conceivable way. It goes beyond the need for transparency.

We still have those who would argue, and just a moment ago I was in our

Committee on Financial Services where I had someone from American Enterprise arguing that we should not interfere, we should not try and create too many laws, we should allow the marketplace to work their will, correct itself.

I am sorry, we cannot watch people be harmed. We cannot watch investors harmed. We cannot watch pensioners harmed and say, Well, Enron is going to go down and that is the price they will pay.

How many times do we have to watch consumers hurt? How many times do we have to unveil the manipulations of the greedy corporations of America that will take advantage of anybody that it has the opportunity to take advantage of?

This business of shredding documents should have us all outraged, but we do not hear a chorus of voices coming from those who are trying to protect Enron and the other corporations of America who are manipulating their consumers. What we hear is, Let us make a few new rules, not too many, let us do something to let the American public know we hear them, but let us not do too much.

□ 1345

Well, I want to make sure that we pass laws in this Congress that will not only deal with the tricks of Enron and the way that they created all of these phony and funny companies, but I also want to deal with the accounting firms. I want to make sure they are never able again to receive consulting fees from the same company that it is supposed to be auditing; never able again to turn a blind eye to the practices of the corporation.

We cannot do all of that in this legislation. This is about something else. But we have an opportunity here to do something about the shredding of documents. The shredding of documents shows intent, intent to hide something, intent to make sure there is not a certain kind of discovery. It is really criminal on its face. The shredding of documents by a major corporation in the middle of a scandal, where they have declared this huge bankruptcy, cannot be left untouched.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. WATERS. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I would ask the gentlewoman, is it not true that in the Enron case that the shredding was flagrant and outrageous in the sense that even after they were discovered shredding, they continued to shred?

Ms. WATERS. Reclaiming my time, Mr. Chairman, that is absolutely correct; and that is what is so outrageous about it all. They started shredding early, they continued shredding, and even after it was discovered, they shredded some more.

So what they have done is to flaunt their criminal activity in all of our faces; and literally, in the way they are acting, they are daring us to do something about it.

Mr. CONYERS. If the gentlewoman will continue to yield, I would ask her if her amendment, then, would hold them accountable and reinforce any existing remedies against shredding, sanctions of the court, criminal prosecution, and emphasizes this, in the face of the arrogance that has been displayed in this case, and perhaps other cases that have not even come to light?

Ms. WATERS. Mr. Chairman, the gentleman is absolutely correct. Everybody knows about the shredding that took place in Enron. We have all the employees who said, yes, we did it; they told us to do it. And so what we have here is such an admission and knowledge by so many people that with my amendment here they would not be able to get out from under the fact that they absolutely committed the shredding of the documents.

Mr. CONYERS. Well, Mr. Chairman, I want to thank the gentlewoman on behalf of many of us on the committee for a very timely, appropriate, and very sensible provision in the light of what has come to become common knowledge to everyone in the country now.

Ms. WATERS. Reclaiming my time once again, Mr. Chairman, the gentleman is certainly welcome, and let me just say this to him. I believe that as we legislate in this Congress, we must take every opportunity to close every loophole, shut every door, shut down every opportunity for any corporation in America to ever do again what Enron and what appears Global Crossing is doing and has done.

I hate to repeat it because I know people do not want to keep hearing it, but I know the stories of Enron employees who had paid into their 401(k)s. They only had $400,000 for their retirement to last them for the rest of their lives. It is gone. It is gone. There is nothing that anybody can say about us being too involved, overlegislating, attempting to micromanage. There is nothing that anybody can say that should keep us from using every opportunity.

The CHAIRMAN pro tempore (Mr. SWEENEY). The time of the gentlewoman has expired.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume, and I rise in opposition to the amendment.

Mr. Chairman, I rise in opposition to this amendment because it confuses discovery orders with factual evidence and appears to give the court discretion to admit unproven facts into evidence. This not only undermines the bill but it undermines the very notion of a fair trial that our judicial system is based upon.

There are rules for a fair trial: the right to confront your accuser, a right to a jury in some instances, and a rule that allows both sides to discover information. But there is no precedent in the American legal system for a court to have the authority to simply decide facts without proof. The amendment of the gentlewoman from California (Ms. WATERS) proposes to do that.

The gentlewoman's amendment strikes at the heart of so many constitutional protections intended to protect the rights of all Americans when they are brought before the court, and it sticks the thumb on the scale of justice against those rights that have been protected both by court rules and statutes, as well as the Constitution of the United States.

For that reason, and for that reason alone, it ought to be rejected. But I would like to talk about two things. The other side keeps on talking about Enron, and we will confront that directly. Enron is broke. No matter what comes out of the bankruptcy court, the people that have lost money in their 401(k)s and had employment contracts ripped up and all of that are not going to get very much money out of it. I think that is a given. And that is a shame, and it is something that we are going to have to get into in another forum. But the law is quite clear that the destruction of subpoenaed documents is a criminal obstruction of justice, and this bill does not change that criminal statute. This bill does not deal with the criminal law in any respect whatsoever.

If people did do that destroying of documents, as we have read that they did, they should be indicted and prosecuted. And if the jury finds them guilty, they should go to jail and they should go to jail for a long time. But I think they deserve a fair trial just like everybody else who is accused of a crime. Because they happen to be associated with Enron or Arthur Andersen really should not make any difference. Because if we erode the right of a fair trial to those defendants, we have set a precedent that is going to bite the people of this country and this Congress for years and years to come. The way to keep the lid on Pandora's box is to reject the amendment of the gentlewoman from California.

Now, the second thing I would like to bring up is let us run the wheel back about 3½ or 4 years. There were certain e-mails in the Clinton White House that were destroyed after having been subpoenaed by the Committee on Government Reform. Now, under the amendment of the gentlewoman from California, whatever the gentleman from Indiana (Mr. BURTON), the chairman of the Committee on Government Reform, thought he was looking for would have been admitted as evidence and as fact and could not be impeached, even though the destroyed e-mails might have had nothing to do with what he put in his subpoena. That is the type of Pandora's box that this misdrafted amendment is opening up.

And I think my friends on the other side of the aisle, including the gentlewoman from California and the gentleman from Michigan, who were most

eloquent in their defense of the former President, regardless of what the facts were, would have really talked about how unfair a Waters provision would have been relating to those destroyed e-mails. So I think that if it would have been bad as it applied to former President Clinton, it is bad if it applies to Enron or anybody else. We should not open up the Pandora's box.

Mr. Chairman, I yield 2 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in opposition to this amendment. It is frivolous. Its premise is that courts cannot or do not have the power to sanction wrongdoing by parties in discovery or that the system itself does not prosecute crimes when they occur in our court system.

But, Mr. Chairman, the Democrats have talked today about Enron. They have talked about prescription drug benefits, they have talked about apple juice, tires and the environment. Our friend from Texas even raised my constituents in San Juan County, Utah. Yes, each of these cases presents terrible tragedies committed by one party against a group of others. But this debate is not about whether the plaintiffs in each of these cases is entitled to sue or even entitled to seek class action status. I have heard no one in this Chamber calling for doing away with class action lawsuits. This debate is about where the cases are heard, Federal or State court, and that is it.

When our friends on the other side of the aisle talk about Enron, prescription drugs, truck tires, the environment, or my constituents in San Juan County, what they are doing is to change the subject. Make no mistake, they do not want to talk about multimillion dollar awards for trial lawyers while Americans get coupons in the mail.

It is not often I agree with The Washington Post editorial page, but today I do. The current system is obscene. Trial lawyers take advantage, the little guys get taken to the cleaners, and consumers ultimately pay the price in the form of higher prices.

This legislation deserves everyone's support. I encourage a vote against this amendment and for H.R. 2341.

Mr. SENSENBRENNER. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore. The gentleman from Wisconsin has 3½ minutes.

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

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

There are two major problems with this amendment, which I strongly oppose and which is not well thought out. First, it betrays a serious misunderstanding about how discovery works in civil litigation.

The amendment says if documents subject to a discovery order are destroyed or withheld such action shall be deemed an admission of any fact with respect to which the order was issued. The problem is that discovery orders normally are not issued with respect to facts. The orders normally say that certain categories of documents should be retained or produced.

For example, the order may say produce all letters sent between person A and person B; or the order may say preserve all documents regarding subject X. Thus, the punch line to this amendment does not make any sense. If a party withheld a letter sent between person A and person B, what fact would be admitted? And if a party destroyed a document regarding subject X, what facts would be admitted?

In sum, the amendment is fatally flawed because it bears no relationship to how civil discovery really works. Second, and perhaps more importantly, the amendment would actually disrupt and water down existing rules that apply to the destruction or withholding of documents in the discovery process.

Federal Rule of Civil Procedure 37 already provides for an array of sanctions if a party destroys or withholds documents. The court may order that certain facts be admitted. The court may order that a party may not introduce certain defensive evidence at trial. The court may order that monetary sanctions be paid. And most importantly, the court may order a default judgment. The court may issue an order that the party that disobeyed a discovery order loses the entire case and must pay the plaintiffs what they requested.

There is a considerable risk that courts would view this amendment as replacing this very tough rule 37 in the context of class actions. The amendment only requires admissions. Rule 37 authorizes a court to impose much more serious penalties. Thus, this amendment likely would substantially weaken existing law in addressing and correcting discovery abuses in the context of class actions.

Rule 37 is a preferable approach to discovery abuse issues because it awards various levels of sanctions that may be imposed depending upon the seriousness of discovery abuse. Not every document destruction or withholding situation is the same, and rule 37 allows courts to impose even stronger sanctions than this amendment, if the circumstances warrant.

The chairman of the Committee on the Judiciary is exactly right. If we allow a person making an allegation and then demanding a production of documents to be deemed to have proven their point; that whatever they allege was in those documents to have been what that party alleged, a serious misjustice will occur and abuses will crop up all throughout our legal system. This is a bad approach and I urge my colleagues to oppose it.

The CHAIRMAN pro tempore. The gentleman's time has expired. All time for debate on amendment No. 3 has expired.

The question is on the amendment, as modified, offered by the gentlewoman from California (Ms. WATERS).

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

Mr. CONYERS. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

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

The point of no quorum is considered withdrawn.

□ 1400

The CHAIRMAN pro tempore (Mr. SWEENEY). It is now in order to consider amendment No. 4 printed in House Report 107–375.

AMENDMENT NO. 4 OFFERED BY MR. KELLER

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. KELLER:

Page 9, insert the following after line 20 and redesignate the succeeding section accordingly:

"§ 1716. Disclosure of attorney's fees

''Any court with jurisdiction over a plaintiff class action shall require that, if there is a settlement of the class action or a judgment for the plaintiffs, the attorneys for the plaintiffs shall disclose to each plaintiff—

''(1) at the time when any payment or other award is transmitted to the plaintiff in accordance with the settlement of judgment, or

''(2) in a case in which no such payment or award is made to a plaintiff, at the time when notice of the final settlement or judgment is transmitted to such plaintiff,

the full amount of the attorney's fees charged by the attorneys for services rendered in the action.

Page 6, in the matter preceding line 1, strike the item relating to section 1716 and insert the following:

''1716. Disclosure of attorney's fees.
''1717. Definitions.''.

AMENDMENT NO. 4, AS MODIFIED, OFFERED BY MR. KELLER

Mr. KELLER. Mr. Chairman, I ask unanimous consent to modify the amendment and further request that such modification be considered as read.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

The text of the amendment, as modified, is as follows:

Amendment No. 4, as modified, offered by Mr. KELLER:

Page 10, insert the following after line 4 and redesignate the succeeding section accordingly:

"§ 1716. Disclosure of attorney's fees

''Any court with jurisdiction over a plaintiff class action shall require that, if there is a settlement of the class action or a judgment for the plaintiffs, the attorneys for the plaintiffs shall disclose to each plaintiff—

''(1) at the time when any payment or other award is transmitted to the plaintiff in accordance with the settlement of judgment, or

''(2) in a case in which no such payment or award is made to a plaintiff, at the time when notice of the final settlement or judgment is transmitted to such plaintiff,

the full amount of the attorney's fees charged by the attorneys for services rendered in the action.

Page 6, in the matter preceding line 7, strike the item relating to section 1716 and insert the following:

''1716. Disclosure of attorney's fees.
''1717. Definitions.''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, the gentleman from Florida (Mr. KELLER) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Florida (Mr. KELLER).

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

Mr. Chairman, this is a straightforward amendment relating to the disclosure of attorneys' fees. Simply put, if there is a settlement or a judgment for the plaintiffs in a class action suit, the plaintiffs' attorneys shall be required to disclose to their own clients the full amount of the attorneys' fees they are charging.

Why is this necessary? Too often, lawyers cash in while the client gets a coupon or a de minimis cash payment.

For example, in a class action suit against General Mills over a food additive in Cheerios cereal, lawyers were paid $2 million in fees while their clients received a coupon for a free box of cereal. In a class action lawsuit against Chase Manhattan Bank, the lawyers reached a settlement which provided the lawyers with $3.6 million in attorneys' fees and provided their clients with 33 cents each.

In another settlement agreement reached last year with Blockbuster, the trial lawyers received $9.25 million in attorneys' fees and their clients got two free movie rentals and $1-off coupons.

In a Texas class action suit against two auto insurance companies, the lawyer who filed the suit got $8 million in attorneys' fees. The policyholders got $5.50.

In a class action suit brought against manufacturers of computer monitors, the trial lawyers settled the case for $6 million in attorneys' fees for themselves and $6 for their clients. The list literally goes on and on.

This amendment simply brings some much-needed sunlight to this situation by requiring attorneys to disclose their own fees. It does not tell them how much to charge, how little to charge, but whatever they charge they are going to have to disclose to their clients.

I ask my colleagues to vote ''yes'' on the Keller amendment and vote ''yes'' on final passage of the Class Action Fairness bill.

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

The CHAIRMAN pro tempore. Does the gentleman from Texas rise in opposition?

Mr. SANDLIN. Mr. Chairman, I rise in opposition.

The CHAIRMAN pro tempore. The gentleman from Texas is recognized for 10 minutes.

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

Everyone is interested in fairness. Everyone is interested in transparency. I think no one has any opposition to making sure that both sides in the litigation and the court know about the amount of attorneys' fees, and that is fine.

But this amendment is one-sided, Mr. Chairman, because this amendment requires only that the plaintiffs' attorney reveal the amount of fees to the clients. That is fair to neither the plaintiffs nor the defendants.

Also, our friends on the other side of the aisle forget to note that courts already review fees with a long laundry list of issues and criteria such as time and labor involved, novelty and difficulty of the questions, skill requisite to perform the employment, the customary fees and things such as that. So our position is that what is good for the goose is good for the gander. If we want to have transparency and we want to know what the fees are, let us talk about the fees on both sides so everyone knows where we are.

I wonder if the gentleman from Florida would be willing to consider requiring equal treatment for both sides, require the disclosure of fees for both defense attorneys and plaintiffs' attorneys.

REQUEST TO OFFER MODIFICATION TO AMENDMENT NO. 4

Mr. SANDLIN. Mr. Chairman, I ask unanimous consent that the Keller amendment be amended by inserting the words ''and the defendants'' after ''plaintiffs'' in line 5 of the amendment.

The CHAIRMAN pro tempore. The Chair only would recognize that unanimous-consent request to make a modification if it was made by the amendment's sponsor himself.

Mr. SANDLIN. Mr. Chairman, as I said before, this amendment is one-sided and unfair. If the other side was really interested in letting consumers and the court and the public know about fees, the other side would say the defense should reveal the fees that the defense attorneys are charging, too. That is fair. That is equitable. They know it.

The change I offered to this amendment, which was rejected by the gentleman from Florida, would have corrected that inequality. I would support a fair and equitable disclosure of all attorneys' fees, and those on the other side would not.

I would note that later today the gentlewoman from Pennsylvania (Ms. HART) will offer an amendment to commission a study to look at, among other things, attorneys' fees and get recommendations from experts on how best to ensure that they are fair and reasonable. Let us not put the cart before the horse. Let us not make change and then do a study. If we want to see if fees are fair, if they are equitable, if they are based upon the law, let us do the study and see what the study says; then we can look at the changes.

The change should be applicable to the plaintiffs, the change should be applicable to the defendants. I think the gentlewoman from Pennsylvania's approach would better ensure that we are addressing the real problems.

I urge my colleagues to defeat this amendment. If you want to review attorneys' fees on both sides, then support HART, support the study. But do not support one-sided legislation and then have the nerve to get up here and put the word ''fairness'' in the name of the bill. We know there is nothing fair about this bill.

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

The CHAIRMAN pro tempore. The Chair would note that the gentleman from Texas is not a member of the committee. Therefore, the gentleman from Florida has the right to close.

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

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman from Florida for yielding me this time. I commend him for offering this amendment and I strongly support it. Let me tell you why.

To the gentleman from Texas, the plaintiffs in a class action lawsuit do not pay the defendants' attorneys' fees, but they sure do in some class actions. How about the Bank of Boston settlement? Would it not have been a good idea for all the plaintiffs in that case if they knew, after the attorneys in the case were paid $8.5 million in attorneys' fees, that the members of the class would then be sued by their own attorneys to pay $25 million more? Would that not have been a useful thing for the plaintiffs to have had in that case, when they decide whether or not they want to support this particular proposed settlement of the class?

Or how about the plaintiffs in the airline case where the attorneys received $16 million in fees, and the plaintiffs themselves received coupons for $25 off a $250 or more airline flight, in other words, a 10 percent reduction? Many of those plaintiffs may have said the attorneys are getting $16 million and I am getting a coupon, no, I do not want that settlement. They ought to know that ahead of time.

How about the case against the National Football League, where the attorneys received $3.7 million and the subscribers got somewhere between $8 and $20? Maybe they would like that, maybe they would not, but they ought to know ahead of time before they vote on the settlement.

How about the Blockbuster case? Twenty-three class action lawsuits in

which the class members got dollar-off coupons and buy-one-get-one-free coupons; and the attorneys are estimated, we do not know for sure because we do not have this disclosure requirement, are estimated to get $9.2 million in attorneys' fees. I think disclosure would be good in that case as well.

And then, of course, my favorite again, this case where, against Chase Manhattan Bank, the attorneys get $4 million in fees and the plaintiffs get a check for 33 cents. But, of course, I remind you again they had to mail in that acceptance, so it cost them 34 cents to mail it in to get their 33 cents. I bet people who knew that the attorneys in this case were getting $4 million would not vote to get a penny off which is what the net result of that is.

Again, that is the actual check from Chase Manhattan Bank. They cut all these checks. It cost 33 cents apiece to issue the check plus more than that to mail the checks to the plaintiffs. The attorneys, of course, their check is $4 million and I think if the plaintiffs knew that, they would vote against these settlements. They would let the court know, do not approve a settlement where all we get is a 33-cent check and the plaintiffs' attorneys get a $4 million fee.

I urge my colleagues to support this very good amendment.

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

The statement from our last speaker shows a gross misunderstanding of these suits and the way the fees are paid. He indicated that the plaintiffs do not pay the attorneys. They fail to recognize that there is only so much money in these suits.

What are the defendants scared of? What are the Enrons of the world trying to hide? What are the accounting firms trying to hide? What do the chemical manufacturers want to hide from the public? Why will they not accept fair and reasonable disclosure of the fees charged by defense counsel? That is because defense counsel is charging $750 an hour, $500 an hour, $450 an hour, countless hours with scores of attorneys, most of them not doing any work.

If we are going to have transparency, if you are really interested in good public policy, if you really want to know how much fees are being paid, you should stand up there and do the right thing and say, we agree that the defense should reveal and show how much the defense is getting in addition to what the plaintiffs are getting.

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

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

The gentleman from Texas says, well, let us have the defense attorneys reveal how much they are charging. What he does not point out is that the class members themselves in this plaintiffs' suit are bound to class actions unless they affirmatively opt out.

Defendants, in contrast, actually hire and fire their attorneys. There is a stark difference. They get those bills on an hourly basis every month. They know precisely what they are being charged and how much the attorneys make. It is the poor guy who gets the Cheerios coupon and then sees the attorney get several million dollars who is a little bit upset. And he is the one who needs some sunlight here; there already is sunlight on the other side.

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

Mr. SANDLIN. Mr. Chairman, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), the ranking member.

Mr. CONYERS. Mr. Chairman, I would like to ask my friend on the committee, the author of the amendment, the gentleman from Florida (Mr. KELLER). Is he not aware of the fact that in most of these settlements, the court requires that the amounts of recovery or payment to the lawyers is revealed in the settlement?

Mr. KELLER. If the gentleman will yield, I am aware that if that is the case, then he should have no objection to my amendment.

Mr. CONYERS. Is he aware or is he not?

Mr. KELLER. I am aware that a lot of people who are members of the class are shocked and appalled to find out.

Mr. CONYERS. I know they are shocked, but are you aware? You know that, do you not?

Mr. KELLER. I am not aware of that most of the time.

Mr. CONYERS. You do not know that.

I thank the gentleman very much. He is not aware of it.

Mr. KELLER. I am aware of the opposite.

Mr. CONYERS. Just a moment, sir. I am not yielding you any more time.

Mr. KELLER. You asked me a question.

Mr. CONYERS. Now that we do understand that this is revealed frequently in the court, even though the gentleman did not know it before, the courts make this matter public.

The other thing is, and this is a question I am going to yield to you on. Are you aware that in section 1715 of this bill that there is the same provision that you are now offering as an amendment?

I yield to the gentleman.

Mr. KELLER. To answer your first question?

Mr. CONYERS. Just answer this one, please. Are you aware or are you not?

You are not. Then I suggest you look at section 1715, and you will see that this request that you are making, as one-sided as it is, is already in the bill that I guess you are supporting; and so it is redundant.

I am impressed by the fact that defense attorneys' fees are not to be revealed, but plaintiffs' attorneys' fees are to be revealed, giving up yet another secret of the practice, namely, that defense lawyers frequently get far more than plaintiffs' lawyers.

So thanks a lot for public disclosure. This is a very helpful amendment in trying to get what we call the vengeance of the ex-trial lawyers in Congress on their former profession.

□ 1415

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

Mr. Chairman, I was asked several questions and really did not get a chance to respond to them, but I will go ahead and respond to them now.

I was asked are you aware you already have this identical language in section 1715? First, I would make the point if the language really were there, then the gentleman, of course, would have no objection to this amendment, which he obviously does, so that is a little bit of a supercilious argument.

Second, having looked directly at section 1715, I can say that language is not there. There is language talking about on the front end providing notice to members of the class as to a perspective amount of payment. My amendment deals with the actual payment that the attorney has received after there has been a judgment or a settlement. So it is distinctly different and is worthy of support.

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

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

Mr. Chairman, as was indicated by my friend, the gentleman from Michigan, fees are already revealed in settlements. Fees are a matter of public record; and they are approved, the fees, by the court based upon certain criteria that has been set out and is of long standing approval by the courts.

There are two basic methods, the percentage method and the load star method. They have many of the same elements; but they consider things, such as an evaluation of the number of hours worked, benefits secured, the nature and complexity of the issues involved, the amount of money or value of property, the extent of the responsibilities assumed by the attorney, or that the attorney lost employment as a result of being employed in this case, novelty and difficulty of the questions, time limitations, experience, reputation and ability of counsel, undesirability of the case, awards in similar cases and customary fees.

That is the general rundown. Those things are considered by the court and fees are placed against that standard when they are approved, and that is placed in the approval.

Now, true enough, attorneys do get fees and do get paid; but our friends on the other side do not want the defense to reveal that. Why not? What are they scared of? What are they hiding? Answer me why the defense will not do it.

In one case, Food Maker, Inc., as we heard today, killed three people. The attorneys got paid in a class action, and they got paid under the criteria that I read to you.

In another case, a sulfuric acid compound leaked from a car in a General

Chemicals Richmond, California, plant; 24,000 people sought medical treatment. The attorneys were paid, and they were paid based upon this criteria.

There was another case where we had $50 million to a class of 3,500 people living near a pesticide plant contaminated in New Orleans. The amount paid to each plaintiff depended on the years they lived in the area, the extent of exposure, whether they owned their land, what illnesses arose, did they increase in severity, all reasonable things. The attorneys were paid. They were paid based on the criteria approved by the court and by the law.

Lawyers recently filed assault in New Jersey on behalf of by diabetics who used the prescription drug Rezulin to lower blood sugar levels. It was marketed as safe, but later it was showed that it caused severe liver damage, liver failure or death in 100 cases. It was shown the manufacturer knowingly concealed facts about the dangers of the drug from the consumers and the FDA in order to increase sales and make more money. They reached a settlement, and, you know what? The attorneys were paid, as they should have been, based upon the criteria approved by the law.

It is transparent, it is clear. Everyone knows what the plaintiff gets. Everyone knows what they are paid. And the people here that are hiding something are over on that side of the aisle that say we refuse to let you know what defense gets; we refuse to let you know what the insurance lawyers are paid; we refuse to let you know what corporate America's attorneys get paid, because it would offend people such as Enron.

If you want to protect corporate wrongdoers, you need to just get up there and say it and say that is what we are doing, because there is no excuse to say it should be transparent on one side but not transparent on the other. If you want to be fair, be fair; stand up, be fair about it. If you want to be partisan, if you want to protect corporate wrongdoers, just get up there and say it, because that is exactly what you are doing.

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

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

Mr. Chairman, this is a straightforward amendment. We are just shedding some sunlight on the situation and requiring that the plaintiffs' attorneys tell their clients the full amount of fees they are charging. It is as simple as that. We are not saying how much they can charge, how little they can charge, just shed some sunlight on the situation.

We have heard three principal objections to this amendment. First, we hear that some class actions may have merit, and you hear about the Enron case. Well, I agree. I think the Enron class action probably does have merit and probably think there are other class actions that have merit. This has nothing to do with the merit or lack of merit or any particular class action. It has nothing to do with how much they can charge. It simply relates to disclosure of attorney fees, shedding some sunlight on the situation.

The second thing we have heard is this language of the Keller amendment is already in the bill. Well, it is not in the bill; but even if it were, then so be it. That would be great news. Vote for final passage.

The third thing we hear is, well, defense attorneys should be required to tell their clients how much they charge. In fact, they do. In fact, defense attorneys, unlike the poor people in the class, actually hire and fire their attorneys. They get a monthly statement as to how much they are being charged. There already is full disclosure on that side. So there is a clear distinction.

Mr. Chairman, I urge my colleagues to vote ''yes'' on the Keller amendment. Let us bring some much-needed sunlight to this situation to require attorneys to disclose their fees.

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

The CHAIRMAN pro tempore (Mr. SWEENEY). The question is on the amendment, as modified, offered by the gentleman from Florida (Mr. KELLER).

The amendment, as modified, was agreed to.

WITHDRAWAL OF REQUEST FOR RECORDED VOTE ON AMENDMENT NO. 2, AS MODIFIED, OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, earlier I asked for a recorded vote on amendment No. 2, as modified. I ask unanimous consent to withdraw that request.

The CHAIRMAN pro tempore. Without objection, the recorded vote requested by the gentleman from New York (Mr. NADLER) on amendment No. 2, as modified, is withdrawn.

There was no objection.

The CHAIRMAN pro tempore. The amendment is agreed to pursuant to the voice vote taken earlier today.

It is now in order to consider amendment No. 5 printed in House Report 107–375.

AMENDMENT NO. 5 OFFERED BY MS. LOFGREN

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Ms. LOFGREN:

Page 15, line 6, strike ''if—'' and all that follows through line 17 and insert the following: ''if 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.''.

Page 15, line 21, strike ''The'' and all that follows through ''subparagraph (A).'' on line 24.

Page 16, line 2, strike ''subparagraph (B)'' and insert ''this paragraph''.

MODIFICATION OF AMENDMENT NO. 5 OFFERED BY MS. LOFGREN

Ms. LOFGREN. Mr. Chairman, I ask unanimous consent to modify amendment No. 5 so that the page numbers comport with the report this morning.

The CHAIRMAN pro tempore. The Clerk will report the amendment, as modified.

The Clerk read as follows:

Amendment No. 5, as modified, offered by Ms. LOFGREN:

Page 15, line 15, strike ''if—'' and all that follows through page 16, line 2, and insert the following: ''if 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.''.

Page 16, line 6, strike ''The'' and all that follows through ''subparagraph (A).'' on line 9.

Page 16, line 12, strike ''subparagraph (B)'' and insert ''this paragraph''.

Ms. LOFGREN (during the reading). Mr. Chairman, I ask unanimous consent that the modification be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

The CHAIRMAN pro tempore. Without objection, the modification is agreed to.

There was no objection.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, the gentlewoman from California (Ms. LOFGREN) and a Member opposed each will control 10 minutes.

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

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

Mr. Chairman, there is no doubt that there have been problems in the area of class action lawsuits. We have heard some reference to those problems here today, and certainly the Committee on the Judiciary heard testimony about some of the issues that do need to be addressed.

However, the fact that there are problems with coupon settlements does not mean that we can adopt any old thing as a remedy. In fact, this bill has some flaws, and the amendment before the body now is a very important amendment because it cures one of those flaws.

This is an amendment that is very important for local prosecutors. H.R. 2341, oddly enough, prevents district attorneys from taking civil actions to benefit the public under the guise of ''class action reform.''

This provision of the bill is opposed by the California District Attorneys' Association, and that is because this provision of the bill is not limited to consumer protection class actions brought by plaintiff attorneys. It has a far-more reaching effect. It federalizes any State cause of action that is brought on behalf of the general public.

California, like many other States, has enacted strong antitrust laws that prohibit unfair combinations and unlawful restraints of trade, and Californians have chosen to allow their district attorneys, in addition to the State attorney general, to enforce

these laws in State courts. This bill would usurp California's choice with an expansive definition of ''class action'' that includes any case brought on behalf of the general public.

The Federal Government should not force a local prosecutor to try State antitrust lawsuits in Federal court. Nor should the Federal Government force local prosecutors to comply with Federal class certification requirements that they likely cannot comply with, and if they fail to comply, their cases will be dismissed and very likely they will not be able to refile in State court.

This bill would have a chilling effect on State and local antitrust law enforcement, as well as consumer protection actions in the civil side that are undertaken by district attorneys.

The ability to bring these suits is a powerful tool for local district attorneys, many of whom, including in my own county of Santa Clara, have set up consumer protection units. In fact, one such unit in the San Francisco District Attorney's Office successfully settled a major consumer protection action against Providian Financial Corporation that netted $300 million for consumers.

I would note that in addition to standing up for consumers, local district attorneys can also generate revenue for local government in their very modest fees that do not match the fees that we have heard talked about on this floor.

Now, some have asked me, how can this bill do what I have described? I would simply direct Members to page 15 of the bill where class action is defined in this way: ''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, seeking a remedy of damages, restitution, disgorgement, or any other form of monetary relief, and is not a State attorney general.''

Well, I think the drafters of the bill have understood that State attorneys general bring civil actions. They just apparently have not understood that district attorneys and city attorneys can bring those same kinds of actions. It does not make any sense at all to force those district attorneys into Federal court, where they are going to then be asked to comply with rule 23, and the district attorneys will not be able to comply with rule 23 because they are not bringing a class action lawsuit, and, then, according to the bill, their lawsuits made on behalf of the people, most mandatory, will be dismissed.

So this amendment offered by myself and the gentleman from California (Mr. SCHIFF), a former prosecutor in California, would remedy this serious defect in the bill.

I urge its adoption.

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

The CHAIRMAN pro tempore. Does the gentleman from Wisconsin (Mr. SENSENBRENNER) rise in opposition to the amendment?

Mr. SENSENBRENNER. I do, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman is recognized for 10 minutes.

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

Mr. Chairman, I rise in strong opposition to this amendment, which effectively excludes private attorney general claims from the provisions of H.R. 2341.

Allowing citizens to use private rights of actions as a class is an enormous loophole in this law that can be easily accessed and lead to continued abuses in local courts, even in California.

Now, let me say when we are talking about diversity jurisdiction as established in the Constitution, we are talking about claims between plaintiffs in different States and defendants in different States, so if all the plaintiffs lived in California and the defendant was living in California, there would be no Federal diversity jurisdiction whatsoever and the case would be tried in the California court.

However, the Federal courts were intended by the Framers in diversity jurisdiction to get away from having a State court be the hometown umpire and thus favoring litigants from the State where the court sat. So if I had a claim and were potentially a member of a class as a citizen of the State of Wisconsin, I really would not appreciate very much one of these private attorney general actions litigating my claim in a California court which is 1,500 miles away from my State. I would end up having my rights litigated and my remedies extinguished as a citizen of Wisconsin in a court that I might not think I would get a fair trial in.

Now, under H.R. 2341, I, as a citizen of Wisconsin, if I were a defendant in this action, would have the right to remove the case into a Federal court and even the playing field.

Mr. Chairman, I think we ought to realize that every case that arises under diversity jurisdiction arises under State law. Cases that arise under Federal law jurisdiction, the jurisdiction is in the Federal courts, and they can automatically be removed simply because a Federal question is posed. So diversity jurisdiction applies where no Federal question is posed, but you have plaintiffs and defendants who live in different States and are citizens of different States.

Now, I think that in order to protect the nonresident litigants, there ought to be a procedure to remove those types of private attorney general class action claims into Federal court. The bill provides that procedure. The gentlewoman from California wants to eliminate that procedure, and that means that those of us who happen to be either plaintiffs in a class action or a defendant in one of these private attorney general actions in a State like mine that does not allow them will end up having the case litigated in a court that might be thousands of miles away from where we live and would have the hometown bias.

□ 1430

That is not what this bill should be about, and that is why I hope this amendment will be defeated.

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

Ms. LOFGREN. Mr. Chairman, I yield myself 45 seconds to note that in the Providian case I mentioned where the district attorney in San Francisco pursued a remedy for the citizens, the public, the people in San Francisco, obtaining a $300 million benefit for consumers, there was incomplete diversity and it was not removed because one of the subsidiary defendants was from out of State. However, under this act, that action would have to be removed and would have to be dismissed, because rule 23 relative to class actions cannot possibly be complied with by district attorneys acting on behalf of the people, and I think that this is a very stealthy way to eliminate jurisdiction of district attorneys and city attorneys acting in their civil capacity on the part of the people. I would urge that this amendment be adopted to cure this fatal defect.

Mr. Chairman, I reserve 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 thank the gentleman for yielding me this time. I too oppose this amendment.

A rose by any other name would smell as sweet; a class action by any other name is still a class action. This legislation is designed to treat all similar types of actions similarly, and it is totally unfair to place parties in other States at the mercy of those who would have an exception to this rule that if it were brought by a local prosecutor or other attorney, that they would then be able to keep these cases in State court.

As to the concern raised by the gentlewoman regarding the bringing of these actions in Federal court, no, they do not have to be moved to Federal court; and if they are, the Federal court judge has wide latitude to remand cases to State court where the judge finds that an inequity would result or where it would be better to bring that case in State court in the first place.

So there is no reason to draw a distinction. There are many, many class action lawsuits that can and should be heard in the State courts. If they meet the criteria of the law, they should do it.

This bill is simply designed to make sure that cases that otherwise could be brought in Federal court because of diversity of jurisdiction can indeed be

brought for that reason and not bogged down under a $75,000 per plaintiff limitation, which in so many, many of these class actions involving peanuts, being the amount of the settlement for the plaintiffs, could not be brought in Federal court and, instead, gets brought in that favorite jurisdiction, whether it is in California or any other State. This levels the playing field and makes sure that all of these actions are treated fairly and equally. There is no reason to make a distinction for this type of action.

Mr. Chairman, I would encourage my colleagues to oppose this amendment.

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

Ms. LOFGREN. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, I rise in support of the amendment proposed by the gentlewoman from California (Ms. LOFGREN).

The gentleman who just spoke quoted that a rose by any other name is still a rose, and I would like to talk about one of those roses that we talk about frequently in this House, and that is the rose of federalism, that is the rose of State rights. Because State rights and deferring to the legislatures of the 50 States is as pure and as beautiful as a rose, both in this context, as it is in so many other contexts that our colleagues remind us of from time to time.

What does that mean in the case of this amendment? It means that when a legislature like that in California passes a law to protect the consumers of that State by empowering individuals to act as private attorneys general, rather than simply expanding the attorney general's office and hiring more and more attorneys general, California has chosen to protect consumers by empowering individuals to act as the attorney general when the attorney general lacks the resources to do it. Maybe the case is too small to impose upon the attorney general, so private citizens can bring these actions to protect their rights.

This is exactly what the States are supposed to do; they are supposed to innovate. They are supposed to use new methods of attacking old problems. So California has used this new method of private attorneys general to attack unfair business practices.

What is the Congress doing in this bill right now by opposing this amendment? It is saying that, well, we are fine with federalism, we are fine with State rights except when the rights are about protecting consumers; except when we do not like the direction where the State may be headed.

I served in the California legislature for 4 years. We have very strong consumer protections. Large corporations that do business in California, they take advantage of those protections in a positive way. They take advantage of all of the benefits of California law, and we should not pass a bill today that basically says that these large, out-of-state companies that want to take advantage of the good economic environment in California and sell goods and products and services to Californians, to take advantage of that forum should be somehow immune, be able to remove from California courts, maybe remove from California completely, any action that consumers might bring or a private attorney general might bring on their behalf. That simply is not right.

A rose by any other name is a rose, and the rose of federalism supports this amendment. I urge an ''aye'' vote.

Ms. LOFGREN. Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan (Mr. CONYERS), the ranking member of the full committee.

Mr. CONYERS. Mr. Chairman, I want to compliment the gentlewoman from California (Ms. LOFGREN) on this amendment because the State of Michigan has precisely the same provision as the State of California.

The gentleman from California (Mr. SCHIFF) and the gentlewoman from California (Ms. LOFGREN) have explained it perfectly. I just had a Committee on the Judiciary staffer, Scott Deutchman, call the attorney general, Jennifer M. Granholm, in Michigan to confirm with her before I made the statement in support of the Lofgren provision that the Michigan attorney general is totally supportive and is stunned by the notion that anything in our laws, our procedures here would require her or citizens to go into a Federal court to seek a remedy that is uniquely available to them under State procedures.

So I am very pleased to indicate that our attorneys general and like those of California are totally in support of the Lofgren amendment. I hope that the Members will appreciate the significance of this provision.

Ms. LOFGREN. Mr. Chairman, do I have the right to close?

The CHAIRMAN pro tempore (Mr. SWEENEY). The gentleman from Wisconsin (Mr. SENSENBRENNER) has the right to close. The gentlewoman from California has 1¼ minutes remaining.

Ms. LOFGREN. Mr. Chairman, I yield myself the remaining time.

I have heard the comments that the provision in the bill is fine because it is diversity jurisdiction, and I just do not buy that argument. I will tell my colleagues why.

Take a look at the provision that creates sort of class action coverage for the actions of district attorneys, our local prosecutors. It specifically exempts State attorneys general. So the argument my colleagues are making that these cases need to be brought and heard in Federal court when there is diversity of any sort at all does not wash if we are exempting the State attorneys general from the provisions of these consumer protection actions.

I called yesterday, I was ill last week and I wish I had called him before yesterday, but I called the district attorney in Santa Clara County. He was stunned to see this provision and adamantly opposes it. He put me in touch with the California State Attorneys General Association. They could not believe that this provision would be proposed; and they were absolutely amazed that it would seriously be considered, that their divisions that act in behalf of the people would essentially be shut down because they could never comply with rule 23.

Please, support this amendment and cure this serious problem in the bill.

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

Mr. Chairman, the reason there is an exemption for State attorneys general in this bill is because the State attorney general is the chief law enforcement officer of the State. In most States, the attorney general is an elected official.

Now, if the attorney general is not doing his job, then it is up to the voters to choose a new attorney general in the next election. But just because attorneys general might not be able to do their job is no reason why we should empower a whole host of other people to file pseudo class actions, which is what the amendment of the gentlewoman from California seeks to do.

Now, again, diversity jurisdiction interprets State law. Federal questions are automatically removable to Federal court. The reason the Framers put diversity jurisdiction into the Constitution was to prevent a State judge from being a hometown umpire to the prejudice against citizens of other States who happen to be litigants.

So very simply, what we do in this bill is to provide a better way of protecting litigants who come from other States. For that reason, I would urge that this amendment be rejected.

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

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentlewoman from California.

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

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

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

It is now in order to consider Amendment No. 6 printed in House report 107–375.

AMENDMENT NO. 6 OFFERED BY MR. CONYERS

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. CONYERS:

Page 16, line 2, strike the quotation marks and second period.

Page 16, insert the following after line 2:

''(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.''.

AMENDMENT NO. 6, AS MODIFIED, OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I ask unanimous consent to modify the amendment, and I further request that such modification be considered as read.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The text of amendment No. 6, as modified, is as follows:

Page 16, line 12, strike the quotation marks and second period.

Page 16, insert the following after line 12:

''(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 pro tempore. Pursuant to House Resolution 367, the gentleman from Michigan (Mr. CONYERS) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

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

Mr. Chairman, I begin by hoping that this amendment may be accepted; but moving on, I would describe the amendment to my colleagues.

This is an amendment designed to help adjust the problem that is happening with increasing frequency where our domestic United States corporations reincorporate at an office somewhere abroad, out of the United States, for the purpose of, one, avoiding United States taxes; and, two, avoiding legal liability.

Now, in the 6 months of our fight against terrorism at home or abroad, it would seem to me the last thing that we should be doing would be to pass legislation which would in any way aid, help, or assist what I would call these corporate tax traitors.

With increasing frequency, there are U.S. companies setting up shell companies in places like Bermuda, and the company continues to be owned by United States shareholders, continues to operate in the United States and do business in the USA and all its locations. The only difference is that the new foreign company escapes substantial tax liability and, under the provisions of this bill, could more easily avoid legal liability in State class action cases.

□ 1445

The actions of these companies are a slap in the face to every citizen who works hard and pays their taxes in this country. Our amendment responds to this egregious behavior by treating the former United States companies as a domestic corporation for class action purposes.

Now, apologists for these financial outlaws may attempt to argue that our amendment may not be necessary because the bill only deals with national class actions. But, Mr. Chairman, nothing could be further from the truth.

Under this bill, actions involving State consumer protection laws brought by residents who all reside in one State could be removable to a Federal court simply because the financial outlaws tried to abscond from the State. This is not a national class action. This is a State class action that belongs in a State court, the fact that a financial corporate outlaw engaged in a sham transaction should be irrelevant as far as the legal liability in these cases would be concerned.

So the bottom line is simple: as presently written, the bill gives a liability windfall to these foreign tax evaders. Today we have an opportunity to send a message that it is wrong to pretend one is a U.S. corporation when one is incorporated in Bermuda. It is wrong to seek the benefits of corporate citizenship without responsibility. It is wrong to engage in sham offshore transactions which leave hard-working United States citizens paying more taxes because they are paying less.

Mr. Chairman, I urge support for this Conyers-Jackson-Lee-Neal amendment.

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

The CHAIRMAN pro tempore (Mr. SWEENEY). Does any Member rise in opposition?

Mr. GOODLATTE. Mr. Chairman, I claim the time in opposition.

The CHAIRMAN pro tempore. The gentleman from Virginia (Mr. GOODLATTE) is recognized for 10 minutes.

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

Mr. Chairman, I rise in strong opposition to this amendment. This is a red herring if there ever was one. There is nothing in this legislation that has anything to do with the tax liability of corporations that may have been moved offshore. To raise it in this class action lawsuit is a big mistake. It would provide more jurisdiction over larger cases to State courts and undermine our effort to allow Federal courts jurisdiction over large, interstate class actions, the very point of bringing this legislation forward. The most complex cases should be heard in the courts designed to hear them: the Federal courts.

Attempting to redefine the home base of a corporation just for the purposes of class action lawsuits will not affect any other lawsuits brought against the corporation. It certainly will not affect their tax liability. If this amendment is about tax loopholes, then that is something that should be dealt with by the Committee on Ways and Means.

This amendment is intended to prevent nationwide, even international, class actions having national implications then plaintiffs from many States from being heard in Federal court.

The premise of H.R. 2341 is to allow Federal courts to resolve these large class actions in a balanced and fair way. That is why the Founding Fathers created article III courts, to resolve Federal questions and issues of a wide degree of diversity. That is what class actions are by their very nature.

The fact of the matter is that a dispute between two individuals from different States for slightly more than $75,000 can be resolved by a Federal court, but with a national class action worth billions of dollars, in the case of this amendment a foreign corporation, the case cannot be heard in Federal court. That is wrong.

I urge my colleagues to oppose this amendment. It is something that would give State courts jurisdiction over cases that involve U.S. companies that have been purchased by foreign companies. These are generally large, nationwide lawsuits that we are talking about. They are precisely the kind of cases that should be brought and heard in Federal court.

I urge my colleagues to oppose the amendment.

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

Mr. CONYERS. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Massachusetts (Mr. NEAL), who has worked on this subject matter for many years.

Mr. NEAL of Massachusetts. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for yielding time to me and certainly acknowledge some of the questions that have been raised by a former constituent of mine, the gentleman from Virginia (Mr. GOODLATTE).

But I want to call attention to this issue. The gentleman from Colorado (Mr. MCINNIS) is sitting on the floor, as well. I know that he has filed similar legislation to the bill that I filed last week.

Let me, if I can, Mr. Chairman, outline the nexus of this problem. Last week the Defense Department announced that the U.S. was sending military advisers to Yemen, the Philippines, and Georgia, in the former USSR. This is going to be expensive, but we acknowledge it is a necessary defensive action.

And as we prosecute this war on terrorism, Mr. Chairman, one U.S. corporation next week will vote on whether or not to leave the United States solely to avoid U.S. income taxes, taxes which our constituents and I will have to pay more of to fund this war against evil.

Today I am urging the Members to support a commonsense amendment telling these corporate expatriates, these financial deceivers, that they should not enjoy special legal protections. This amendment is based on bipartisan legislation that surely at some point is going to see the light of day and make it to the floor of this House.

But, Mr. Chairman, one accountant, a very aggressive accountant, I might add, advised her clients just 3 months ago to sneak out of the United States; just leave in the dark of night to avoid paying American income taxes. The Treasury Department just stated 2 weeks ago: ''We are seeing a marked increase in the size and frequency of these transactions.'' For a mere $27,000, a corporate expatriate can rent a post office box offshore and avoid $40 million in Federal income taxes.

If individuals were doing this, the American people would be outraged. As our Senate colleague from Iowa, the ranking Republican on the Finance Committee, said last week, it is a slap in the face to individual taxpayers who bear the brunt of the total Federal tax burden when the business community buys into these deals. Support this amendment today denying a liability windfall to these corporations that shelve the Stars and Stripes to simply save on the bottom line.

Mr. GOODLATTE. Mr. Chairman, it is my pleasure to yield 3 minutes to the gentleman from Colorado (Mr. MCINNIS).

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

First of all, I agree with the comments of the gentleman from Michigan (Mr. CONYERS). I agree with most of the comments of the gentleman from Massachusetts (Mr. NEAL). I think it would be beneficial, and we would ask the gentleman to merge his bill with our bill.

Mr. NEAL of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. MCINNIS. I yield to the gentleman from Massachusetts.

Mr. NEAL of Massachusetts. Mr. Chairman, perhaps the gentleman from Colorado (Mr. MCINNIS) would merge his bill with my bill. We are only 5 percent different.

Mr. MCINNIS. Mr. Chairman, as the first in order of number, we will take the gentleman on our bill.

Mr. Chairman, the point is, we agree on the substance of the abuse that is taking place out there, and we want to close the loophole. This is not the bill to close the hole. This is not the Committee on Ways and Means, and this is not the Committee on Ways and Means' bill.

What has happened here is they put this amendment out, I think, simply to express our disdain, properly express our disdain with what is going on out there and with what some of the corporations are doing, including Stanley Tool Corporation and some others that I think ought to be held publicly accountable.

In fact, I would say to the gentleman from Massachusetts, I was at a dinner last weekend with several hundred blue-collar workers, mechanics; and I urged every one of them not to buy Stanley tools as a result of what Stanley Tool Corporation is attempting to do. While our American young people fight overseas, we have these corporations that enjoy the protection of this putting up a post office box in Bermuda.

This simply has nothing to do with it. This amendment deals with diversity. This amendment deals with standing. To try and link, to make that leap, we are not making the link. So the issue is right and the platform is wrong.

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

Mr. MCINNIS. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I just want to compliment the gentleman on his support for the theory behind this.

I would just point out to him that escaping legal liability is not a function of any other committee but the Committee on the Judiciary. So we are not trying to get to the tax prosecution, sir. We are just getting to those who are escaping, to escape the kind of jurisdiction of class action suits.

Mr. MCINNIS. Reclaiming my time very quickly, Mr. Chairman, I am not trying to take jurisdiction from the gentleman's committee, obviously. I disagree that this amendment is going to do what the gentleman is saying it is going to do. I say that with all due respect. I think this amendment out there is simply to bring up this discussion.

We ought to have lots of discussion and public exposure, I say to the gentleman from Massachusetts (Mr. NEAL), on what is going on out there. It is wrong. But this is not the platform to do it. This amendment does not accomplish what the sponsors say it will as far as the legal corporation for standing in class suits and diversity. I think it is a good discussion, wrong place.

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

Mr. MCINNIS. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, would the gentleman from Colorado (Mr. MCINNIS) agree that not only is this not the right place to do this, but this amendment does not cure the problem that the gentleman is talking about? It has nothing to do with changing the tax laws of these corporations.

Mr. MCINNIS. Reclaiming my time, Mr. Chairman, the gentleman from Virginia is absolutely correct. This does not accomplish what the intent behind it may be, and the proper discussion that is taking place here really will take place in great detail in front of the Committee on Ways and Means with both of our bills, and I urge that is where we move it back to and get on with the business at hand.

Mr. CONYERS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Texas (Ms. JACKSON-LEE), who is a cosponsor of the amendment.

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

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. JACKSON-LEE of Texas. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I just wanted to go back to the comments of the gentleman from Colorado (Mr. MCINNIS), who I more frequently see on Special Orders at night in my home than I do on the floor. I am happy to find he and I in agreement.

But he asked the question, will this amendment accomplish what we say it will. Well, we have talked with the American Law Division, and they agree that, in its current form, the measure offers new abilities, this bill, to remove cases to Federal court for companies that engage in corporate repatriation transactions that are not available under present law.

So, in other words, the only place we can stop this is in the Committee on the Judiciary in terms of this jurisdictional opportunism.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman for yielding to me, and I would like to pursue the argument he just made. I think that is the crux of the difference of opinion that we have in opposing this legislation but supporting this amendment. That is, where there is a benefit, there has to be a burden.

I think that the Committee on the Judiciary in this jurisdiction is frankly the appropriate place for this amendment to be placed, because what we are suggesting is that if one is absconding from the United States, absconding from paying taxes, then one should not have the benefit of going into the Federal courts where they will be able to, in essence, block petitioners who are in a class action litigation.

We are opposed to this particular legislation because it does undermine

class actions that have been successful in State courts. Let me cite an example: Foodmaker, Inc., the parent company of Jack-in-the-Box restaurants, agreed to pay $14 million in a class action settlement in Washington. The class included 500 people, mostly children, who became sick early in 1993 after eating undercooked hamburgers tainted with e. Coli bacteria.

The victims suffered from a wide range of illnesses, from more benign sicknesses to those that required kidney dialysis. Three children died. The settlement was approved on September 25, 1996, in King County, Washington Superior Court.

If, for example, this legislation was in place, there is clear opportunity, possibly if one of the plaintiffs had just moved over to Oregon or had been visiting from Oregon, that case would have been in a Federal court.

We are suggesting that if one absconds from the United States in order not to pay taxes, if this legislation were to have passed, we do not believe they should have any right to the benefit of moving the case, a class action case, to the Federal courts. That is the crux of this. This is the bill that is moving through the House now.

I certainly appreciate the legislation of the gentleman from Massachusetts (Mr. NEAL), and I want to support the legislation. I appreciate his support. He is on the Committee on Ways and Means.

□ 1500

That bill can move of its own legs, and we will support it, but this bill is moving, and we are only talking about legal liability, the inability to access the Federal court, a benefit that one would secure if this legislation passed. We want to block that benefit because we need to protect consumers on this.

Let me just simply say, we are standing here today to say to Americans, who have just gone through a traumatic experience with the collapse of a major corporation, that we are going to smack them in the face and go against the rights of consumers. We are also going to allow someone who absconds to another island, another place to establish a foreign corporation, to now not only access the Federal courts and benefit from the presence of that legislation, but also not pay taxes.

This is a common-sense, good-sense consumer protection amendment, and I believe my colleagues, if they look at it, will understand it is appropriately tracking this legislation which is under the jurisdiction of the Committee on the Judiciary, because we are preventing them from having a legal benefit when they abscond from the United States and desire not to pay taxes.

Thank you Mr. Chairman and Ranking Member CONYERS.

I am proud to join Mr. CONYERS in offering the Conyers Jackson-Lee Neal amendment which would deny corporations who relocate to foreign countries simply to avoid paying income taxes from enjoying the benefits of this bill.

As the saying goes, ''death and taxes are the only guarantees in life''. You and I could never avoid paying taxes, but we try to minimize them to the best of our ability. The same philosophy applies to companies.

However, there is a growing trend in this country where American companies are incorporating Bermuda, or other countries that do not have income taxes, to avoid paying taxes altogether while maintaining the benefits and security of doing business in the United States. But these companies don't actually relocate to Bermuda. Rather, they are a Bermuda corporation only on paper.

But the tax benefits are profound. Tyco International, a diversified manufacturer headquartered in New Hampshire but incorporated in Bermuda, saved more than $400 million last year in taxes alone. And Stanley Works, a Connecticut manufacturer for 159 years, will cut its tax bill by $30 million a year to about $80 million.

Although it is a growing trend, some companies hesitate to incorporate in Bermuda because of patriotism issues, especially after the tragedies of September 11. But low and behold, ''profits trump patriotism''.

Enron Corp had set up an estimated 2,800 to 3,000 ''special purpose entities'' (SPEs) in an attempt to hid amounting debt and losses and to avoid paying taxes. As a matter of fact, Enron had not paid any income taxes in the last five years. And due to the nature of these transactions, and the fact that these SPEs were created as a separate entity from Enron, government officials have been unable to acquire more information to determine the extent of liability.

Allowing companies who relocate to foreign countries simply to avoid paying taxes and still benefit from class actions in a federal forum would enable a defendant corporation to avoid accountability and result in the plaintiff class having a more difficult time seeking redress.

Again, this amendment would attempt to bring justice within the reach of the victims aggrieved by these corporate giants. I ask my colleagues to support this amendment.

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

The CHAIRMAN pro tempore (Mr. SWEENEY). The gentleman from Virginia (Mr. GOODLATTE), who has the right to close, has 4 minutes remaining.

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

Mr. Chairman, frankly this amendment is not just wrong, it does not make any sense at all. What the other side is proposing to do here will not have the effect that they are suggesting. They are limiting the options of those who would bring class action lawsuits against some of these corporations that they refer to.

There are many instances now in which a case cannot be brought in Federal court because of this diversity rule which could be brought against those corporations; in my State of Virginia, for example, a State that does not recognize class action lawsuits, so making it easier to bring actions in Federal court is not something that is going to harm these corporations whatsoever.

As explained during the Committee on the Judiciary markup, the purpose of this amendment is to discourage companies from moving their parent entities offshore, to turn them into foreign corporations in order to achieve tax advantages. Thus, although this amendment does not seek to derail enactment of the core provision of the bill, that is, the provisions expanding Federal diversity jurisdiction over interstate class actions, it would preclude companies owned by foreign or offshore companies from exercising that change.

This effort to establish tax policy through procedural and jurisdictional rules applicable to civil litigation is truly bizarre, the ultimate non sequitur.

As stated by its authors, the purpose of the amendment is to punish companies with offshore owners by forcing them to litigate class actions brought against them in State court, while companies that have U.S. parents may remove their cases to Federal court under the expanded Federal jurisdiction of provisions of this bill.

Obviously, making this sort of distinction among companies based on foreign ownership is a constitutionally suspect policy, but equally important is the fundamental premise of the amendment, that forcing parties to litigate interstate class actions in State courts constitutes a sort of punishment.

Thus, although this amendment should be defeated, it does suggest agreement on the key predicate for H.R. 2341: State courts are not an ideal place for parties to litigate class actions.

This amendment should be defeated, but this amendment should be remembered as confirming the key reasons why the overall bill, the fundamental provisions of H.R. 2341, should be enacted.

Let us not limit the choice that is involved here where these cases can be considered. Let us make the Federal diversity rules work. That is what this bill is about. That is what this amendment would defeat, and I urge my colleagues to oppose the amendment.

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

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentleman from Michigan (Mr. CONYERS).

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

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

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan (Mr. CONYERS) 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. 3 offered

by the gentlewoman from California (Ms. WATERS); Amendment No. 5 offered by the gentlewoman from California (Ms. LOFGREN); and Amendment No. 6 offered by the gentleman from Michigan (Mr. CONYERS).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 3, AS MODIFIED, OFFERED BY MS. WATERS

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on Amendment No. 3, as modified, offered by the gentlewoman from California (Ms. WATERS) on which further proceedings were postponed 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 174, noes 251, not voting 9, as follows:

[Roll No. 56]

AYES—174

Abercrombie
Ackerman
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Becerra
Berkley
Berman
Berry
Bishop
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hoeffel
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Moore
Moran (VA)
Murtha
Nadler
Neal
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wynn

NOES—251

Aderholt
Akin
Allen
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Condit
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frank
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Kleczka
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
McNulty
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Mollohan
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Sabo
Sanchez
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Thurman
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NOT VOTING—9

Barrett
Bentsen
Blagojevich
Davis (IL)
Eshoo
Hinojosa
Kilpatrick
Napolitano
Traficant

□ 1527

Messrs. SKEEN, BOEHNER, GREENWOOD, EHLERS, HILL, BOOZMAN, Ms. PRYCE of Ohio, Ms. GRANGER, and Mrs. THURMAN changed their vote from ''aye'' to ''no.''

Mr. TIERNEY changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Ms. NAPOLITANO. Mr. Chairman, I was in the Chamber intending to vote ''yes'' on rollcall 56. Had I voted I would have voted ''aye'' on rollcall 56.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. SWEENEY). Pursuant to clause 6 of rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on each amendment on which the Chair has postponed further proceedings.

AMENDMENT NO. 5, AS MODIFIED, OFFERED BY MS. LOFGREN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment, as modified, 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 is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 194, noes 231, not voting 9, as follows:

[Roll No. 57]

AYES—194

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Becerra
Berkley
Berman
Berry
Bishop
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Cramer
Crowley
Cummings
Davis (CA)
Davis (FL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley
Doyle
Edwards
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hill
Hilliard
Hinchey
Hoeffel
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum

McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—231

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Waters
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Barrett
Bentsen
Blagojevich
Davis (IL)
Eshoo
Hinojosa
Kilpatrick
Pelosi
Traficant

□ 1536

So the amendment, as modified, was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 6, AS MODIFIED, OFFERED BY MR. CONYERS

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 6, as modified, offered by the gentleman from Michigan (Mr. CONYERS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will designate the amendment.

The Clerk designated 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 202, noes 223, not voting 9, as follows:

[Roll No. 58]

AYES—202

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldacci
Baldwin
Barcia
Becerra
Berkley
Berman
Berry
Bishop
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Carson (OK)
Castle
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (FL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doggett
Dooley
Doyle
Duncan
Edwards
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank
Frost
Gephardt
Gilman
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Hunter
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Royce
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—223

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Cantor
Capito
Chabot
Chambliss
Coble
Collins
Combest
Cooksey
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Diaz-Balart
Dicks
Doolittle
Dreier
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hyde
Isakson
Issa
Jenkins
John
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roukema
Ryan (WI)
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield

Wicker	Wilson (SC)	Young (AK)
Wilson (NM)	Wolf	Young (FL)

NOT VOTING—9

Barrett	Davis (IL)	Istook
Bentsen	Eshoo	Kilpatrick
Blagojevich	Hinojosa	Traficant

□ 1544

So the amendment, as modified, was rejected.

The result of the vote was announced as above recorded.

□ 1545

The CHAIRMAN pro tempore (Mr. SHIMKUS). It is now in order to consider amendment No. 7 printed in House Report 107–375.

AMENDMENT NO. 7 OFFERED BY MS. JACKSON-LEE OF TEXAS

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Ms. JACKSON-LEE of Texas:

Page 18, line 14, strike the quotation marks and second period.

Page 18, insert the following after line 14:

''(g) CERTAIN ACTIONS NOT REMOVABLE.—A party to a class action may not remove the class action to a district court under this section if that party has been found by a court to have knowingly altered, destroyed, mutilated, concealed, falsified, or made a false entry in, any record, document, or tangible object in connection with that class action.''.

MODIFICATION OF AMENDMENT NO. 7 OFFERED BY MS. JACKSON-LEE OF TEXAS

Ms. JACKSON-LEE of Texas. Mr. Chairman, I ask unanimous consent to modify the amendment, and further request that such modification be considered as read.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from Texas?

There was no objection.

The text of the amendment, as modified, is as follows:

Amendment No. 7, as modified, offered by Ms. JACKSON-LEE of Texas:

Page 18, line 25, strike the quotation marks and second period.

Page 18, add the following after line 25:

''(g) CERTAIN ACTIONS NOT REMOVABLE.—A party to a class action may not remove the class action to a district court under this section if that party has been found by a court to have knowingly altered, destroyed, mutilated, concealed, falsified, or made a false entry in, any record, document, or tangible object in connection with that class action.''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, the gentlewoman from Texas (Ms. JACKSON-LEE) and a Member opposed each will control 10 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, we have before the House today the Class Action Fairness Act of 2002, and what those of us who believe this legislation could either be made better or in fact does not really speak to the interests of consumers are trying to do is to ensure that those who are fraudulent, those who misrepresent, those who would abscond and not pay taxes, not have the benefit of an action or legislation that is proposed to be in the Class Action Fairness Act.

The amendment I offer today strikes at the very heart of consumer protection. It strikes at the very heart of the ability of any litigant to go into court with a fair opportunity to pursue their case.

This amendment would prohibit the removal provision in section 5 of this bill from applying if a party to a class action suit destroys material relating to the subject matter of the class action or makes a misrepresentation with respect to the existence of such materials.

The destruction of documents, particularly in contemplation of litigation, is already a sanctionable act. Destroying such documents prohibits the discovery of truth and justice. If a party participates in such activity, they should not have the benefit of removing a class action suit to Federal court jurisdiction, where this bill makes it more difficult for the class to be certified. Justice requires that these parties remain under State jurisdiction, where the playing field will be more level.

It is obvious that when you are trying to put together a massive class action case, there is nothing more daunting and devastating to your case than losing, the destruction of, or misrepresentation over, documents. An example of this would be the collapse of Enron, the Texas-based energy trading giant, that once was America's seventh largest company, now undergoing America's largest-ever bankruptcy.

On behalf of Enron employees, both existing and those who are no longer Enron employees, the fact that there are documents that no longer exist undermines probably the bankruptcy case and any other matter that they would be pursuing. It is certainly a case that when you lose documents, you lose a part of your case.

Mr. Chairman, this amendment seeks not to give giant corporate defendants in a class action lawsuit more benefits in defending their suit. They have deep pockets for such expenses as legal fees, travel and expert witnesses, which the class does not have.

Again, how daunting it would be to find out that documents that you might be able to secure no longer exist. So the information has been retained by the defendant; but you, the petitioner in the class action, have no way of accessing it.

We must maintain the spirit to which class action lawsuits were developed, to efficiently bring justice to a large group of people victimized by historically large, giant, multiconglomerate corporations.

In addition, Mr. Chairman, I might say that the court of equity was the first place the State class actions was to go based on common law, common sense, equity and fairness. To destroy documents strikes at the very heart of the access of the little person to get in the courtroom.

This amendment would prohibit the removal provision in Section 5 of this bill from applying if a party to a class action suit destroys material relating to the subject matter of the class action, or makes a misrepresentation with respect to the existence of such materials.

The destruction of documents, particularly in contemplation of litigation, is already a sanctionable act. Destroying such document prohibits the discovery of truth and justice. If a party participates in such activity, they should not have the benefit of removing a class action suit to federal court jurisdiction where this bill makes it more difficult for the class to be certified. Justice requires that these parties remain under state jurisdiction where the playing field will be more level.

An example of this would be the collapse of Enron Corporation, the Texas-based energy-trading giant that was once America's seventh-biggest company, now undergoing America's largest ever bankruptcy proceeding. Enron is based in my District—the 18th District of Texas.

Enron's former accounting firm, Arthur Andersen, in light of approaching litigation, organized the destruction of tons of Enron-related documents that may have been potentially harmful and would have subjected Andersen to civil as well as criminal liability.

Mr. Chairman, this amendment seeks to not give giant corporate defendants in a class action lawsuit more benefits in defending their suit. They have deep pockets for such expenses as legal fees, travel, expert witnesses, for which the class does not have. And we must maintain the spirit to which class action lawsuits were developed—to efficiently bring justice to a large group of people victimized historically by corporate giants.

I ask my colleagues to support this amendment.

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

The CHAIRMAN pro tempore. Does the gentleman from Wisconsin (Mr. SENSENBRENNER) rise in opposition to the amendment?

Mr. SENSENBRENNER. I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Wisconsin is recognized for 10 minutes.

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

Mr. Chairman, if the civil and criminal law did not provide for sanctions against those who deliberately destroy documents, I believe that the arguments of the gentlewoman from Texas would be valid. But they do. Adopting the amendment that she proposes will simply allow the trial lawyers to have another tool to game the system and to prevent the removal of cases that really should be removed as a result of the changes in the diversity of citizenship requirements that are contained in this bill.

Let me point out that in many instances, the destruction of subpoenaed

documents is a criminal obstruction of justice. The gentlewoman from Texas keeps on bringing up the case of Enron. There is a criminal investigation going on whether Enron and Arthur Andersen and other people who are involved in this obstructed justice by altering or destroying documents. I hope that that investigation is thorough, and, if there is probable cause to believe that such misconduct happened, that the Justice Department will seek indictment, prosecute those who are responsible, the jury will convict them, and I hope that the judge sentences them to jail for a long, long time, because destroying documents that are needed to fairly administer justice is something that cannot be tolerated, and it goes to the very heart of the ability of the courts to fairly mete out justice. We wish the gentlewoman were on the other side when we were talking about that when President Clinton was accused of destroying documents a few years ago.

But on the civil side, there are plenty of sanctions that can be imposed by a court if discovery is being thwarted, up to and including the court ordering a default judgment entered against a defendant that destroys documents and completely obstructs the discovery that the Federal Rules of civil procedure allow.

Mr. Chairman, I will tell you what will happen if the Jackson-Lee amendment becomes a part of this bill and the bill becomes law, and that is there will be repeated allegations of misconduct through the destruction of documents. When an allegation is made, the court is going to have to hold a hearing on it and take testimony and make a determination on whether removal can be thwarted because of the provision of the Jackson-Lee amendment. As a result, it ends up being tried in the State court, because the Federal court will not be able to determine whether or not a case is removable.

Now, that is ridiculous. If this type of amendment was put into law, if there was a civil action filed alleging a civil rights violation in a State court with a redneck judge anywhere in the country, this game could be played to prevent the Federal court from getting jurisdiction over it, and that would be equally ridiculous in terms of thwarting the administration of justice.

Now, this bill, in section 1716(C)(2), provides that discovery should not proceed while a motion to dismiss an action is pending and also during appeals from class certification rulings.

But the bill flatly states that in these circumstances, discovery shall proceed where necessary to preserve evidence and to prevent undue prejudice. Thus the bill anticipates and deals with document destruction risk and gives the Federal court the authority to prevent documents that are necessary to find out what the true facts are from being altered or mutilated or destroyed.

According to the Manual for Complex Litigation, third edition, courts normally issue orders requiring the preservation of documents at the outset of litigation of such cases. Thus any document-destruction risk is addressed by such orders. So we do not need additional laws, civil laws, statutory laws or criminal laws, to protect against the destruction and mutilation of documents.

The amendment of the gentlewoman from Texas merely gives the trial lawyers' bar another tool to game the system. It is unnecessary because of the other provisions of law and rule that I stated and should be rejected.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, first of all, I totally agree with my chairman in that I hope that all those who have misrepresented and destroyed documents in the present ongoing protracted episode of Enron and Arthur Andersen are in fact brought to justice. That we agree on.

With respect to my position on the Clinton documents, my amendment responds to that by indicating that it should be a court-determined destruction of documents. That was not the case in the Clinton situation.

So I would hope that we recognize that if you are court determined to have destroyed documents, then you do not need the benefit of this legislation.

Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Washington (Mr. INSLEE).

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

Mr. INSLEE. Mr. Chairman, we hope that the first legislation passed in this House in the post-Enron world should not be to make the world safer for Enron.

My friend, the gentleman from Wisconsin (Mr. SENSENBRENNER), challenged me earlier when I said that this could make the world safer for Enron. Well, we just did a little bit of research about that over the lunch hour and found a case called Bullock v. Arthur Andersen, et al. It is a case in Washington County, Texas. If it were to be certified as a class action under this legislation, the defendants, who include some names Andrew Fastow, Kenneth Lay and Jeffrey Skilling, would be given the privilege by your legislation to force this to be removed to Federal court away from Washington County.

Now, that is exactly one of the reasons why we think this is the wrong approach. And even if you exempted Enron in its entirety, Enron is an example of why we are going the wrong way because of all the other companies that potentially could be liable.

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

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

Mr. SENSENBRENNER. Mr. Chairman, do the three gentlemen that the gentleman mentioned live in Texas?

Mr. INSLEE. Mr. Chairman, reclaiming my time, I do not know the residence. I cannot tell the gentleman offhand. But I can say this is subject to your bill if it is a class action, and therefore it is wrong.

Mr. SENSENBRENNER. Mr. Chairman, if the gentleman will yield further, if they all live in Texas, the case is not removable because there is not diversity.

Mr. INSLEE. Mr. Chairman, reclaiming my time, the point I bring to the gentleman's attention is this is exactly the kind of case that is subject to removal if there is diversity. They plead fraud, they pled negligence; and under your statute, you want to give them the right to get out of Texas into Federal court. We think that is wrong.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself 10 seconds to say that some the defendants in the case that the gentleman from Washington (Mr. INSLEE) was speaking of dealing with Enron are not from Texas.

Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas (Mr. SANDLIN), a former State district court judge in the State of Texas.

Mr. SANDLIN. Mr. Chairman, in the law we have a doctrine called the ''clean hands doctrine.'' Courts express it by saying he who seeks equity must do equity.

We have seen precious little equity today. First, our friends want to reveal plaintiffs' fees and what they receive, but when we ask to reveal the exorbitant fees of the corporate attorneys and insurance attorneys and defense attorneys, they said no.

I have got a question: What are you hiding? What are you hiding?

You said the recovery in Cheerios is not enough. You forgot to tell us that the expensive litigation is between the insurance companies. The defendants have been indicted, tried and sent to prison.

You are outraged that the plaintiffs have received too little money in one case, but there is absolutely no outrage in your position when a major American company, Nestle, put sugar water in bottles and sold it to American mothers to give to children. You got no outrage in that, other than the attorneys got paid.

Well, surely, surely you can support legislation that says if you destroy evidence, if you commit a crime, if you do things that you are not supposed to do, you do not get the benefit of the law. If you commit a crime, you do not have clean hands. If you destroy evidence, you do not get the benefit of the legislation. Surely you can support something as clean as that.

□ 1600

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

Mr. Chairman, if the gentleman from Texas was so interested in disclosing defendant's fees, he could have gone to the Committee on Rules and asked

them to make in order an amendment for the disclosure of defendant's fees. He failed to do so, and that is why we are not considering this today under the structured rule.

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

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding me this time. I also strongly oppose this amendment.

This amendment is doing what those offering amendments have already done on two other occasions in this debate so far, and that is to try to obscure what this legislation is all about with unrelated issues. Whether or not a case is heard in Federal court or State court has nothing to do with whether or not documents have been destroyed.

In the earlier debate with regard to the Waters amendment, we pointed out all of the tools that are available to a Federal court judge when documents are destroyed in a case. It could very well be much better that the case is in Federal court rather than State court, and we should not write law based upon unrelated matters.

That is exactly what has been offered here repeatedly today to try to obfuscate the issue here, which is a very simple one, and that is that our Federal diversity rules are written in such a way that the most complex litigation in the country cannot get into the courts that were not designed to handle diversity cases and designed to handle more complex litigation and designed to consolidate class actions brought in various parts of the country related to the same issue.

When we create these artificial barriers to removing the case, we are not accomplishing justice for the plaintiff or the defendant. Somebody in the case has to have the ability to remove the case to Federal court. What we say is that any party in the case should be able to do that. If they have unclean hands, address that with the Rules of Procedure that exist in the Federal Rules.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I appreciate the gentleman's argument.

The crux of these amendments that we have been offering on this legislation is to talk about benefit and burden. This amendment specifically says if the court has determined that documents have been destroyed, what we are doing is undermining the plaintiffs' case, which typically are little people who have come together in a class action.

That defendant who has destroyed documents should not be allowed to take the benefit of this legislation if it passes. That is all we are saying.

Mr. GOODLATTE. Mr. Chairman, reclaiming my time, there are a multitude of Federal Rules of Civil Procedure, and I do not know of other ones, in which the law says in advance that because somebody did something else somewhere else unrelated to the issue of whether the case belongs in Federal court or State court would be prohibited from raising that issue. It is a matter of fairness for everybody involved, but that is particularly true of the plaintiffs.

We are trying to create an environment here where cases can be heard in such a way that uniform fairness applies. If we start drawing distinctions between domestic corporations and foreign corporations and somebody who may have shredded documents for a good reason or for a bad reason and deciding whether or not they can remove cases to court, that is simply bad public policy and should not be the measure upon which this bill is voted upon; and certainly this amendment should be opposed.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I am delighted to yield 2½ minutes to the distinguished gentleman from Texas (Mr. DOGGETT), a former member of the Texas Supreme Court.

Mr. DOGGETT. Mr. Chairman, I thank the gentlewoman for yielding me this time.

How truly typical it is, sad though it is, that the first piece of legislation dealing with the Enron-Andersen fiasco that our House Republican leadership permits us to discuss here on the floor of the United States Congress is a bill designed to protect the wrongdoer and to place more burdens on the victims. This is exactly the opposite of where our priorities should be; yet that is the approach that is taken with this piece of legislation.

It is rather fundamental that a right without a remedy, is rather meaningless. People do not choose to come together in class actions because they like to be in a class with many other people; they come together in class actions because often, that is the only way, given the complexities of our legal system and the tremendous imbalance in power between one individual who has been defrauded and one of the largest corporations in the world, to equalize the power. If they are working together in a class, they may have a chance, difficult as it may be, to equate in our courts of justice their rights against those who have wronged them.

All this bill is designed to do is to help those, who committed wrongs to avoid responsibility for their wrongdoing. This bill seeks to ensure that wrongdoers are not held personally accountable for their misconduct, if they just took a little from everybody instead of a great deal from a few.

As for the importance of the gentlewoman's amendment in the debate on this particular bill, the only thing that has been faster than those shredding machines shredding up the documents of misconduct at Enron and Andersen, the only thing faster than those shredders is the spin machine running here in Washington today, spinning that this bill to help some avoid responsibility has anything to do with helping American families. Get serious.

The judges of the States of the United States, our State court judges, have not asked for this. Our Federal court judges, upon whom the burden will be placed of handling these cases, are already overburdened; they have not asked for it. The National Conference of State Legislatures opposes it. This is the wrong thing to do at the wrong time. It is being done only to protect wrongdoers like Enron and Andersen, and it ought to be rejected.

To aid even those who tear up documents and give them additional rights in our courts is particularly outrageous.

I commend the gentlewoman for attempting to resolve this problem, and I recommend her amendment.

Mr. SENSENBRENNER. Mr. Chairman, how much time is remaining on each side?

The CHAIRMAN pro tempore (Mr. SHIMKUS). The gentleman from Wisconsin (Mr. SENSENBRENNER) has 1½ minutes remaining; the gentlewoman from Texas (Ms. JACKSON-LEE) has 1 minute remaining.

PARLIAMENTARY INQUIRY

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentlewoman will state it.

Ms. JACKSON-LEE of Texas. As the proponent of the amendment, do I have the right to close?

The CHAIRMAN pro tempore. The Member on the committee opposing the amendment has the right to close.

Ms. JACKSON-LEE of Texas. I thank the Chair.

The CHAIRMAN pro tempore. Does the gentleman from Wisconsin wish to close?

Mr. SENSENBRENNER. The gentleman does wish to close.

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

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself the remaining time, although I was hoping to hear the distinguished chairman's representation of the Cheerio box.

But let me say this, in all sincerity: We have come into some very troubling times in the litigation history of America. With Enron as a backdrop, and Firestone that knowingly sold defective tires where tread separation caused more than 800 injuries, and Monsanto, which hid 40 years' worth of dumping toxic PCBs, there is great opportunity for documents to be destroyed, because people want to win. The only opportunity for the little guy to achieve victory sometimes is to organize a class action.

They have been successful in State courts, but they cannot be successful under this legislation, nor can they be

successful when those will go knowingly into the courthouse, who have destroyed documents, fraudulently misrepresented and disadvantaged their cases.

This amendment will prevent that kind of action, allowing those who have been found to have destroyed documents not to take advantage of this legislation. This is consumer protection legislation. I cannot imagine any of my colleagues that would not support this amendment.

I ask my colleagues to support the Jackson-Lee amendment.

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

Mr. Chairman, I am really disappointed in the argument of the gentleman from Texas (Mr. DOGGETT), who is a distinguished former member of the State Supreme Court, saying that this has to do with Enron. Enron is in bankruptcy. Bankruptcy is a Federal law. The Federal bankruptcy court will determine the rights of all people who have got claims against Enron, and there is an automatic stake that is entered by the Federal court when a bankruptcy is filed against proceeding in any other court, State or Federal, besides the bankruptcy court.

Now, I think what we are really getting down to is, how are consumers being protected? I do not think most consumers really care whether a class action suit is litigated in State court or Federal court; they care what kind of recompense they get, should the class action suit be resolved.

I have this box of Cheerios here, because General Mills, which owns Cheerios, was sued in a class action suit alleging that there were harmful additives in Cheerios. When the case was settled, what did all the members of the class get? A coupon to buy another box of Cheerios. If Cheerios had food additives that were so damaging, that caused millions of dollars in lawyers' fees to settle this suit out, then why would the lawyers sign off to require people who wanted to cash in on their settlement to eat more Cheerios? It does not make any sense.

The amendment ought to be rejected.

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentlewoman from Texas (Ms. JACKSON-LEE).

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

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

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

It is now in order to consider Amendment No. 8 printed in House report 107–375.

AMENDMENT NO. 8 OFFERED BY MR. FRANK

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. FRANK:

Page 18, line 14, strike the quotation marks and second period.

Page 18, insert the following after line 14:

''(g) PROCEDURE AFTER REMOVAL.—If, after an action is removed under this section, the court determines that any aspect of the action that is subject to its jurisdiction solely under the provisions of section 1332(d) may not be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, the court shall remand all such aspects of the action to the State court from which the action was removed. In such event, the State court may certify the action or any part thereof as a class action pursuant to the laws of that State, and such action may not be removed to Federal court unless it meets the requirements of section 1332(a).''.

MODIFICATION TO AMENDMENT NO. 8 OFFERED BY MR. FRANK

Mr. FRANK. Mr. Chairman, I was informed, and perhaps I should have been paying closer attention, that there was some line number item alteration and I, therefore, in compliance with what has happened, ask unanimous consent to modify the amendment, and I request that the modification be considered as read.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The text of Amendment No. 8, as modified, is as follows:

Page 18, line 25, strike the quotation marks and second period.

Page 18, insert the following after line 25:

''(g) PROCEDURE AFTER REMOVAL.—If, after an action is removed under this section, the court determines that any aspect of the action that is subject to its jurisdiction solely under the provisions of section 1332(d) may not be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, the court shall remand all such aspects of the action to the State court from which the action was removed. In such event, the State court may certify the action or any part thereof as a class action pursuant to the laws of that State, and such action may not be removed to Federal court unless it meets the requirements of section 1332(a).''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, the gentleman from Massachusetts (Mr. FRANK) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. FRANK).

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

When I originally heard of this bill, I was inclined to be supportive. It was described to me several years ago as a bill that would more accurately determine, in fact, whether a class action was multistate or unistate in its real focus. I was told, and I think there is some accuracy, that the technical way in which the diversity rules operated resulted in some class actions that really were national in scope being tried in particular State courts when, under our system of government, they would more appropriately be tried in Federal court; and I thought that was reasonable, and I supported a bill that would do that, and I still would, unlike some of my colleagues here.

When I read the bill, though, it became clear that the bill does not simply say that certain class actions will be tried in Federal court rather than State court; much of its attraction, I believe, to its proponents is that it will make sure that certain potential class actions are never tried at all. That is the way the bill reads.

If a class action is brought in State court, and under the liberalized removal procedures of this bill, it is then removed to Federal court, and a Federal judge finds that he or she does not believe that it meets the requirements for a Federal class action, it is dismissed, in effect, with prejudice. That is, it cannot ever again be tried as a class action. If it was restarted in State court, it would go back again to Federal court, which would again dismiss it, so that would be fruitless. An individual case could obviously be brought.

So I have been asked if this is an amendment that guts the bill. I do not think it guts the bill. I think it does something of which I am generally more in favor. I think it outs the bill. What it does is to say, let us stop pretending to be something we are not. Let us not claim simply to be a bill that is about which jurisdiction tries the case. Let us be clear that its impetus is to reduce the number of class actions, because people believe that some States imprudently and improvidently allow class actions and because some Members in the majority, many of them, do not trust all of the State courts to honestly apply class action rules; they want to be able to go into Federal court so the Federal court can, in some cases, prevent the class action from being maintained anyway.

Again, under the proposal that I advance in my amendment, if, in fact, the case meets the criteria set forward in this bill for removal, it is removed, and the Federal court can go forward with it. The only change I make is, the Federal court does not have the option of saying, this can never be tried as a class action.

So I hope the Members will adopt it.

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

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume, and I rise in opposition to the amendment and claim the time in opposition.

Mr. Chairman, this can be called the two-or-more-kicks-at-the-cat amendment, because what the gentleman is proposing is that when the Federal court refuses to certify a class, then it goes back to State court and the State court looks at it again and may certify a class. While most States have got class action rules similar to rule 23 of the Federal Rules of Civil Procedure, they are not always uniformly applied, and that is why there is all this forum shopping that is going around that has caused this bill to come before the House of Representatives today.

□ 1615

So I think that we really should not allow two kicks at the cat. They can have their day in court. If the Federal court determines that the Federal rules do not allow for the certification of a class, then we should not go back to square one and have the plaintiffs' lawyers shop around to a friendly State judge that may very well certify that the class that is not allowed in the Federal rules ends up getting certified and the trial ends up proceeding.

So I think that everybody should have one day in court, not more than one day in court. For that reason, I would urge that the amendment be rejected.

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

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

Mr. Chairman, the very purpose of that amendment is to guarantee that as a class action you will get one day in court. Without that amendment, the bill gives no days in court.

Mr. Chairman, I ask unanimous consent that the gentleman from California (Mr. BERMAN) be allowed to control the time.

The CHAIRMAN pro tempore (Mr. SHIMKUS). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. BERMAN. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, just on the good chairman's last point, he wants to give people a day in court. As the gentleman from Massachusetts (Mr. FRANK), the author of the amendment, just pointed out, without this amendment, there is no day in court. They file their class action in State court, the defendants remove it to Federal court, the Federal court refuses to certify it, remanding it back to the State court, they pursue it in State court, and they remove it again back to Federal court. They never get a chance to try it.

If this bill is about trying to have cases, legitimate Federal class action cases, heard in Federal court and not in State courts, then the amendment does nothing to destroy the focus of this bill.

If this bill is about removing the ability of local judges, rather than Federal judges, to give hometown kinds of decisions and rulings, there is nothing in this amendment that hurts this bill.

It is only if one accepts, which I believe is true, that the only purpose of this bill is to eliminate any State or any of the 50 States' ability to decide there are certain kinds of class actions they want to hear that come outside the scope of rule 23, and that, in effect, this bill wipes out the right of all 50 States to make that decision, and defines rule 23 in the Federal courts as the only place to ever bring a class action, that is the only reason to oppose this amendment.

It is hard for me to believe that States' rights-loving adherents to federalism who see a role for the Federal courts and the State courts could, with a straight face, promote this bill, which, in effect, preempts and sucks up all class action rights, forces them into Federal court, eliminates a State legislature and a State judiciary's ability to decide that, there are situations and circumstances where we want a State class action body of law to exist that go beyond the Federal rule 23.

I urge an ''aye'' vote for this amendment. I think it is essential. With this amendment, this bill truly becomes an effort to get the true Federal class action cases into Federal court and still allows the States to decide if there are areas left out where they want to allow at least some jurisdiction so that the person can have his day in at least one court.

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

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

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

I rise in strong support of the bill and in opposition to this particular amendment. It undermines the principles of H.R. 2341, which is that large interstate class actions should be allowed in Federal court because many State courts are not effectively processing these lawsuits.

As chairman of the Subcommittee on the Constitution, I welcome the opportunity to address the criticism that this legislation 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 no less than the Framers of the United States 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 that interstate commerce interests will be protected.

Additionally, the expansion of diversity included in the Class Action Fairness Act is consistent with current diversity laws, 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. Thus, the trial court, regardless of whether it is a State or 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 other States.

For that and other reasons, I would oppose this particular amendment, and I urge my colleagues to oppose the amendment.

Mr. FRANK. Mr. Chairman, I ask unanimous consent to reclaim my time.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. FRANK. Mr. Chairman, I yield 2½ minutes to my colleague, the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Chairman, I rise in strong support of this amendment. Let us be clear: the vote on this amendment will tell us whether this is a bill aimed at giving Federal courts the chance to deal with class actions that they currently cannot, or whether this is a bill aimed at just shutting down all class actions. That is what this is about.

Under this amendment, a class action originally filed in State court could still be removed to Federal court. But let us say that a Federal court will not certify that class. That is where the rubber meets the road. The failure to get class certification in Federal court does not mean that the suit lacks merit. It does not mean this case will be decided on the merits. It simply means it does not meet rule 23.

But the sponsors of this bill would shut down class actions right there, just shut them all down, whether they have merit or whether they do not, saying that if it is refiled in State court, it gets shunted back out to the Federal court that has already said it will not hear it. So what is the result? There is a merry-go-round that begins. It is nothing more than a merry-go-round. Justice is delayed, and then it is denied.

So this bill goes beyond giving Federal courts a chance to hear and use their powers to consolidate class actions that they currently cannot touch. It blocks class actions that were capable of being certified under State law. This amendment would stop the merry-go-round by letting that class action, sent back to State court, move forward on the merits.

There was a letter by a well-known outside group in support of this bill in 1998. This is what the outside group said. I think it kind of gets to the meat of what we are talking about here: ''This bill would enable class action suits filed in State courts to be moved to Federal court, where such wasteful lawsuits can easily be dismissed.''

That is what an outside group said. We should not let that happen. If this is a bill about taking any kind of lawsuit and saying that they are all wasteful and dismissing them early, then let us say that is what this is about. That is what the group said earlier.

This amendment allows the framers of the bill, the authors of the bill, to get their way in terms of having Federal courts to deal with these, but lets the State courts hear these actions on the merits if they do not meet the

technical definition of a class action suit.

We should not let this happen. We want to support this bill. This bill should not be about killing class action. Support this amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. BOUCHER).

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

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Wisconsin for yielding time to me.

Mr. Chairman, I will be brief in stating my opposition to this amendment. If the amendment is adopted, the basic reforms that we are seeking to achieve simply will not be achieved. Some cases simply should not be certified as class actions, either in the Federal or the State courts.

Federal Rule of Civil Procedure 23 is narrowly drawn so as to protect the rights of both plaintiffs and defendants to traditional due process as their rights are litigated. Under rule 23, cases that are overly broad because of conflicting laws that establish the rights of individual class members, or because of the factual differences in the circumstances of the plaintiffs, will not be certified as class actions. Only through denial of certification can the rights of the plaintiff class members be protected.

When cases are denied class action status, all of the individual plaintiffs are then free to file their individual claims, no one is denied a right to recover damages, and another class action can be instituted in State court if it is reconfigured to be a state-centered class action.

I want to stress that denial of class action status in Federal court when the case is removed does not mean an end to the litigation. It does not preclude recovery by the plaintiffs, either in individual actions or in a reconfigured class action proceeding.

But if the gentleman's amendment is adopted, any case which, because of its broad scope, cannot meet the requirements of Federal Rule 23, and therefore is dismissed as a class action in Federal court, could then be certified as a class action in State court from which it was removed. The case would be free to proceed as a State class action, and no further removal to Federal court would then be allowed.

Under the amendment, the cases that are truly national in scope would still be heard in State court, and some States would continue to apply their often unique laws to govern the rights of plaintiffs who live in States that have laws that would dictate that an opposite result be reached.

This extraterritorial application of State law does serious damage to our traditional principles of federalism. It is a kind of reverse federalism that should not continue. But under the amendment that is now pending, it would continue. Our basic reform would not be achieved.

The amendment is a recipe for a continuation of the status quo, and I urge that it not be accepted.

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

I thank the gentleman from Virginia for the honesty with which he acknowledged that the effect of the bill without the amendment, and indeed the purpose, is to prevent many cases from being class actions at all.

I differ with one aspect of his argument when he said that some truly national cases will then be, under my amendment, brought to State court. No, I think that is not true. If they are truly national and they truly represent a national class, they will be tried in Federal court, because under this bill, the Federal court can, under the terms of this bill, take the case from the State court if somebody moved it and try it in the Federal court. So we are not saying that truly national ones cannot be done in Federal court.

What this bill does is to say very simply, in modern slang, rule 23 rules. What it says is this: rule 23 of the Federal Rules of Civil Procedure describing class actions is now, by this bill, the rule for every State in America. No State can deviate from rule 23, because if you have a different description of what class action ought to be, then you will lose to the Federal people.

Now, I find it particularly odd that my friends who pretend to be for States' rights, and excuse me, I do not want to violate the rules, who assert that they are for States' rights, now want to say that rule 23 will preempt any State law to the contrary, because that is what this bill does. This bill says the Federal standard for class action will be the standard to govern everywhere.

Mr. SENSENBRENNER. Mr. Chairman, I yield the balance of my time to the gentleman from Arizona (Mr. FLAKE).

The CHAIRMAN pro tempore. The gentleman from Arizona (Mr. FLAKE) is recognized for 3½ minutes.

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

Mr. Chairman, what this boils down to is if we believe there is a need for reform, it is with class action or not. If Members do not believe there is a need for reform, then this amendment is fine, because under this amendment we have no change at all. There is no reform, because anything that goes to the Federal court can come right back to the State court, where the abuse occurred in the first place.

The examples of abuse are rampant here. We have gone through them before, but it serves us well to go through a few of them again.

In this case, trial lawyers, $2 million; the plaintiffs, a coupon for a box of Cheerios. That kind of abuse, if allowed by this amendment, would go up to the Federal court. If the Federal court says under rule 23 it does not qualify as a class action, it goes back to the State court, where the abuse can occur again.

□ 1630

The other example, trial lawyers get over $100,000; the plaintiffs, four golf balls.

If my colleagues do not think that that is abuse, then this amendment is fine. If Members do, strike down the amendment; do not vote for the amendment because we need reform, and we need it now.

Next example, where the attorneys were awarded $4 million, what did the plaintiffs get? Thirty-three cents, only after they sent in for it, costing them 34 cents. So a net loss of one cent.

If Members do not think there is at least a need for reform, vote for the amendment. If Members agree that there is abuse, then they had better vote for the amendment because it will occur regardless otherwise. If it goes to State court or Federal court, goes back to State court, we have the abuse again. It does not solve anything.

I urge my colleagues to vote against the amendment. It is the only way reform will occur. Vote against the amendment. If Members vote for the amendment, no reform occurs. If Members believe that we have fraudulent abuse as it stands, Members have to vote against the amendment.

If Members believe the situation, the status quo is fine, then certainly vote for the amendment.

The CHAIRMAN pro tempore (Mr. SHIMKUS). All time for debate has expired.

The question is on the amendment, as modified, offered by the gentleman from Massachusetts (Mr. FRANK).

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

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

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment, as modified, offered by the gentleman from Massachusetts will be postponed.

It is now in order to consider Amendment No. 9 printed in House Report 107–375.

AMENDMENT NO. 9 OFFERED BY MS. HART

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

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Ms. HART:

Page 19, insert the following after line 11 and redesignate the succeeding section accordingly:

SEC. 7. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and House of Representatives a report on class action settlements in the Federal courts.

(b) CONTENT.—The report under subsection (a) shall contain—

(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members whom the settlements are supposed to benefit;

(2) recommendations on the best practices that courts can use to ensure that—

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.

(c) AUTHORITY OF FEDERAL COURTS.—Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorney's fees.

MODIFICATION OF AMENDMENT NO. 9 OFFERED BY MS. HART

Ms. HART. Mr. Chairman, I ask unanimous consent to modify the amendment and further request that such modification be considered as read.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from Pennsylvania?

There was no objection.

The text of the amendment, as modified, is as follows:

Page 19, insert the following after line 21 and redesignate the succeeding section accordingly:

SEC. 7. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and House of Representatives a report on class action settlements in the Federal courts.

(b) CONTENT.—The report under subsection (a) shall contain—

(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members whom the settlements are supposed to benefit;

(2) recommendations on the best practices that courts can use to ensure that—

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.

(c) AUTHORITY OF FEDERAL COURTS.—Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorney's fees.

The CHAIRMAN pro tempore. Pursuant to House Resolution 367, the gentlewoman from Pennsylvania (Ms. HART) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from Pennsylvania (Ms. HART).

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

The editorial that many have referred to today that appeared in last Saturday's Washington Post supporting the passage of H.R. 2341 did get it right. Too often our current class action system allows trial lawyers to enrich themselves without benefiting those that those lawyers represent.

As presented, though, H.R. 2341 would have corrective influence on this problem, particularly by allowing the removal of more interstate class actions from the State courts to the Federal courts. Empirical data indicate that this problem of attorneys getting the biggest piece of class action settlements is fundamentally a State court problem. Our Federal courts have done a far better job of ensuring that that does not happen.

Though I do support the bill in all its respect, I would like to add one modest piece to the legislation that I believe would aid in ensuring that these class actions do benefit to serve the class members, not just the attorneys.

The amendment is a request by Congress that the Judicial Conference of the United States, our Federal judges, prepare for the House and Senate Committees on the Judiciary a report on class action settlements. As envisioned by my amendment, that report would have several parts.

First, it would contain the judges' recommendations on best practices that the court will use to ensure that these proposed class action settlements are fair to the class members, that is, the plaintiffs. After all, these class members are the people that the settlements are supposed to benefit, but as we have seen, have not been benefiting. We need to find ways to make sure that they are not forgotten when their claims are being settled.

Second, this report will contain recommendations on best practices that the courts would use first to ensure that attorneys' fees in class settlements appropriately reflect the results that the attorneys get for the class members; and also the report would contain recommendations to ensure that class members, and not the lawyers, are the primary beneficiaries of a settlement.

Finally, the report would indicate the Judicial Conference's plans for implementing the good practices recommendations.

I believe that the value of this amendment is obvious, Mr. Chairman, but let me make two points about its purposes.

First, I want to stress that this amendment is not intended in any way to be an intrusion on the judicial branch of our government. I offer this amendment because I have been advised that the Judicial Conference, particularly through its Advisory Committee on Civil Rules, is already devoting considerable time and energy to this important issue. The committee has held public hearings already, they have conducted research, they have drafted and proposed civil rules amendments, and these are all intended to bring more rationality to class settlements.

I believe that we should applaud the efforts of our Federal judges in this regard. Thus, I offer this amendment not to give our diligent Federal judges a new homework assignment, but rather I offer it to recognize their effort and suggest that they continue their investigation in this arena and encourage them to complete this project.

Second, Mr. Chairman, I wish to emphasize this amendment would not directly regulate attorneys' fee awards. I truly believe that the attorneys' fees lie at the root of the key problems in what the Washington Post editorial referred to as the ''sorry world of class action litigation here in the United States.'' I also recognize an effort by this body to regulate directly the award of such fees could be very divisive.

The bill that we presently have before us is worthy of, and actually has, healthy bipartisan support. So my proposal on the fees issue is a very limited one. It would simply encourage the completion of the work that our Federal judges have undertaken to develop best practices on this issue, all within the current framework of the attorneys' fee awards.

For all of these reasons, I urge my colleagues to adopt the amendment.

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

Ms. HART. I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Mr. Chairman, I think that this is a very constructive amendment, and I would urge the House to adopt it.

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

The CHAIRMAN pro tempore. Does any Member claim the time in opposition?

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentlewoman from Texas (Ms. JACKSON-LEE) is recognized.

Ms. JACKSON-LEE of Texas. Mr. Chairman, it is my pleasure to yield 4½ minutes to the distinguished gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, I thank the gentlewoman from Texas (Ms. JACKSON-LEE) for yielding me the time.

There is kind of a breathtaking level of temerity that the Republicans are engaging in today. As the Enron case and many others hang over our country's financial marketplace, as Arthur Andersen basically struggles for survival of all of the fraudulent activity that was perpetrated on investors, on

workers, on consumers across this country, the Republican response to it is to bring out yet another bill that will make it difficult for those ordinary investors and workers to bring suits against the big guys, the people who play games with the books.

It is almost like there is no shame whatsoever, and I would almost understand it if they kind of snuck this through in July or August when the coast was clear on the Enron and Arthur Andersen case, that had kind of died down a little bit.

What they are doing today is putting in place a dangerous anticonsumer, anti-investor and antiworker piece of legislation. They are standing with the Enrons of the world, the Arthur Andersens of the world against the consumer, against the investors in our country, and it is just incredible to me.

However, remember, the first article of the Republican Contract with America back in 1995 was passing out on this floor the Private Securities Litigation Reform Act of 1995. Amongst other things, that is making it very difficult for people to sue Arthur Andersen right now because they no longer have joint and several liability. They only have proportionate liability. Even as their auditors and consultants are together playing the game and keeping score, because of that 1995 Act it is hard to make them liable, and everyone knows that they were part of this game.

Today, we see the results of their fine handiwork. Just a few weeks ago, Members may have read press reports about Arthur Andersen reaching a $217 million settlement in a class action lawsuit brought under State law in the State of Arizona against Arthur Andersen in connection with a fraud involving a charity organization. According to the testimony delivered to the Committee on the Judiciary at around the same time the State class action was filed, a Federal class action was also filed, same case, same facts, State court, Federal court.

Guess what happened to the Federal class action. It was thrown out of court because the Republicans in 1995 changed the pleading standards in the Federal securities laws to favor wrongdoers. So these poor people who have been defrauded could not even get into Federal court.

What happens? We have a controlled experiment seeing what happens in Federal and State court. The same people now go to the State court with the same case, same facts. In the State court, the plaintiffs win. They can win. They do win. Same case, same events, same facts. In Federal court, under the 1995 Republican Act, wrongdoers are protected. They cannot recover, they are out $217 million. In the State courts, the plaintiffs won. The wrongdoers lost.

What is the Republican vision of the future? They now want to do that for all classes of all plaintiffs. They want to take the public's legal rights away, and that is what this bill would do. So we have to defeat this bill. It is terrible. It says we cannot trust the States, we cannot trust local courts, we cannot give local people a chance to decide whether or not local, fraudulent, big companies have hurt the investors and the workers in their community.

That is a vision of the past, not of the future. Defeat this bill.

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

Ms. HOOLEY of Oregon. Mr. Chairman, I rise today in complete support of the idea behind my colleague from Pennsylvania's amendment to H.R. 2341.

It seems perfectly logical to want to know exactly whether or not this legislation is really needed by requesting a report on Federal class action settlements. We need to know what we are doing.

This report would include recommendations on how to ensure settlements are fair, that they are in the best interests of the plaintiffs, and that the expenses awarded to the lawyers are appropriate.

I end up asking myself, why are we considering this as an amendment? Why not its own legislation? Why would we pass legislation and then amend it with a requirement that we be told whether or not the legislation was actually necessary in the first place? That makes no sense.

I propose today that we work together and pass this amendment as stand-alone legislation and then revisit this whole area of class action reform when we have the recommendations from the report and can act accordingly.

To date, we have not been provided with comprehensive data justifying the changes proposed in this legislation. The report would give Congress a chance to really understand whether or not these reforms are even necessary.

I offer today to spearhead an effort in this body to quickly adapt stand-alone legislation introduced by the gentlewoman from Pennsylvania (Ms. HART) that would require such a report.

Mr. CONYERS. Mr. Chairman, will the gentlewoman yield?

Ms. HOOLEY of Oregon. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, could we hold up this bill till we get the report?

Ms. HOOLEY of Oregon. Mr. Chairman, I would either withdraw this proposal today so that, in fact, we could do this amendment as a stand-alone bill.

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

Ms. HART. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, I thank the author of this amendment for yielding me the time.

One of the previous speakers referred to something he called the 1995 Republican Act. Specifically, he was talk about the Securities Litigation Reform Act of 1995.

□ 1645

First, it was not the 1995 Republican Act. It was passed overwhelmingly by Democrats and Republicans, including such well-known Democrats as the chairman of the Democratic National Committee, CHRIS DODD from Connecticut, who supported this in the Senate, in the other body; TED KENNEDY, from the Member's own State who made these remarks; my own Senator FEINSTEIN, and so on. And it was supported by all these Democrats and Republicans because it benefits the plaintiffs in these cases.

The Enron case is the best example. In the old days, before this law, the first plaintiff to file would have been able to pick who the lead plaintiff in the case is and collusion between the lawyers and the favored class member through bonus payments, which were also outlawed in that legislation, resulted in cents on the dollar. But now the University of California Regents have been selected as the lead plaintiff in the Enron case, and they will be a real lead plaintiff and stand up for the rights of all the plaintiffs. That is the kind of reform that both Democrats and Republicans supported.

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

Mr. COX. I yield to the gentleman from Louisiana, the chairman of the Committee on Energy and Commerce.

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

The Security Litigation Reform Act, passed in 1995, was indeed passed by a great overwhelming majority of the House and Senate Democrats and Republicans. It was the first class action reform, and it stopped the strike suits that were filed against American corporations not to win judgments for fraud but just to shake them down.

Ninety-five percent of those cases were being settled at 10 cents on the dollar. They were shake-down lawsuits designed to defraud the companies. These class action lawsuits before the 1995 act were not real efforts to find fraud, and those reforms have indeed protected constituents across America.

The class action suit brought against Enron now is the best example. Where there is real evidence of fraud, those suits go forward. The strike suits, on the other hand, have ended; and they should have ended a long time ago. That is good reform, just like this bill before us.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. SHIMKUS). Members are reminded to avoid inappropriate references, under House rules, to Members of the other body.

Ms. JACKSON-LEE of Texas. Mr. Chairman, may I inquire about how much time I have remaining.

The CHAIRMAN pro tempore. The gentlewoman from Texas (Ms. JACKSON-LEE) has 5½ minutes remaining,

and the gentlewoman from Pennsylvania (Ms. HART) has 1½ minutes remaining.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, the distinguished chairman of the Committee on Energy and Commerce was talking about sham class action lawsuits. I do not know which ones he was talking about, but he was not talking about the Firestone case, the Monsanto case, the W.R. Grace case, all the tobacco company cases, the asbestos cases, the black lung case, air bags, Pinto, and it goes on and on.

None of those were sham lawsuits settled at 10 cents on the dollar. And I am sorry he is not here to further explain which cases he had in mind.

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

The debate, unfortunately, around this amendment has not really dealt with this amendment. I would like to clarify that this amendment has absolutely nothing to do with Enron, Mr. Chairman.

This amendment has to do with doing what is right. It has to do with Congress requesting facts, requesting the Judicial Conference to prepare a report for us, for the House and Senate Committees on the Judiciary, so that we know and we have better information about class action settlements.

The report would contain recommendations from the judges on best practices to ensure that attorneys' fees in class settlements actually reflect the results of those class actions, that is, that the attorneys get appropriate fees, the class action members, the plaintiffs, actually get a settlement instead of 33 cents.

It is a simple amendment that complements the work our Federal judges have already begun. It urges them to complete their report 12 months after the bill is passed so that we will make sure that we are not just paying lip service to our constituents who believe that class actions have become a joke in this country. It is to make sure that class action lawsuits are real and really provide a real answer to the concerns that were brought to the court.

Mr. Chairman, I urge adoption of the amendment.

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

I certainly attribute to the gentlewoman from Pennsylvania her concern about the consumers, inasmuch as she has offered an amendment to determine the facts of how this legislation would impact those consumers or individuals petitioning the courts. I would have liked this amendment to precede the passage of this legislation. And, in fact, in the discourse just had with the gentleman from Michigan (Mr. CONYERS) and a proponent of the amendment, it was just noted that the proponent of the amendment would have rather and would liked for this to be a stand-alone amendment and leave the class action legislation off to the side. Leave it where it is right now. Do not proceed with it. Let us get a study to find out if in fact there is a problem with class actions in State courts versus Federal courts.

I am confused about a study after the fact. I believe those who oppose this legislation have been asking repeatedly to be given the data to suggest there is a premise for denying plaintiffs, that is the little guy, to get into State court. In fact, Mr. Chairman, I will later submit for the RECORD letters from the Federal courts that absolutely oppose the underlying legislation.

I am concerned that we would make light of the decisions in State courts when I have already noted for the record the Foodmaker, Inc. case, the parent company of the Jack-in-the-Box, where three children died and 500 people were part of a class. Most of these children were made sick by undercooked hamburgers. I believe this case was in a State court. The settlement was approved on September 25, 1996; and it was a reputable settlement for people who had no other opportunity to address their grievances other than to go into Washington Superior Court in King County.

This legislation, Mr. Chairman, is one that does not protect the consumers. The gentlewoman would do well to have her amendment presented singly, standing alone, to provide us with the data so that we might make an intelligent decision not on behalf of special interests but on behalf of the consumers of America, the children that died from the tainted hamburger at the Jack-in-the-Box, those impacted by asbestos, and those impacted by the Firestone tires. Those are the people we should be trying to impact in this House today, particularly in light of the ups and downs that we have had in corporate America over the last couple of months.

I would ask my colleagues to recognize that this amendment may have a good underlying basis; but in fact, the question is why not have it do the job without this legislation. I ask my colleagues to oppose the underlying legislation.

The CHAIRMAN pro tempore. The question is on the amendment, as modified, offered by the gentlewoman from Pennsylvania (Ms. HART).

The amendment, as modified, was agreed to.

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. 7 offered by the gentlewoman from Texas (Ms. JACKSON-LEE) and amendment No. 8 offered by the gentleman from Massachusetts (Mr. FRANK).

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 7, AS MODIFIED, OFFERED BY MS. JACKSON-LEE of texas

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 7 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 177, noes 248, not voting 9, as follows:

[Roll No. 59]

AYES—177

Abercrombie	Hilliard	Oberstar
Ackerman	Hinchey	Obey
Andrews	Hoeffel	Olver
Baca	Holt	Ortiz
Baird	Honda	Owens
Baldacci	Hooley	Pallone
Baldwin	Hoyer	Pascrell
Barcia	Inslee	Pastor
Becerra	Israel	Paul
Berkley	Jackson (IL)	Payne
Berman	Jackson-Lee (TX)	Pelosi
Berry	Jefferson	Phelps
Bishop	Johnson, E. B.	Pomeroy
Bonior	Jones (OH)	Price (NC)
Borski	Kanjorski	Rahall
Boswell	Kaptur	Rangel
Brady (PA)	Kennedy (RI)	Reyes
Brown (FL)	Kildee	Rivers
Brown (OH)	Kleczka	Rodriguez
Capps	Kucinich	Ross
Capuano	LaFalce	Rothman
Cardin	Lampson	Roybal-Allard
Carson (IN)	Langevin	Rush
Clay	Lantos	Sabo
Clayton	Larsen (WA)	Sanchez
Clement	Larson (CT)	Sanders
Clyburn	Lee	Sandlin
Conyers	Levin	Sawyer
Costello	Lewis (GA)	Schakowsky
Coyne	Lipinski	Schiff
Crowley	Lowey	Scott
Cummings	Luther	Serrano
Davis (CA)	Lynch	Sherman
DeFazio	Maloney (CT)	Shows
DeGette	Maloney (NY)	Slaughter
Delahunt	Markey	Smith (WA)
DeLauro	Mascara	Solis
Deutsch	Matheson	Spratt
Dicks	Matsui	Stark
Dingell	McCarthy (MO)	Strickland
Doggett	McCarthy (NY)	Stupak
Doyle	McCollum	Tanner
Duncan	McDermott	Thompson (MS)
Edwards	McGovern	Tierney
Engel	McIntyre	Towns
Etheridge	McKinney	Turner
Evans	Meehan	Udall (CO)
Farr	Meek (FL)	Udall (NM)
Fattah	Meeks (NY)	Velazquez
Filner	Menendez	Visclosky
Ford	Millender-McDonald	Waters
Frost	Miller, George	Watson (CA)
Gephardt	Mink	Watt (NC)
Gilman	Mollohan	Waxman
Gonzalez	Moore	Weiner
Green (TX)	Nadler	Wexler
Gutierrez	Napolitano	Woolsey
Hall (OH)	Neal	Wu
Harman		Wynn
Hastings (FL)		

NOES—248

Aderholt	Bachus	Bartlett
Akin	Baker	Barton
Allen	Ballenger	Bass
Armey	Barr	Bereuter

Biggert	Gutknecht	Platts
Bilirakis	Hall (TX)	Pombo
Blumenauer	Hansen	Portman
Blunt	Hart	Pryce (OH)
Boehlert	Hastings (WA)	Putnam
Boehner	Hayes	Quinn
Bonilla	Hayworth	Radanovich
Bono	Hefley	Ramstad
Boozman	Herger	Regula
Boucher	Hill	Rehberg
Boyd	Hilleary	Reynolds
Brady (TX)	Hobson	Riley
Brown (SC)	Hoekstra	Roemer
Bryant	Holden	Rogers (KY)
Burr	Horn	Rogers (MI)
Burton	Hostettler	Rohrabacher
Buyer	Houghton	Ros-Lehtinen
Callahan	Hulshof	Roukema
Calvert	Hunter	Royce
Camp	Hyde	Ryan (WI)
Cannon	Isakson	Ryun (KS)
Cantor	Issa	Saxton
Capito	Istook	Schaffer
Carson (OK)	Jenkins	Schrock
Castle	John	Sensenbrenner
Chabot	Johnson (CT)	Sessions
Chambliss	Johnson (IL)	Shadegg
Coble	Johnson, Sam	Shaw
Collins	Jones (NC)	Shays
Combest	Keller	Sherwood
Condit	Kelly	Shimkus
Cooksey	Kennedy (MN)	Shuster
Cox	Kerns	Simmons
Cramer	Kind (WI)	Simpson
Crane	King (NY)	Skeen
Crenshaw	Kingston	Skelton
Cubin	Kirk	Smith (MI)
Culberson	Knollenberg	Smith (NJ)
Cunningham	Kolbe	Smith (TX)
Davis (FL)	LaHood	Snyder
Davis, Jo Ann	Latham	Souder
Davis, Tom	LaTourette	Stearns
Deal	Leach	Stenholm
DeLay	Lewis (CA)	Stump
DeMint	Lewis (KY)	Sullivan
Diaz-Balart	Linder	Sununu
Dooley	LoBiondo	Sweeney
Doolittle	Lofgren	Tancredo
Dreier	Lucas (KY)	Tauscher
Dunn	Lucas (OK)	Tauzin
Ehlers	Manzullo	Taylor (MS)
Ehrlich	McCrery	Taylor (NC)
Emerson	McHugh	Terry
English	McInnis	Thomas
Everett	McKeon	Thompson (CA)
Ferguson	McNulty	Thornberry
Flake	Mica	Thune
Fletcher	Miller, Dan	Thurman
Foley	Miller, Gary	Tiahrt
Forbes	Miller, Jeff	Tiberi
Fossella	Moran (KS)	Toomey
Frank	Moran (VA)	Upton
Frelinghuysen	Morella	Vitter
Gallegly	Myrick	Walden
Ganske	Nethercutt	Walsh
Gekas	Ney	Wamp
Gibbons	Northup	Watkins (OK)
Gilchrest	Norwood	Watts (OK)
Gillmor	Nussle	Weldon (FL)
Goode	Osborne	Weldon (PA)
Goodlatte	Ose	Weller
Gordon	Otter	Whitfield
Goss	Oxley	Wicker
Graham	Pence	Wilson (NM)
Granger	Peterson (MN)	Wilson (SC)
Graves	Peterson (PA)	Wolf
Green (WI)	Petri	Young (AK)
Greenwood	Pickering	Young (FL)
Grucci	Pitts	

NOT VOTING—9

Barrett	Davis (IL)	Kilpatrick
Bentsen	Eshoo	Murtha
Blagojevich	Hinojosa	Traficant

□ 1719

Messrs. LEACH, SIMPSON and BASS, Mrs. JOHNSON of Connecticut and Mrs. BONO changed their vote from ''aye'' to ''no.''

So the amendment, as modified, was rejected.

The result of the vote was announced as above recorded.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. SHIMKUS). Pursuant to clause 6 of rule XVIII, the Chair announces that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device will be taken on the remaining amendment on which the Chair postponed further proceedings.

AMENDMENT NO. 8, AS MODIFIED, OFFERED BY MR. FRANK

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on amendment No. 8, as modified, offered by the gentleman from Massachusetts (Mr. FRANK), 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 191, noes 234, not voting 9, as follows:

[Roll No. 60]

AYES—191

Abercrombie	Farr	Maloney (CT)
Ackerman	Fattah	Maloney (NY)
Allen	Filner	Markey
Andrews	Ford	Mascara
Baca	Frank	Matheson
Baird	Frost	Matsui
Baldacci	Gephardt	McCarthy (MO)
Baldwin	Gilman	McCarthy (NY)
Barcia	Gonzalez	McCollum
Becerra	Gordon	McDermott
Berkley	Green (TX)	McGovern
Berman	Gutierrez	McIntyre
Berry	Hall (OH)	McKinney
Bishop	Hall (TX)	McNulty
Blumenauer	Harman	Meehan
Bonior	Hastings (FL)	Meek (FL)
Borski	Hill	Meeks (NY)
Boswell	Hinchey	Menendez
Brady (PA)	Hoeffel	Millender-McDonald
Brown (FL)	Holt	Miller, George
Brown (OH)	Honda	Mink
Cannon	Hooley	Mollohan
Capps	Hoyer	Moore
Capuano	Inslee	Nadler
Cardin	Israel	Napolitano
Carson (IN)	Istook	Neal
Carson (OK)	Jackson (IL)	Oberstar
Clay	Jackson-Lee (TX)	Obey
Clayton	Jefferson	Olver
Clement	Johnson, E. B.	Ortiz
Clyburn	Jones (OH)	Owens
Condit	Kanjorski	Pallone
Conyers	Kaptur	Pascrell
Costello	Kennedy (RI)	Pastor
Coyne	Kildee	Payne
Crowley	Kleczka	Pelosi
Cummings	Kucinich	Peterson (MN)
Davis (CA)	LaFalce	Phelps
Davis (FL)	Lampson	Pomeroy
DeFazio	Langevin	Price (NC)
DeGette	Lantos	Rahall
Delahunt	Larsen (WA)	Rangel
DeLauro	Larson (CT)	Reyes
Deutsch	Lee	Rivers
Dicks	Levin	Rodriguez
Dingell	Lewis (GA)	Roemer
Doggett	Lipinski	Ross
Doyle	Lofgren	Rothman
Edwards	Lowey	Roybal-Allard
Engel	Luther	Rush
Etheridge	Lynch	Sabo
Evans	Maloney (NY)	Sanchez
Sanders	Solis	Udall (NM)
Sandlin	Spratt	Velazquez
Sawyer	Stark	Visclosky
Schakowsky	Strickland	Watson (CA)
Schiff	Stupak	Watt (NC)
Scott	Tauscher	Waxman
Serrano	Thompson (CA)	Weiner
Sherman	Thompson (MS)	Wexler
Shows	Thurman	Woolsey
Skelton	Tierney	Wu
Slaughter	Towns	Wynn
Snyder	Turner	
	Udall (CO)	

NOES—234

Aderholt	Graham	Petri
Akin	Granger	Pickering
Armey	Graves	Pitts
Bachus	Green (WI)	Platts
Baker	Greenwood	Pombo
Ballenger	Grucci	Portman
Barr	Gutknecht	Pryce (OH)
Bartlett	Hansen	Putnam
Barton	Hart	Quinn
Bass	Hastings (WA)	Radanovich
Bereuter	Hayes	Ramstad
Biggert	Hayworth	Regula
Bilirakis	Hefley	Rehberg
Blunt	Herger	Reynolds
Boehlert	Hilleary	Riley
Boehner	Hilliard	Rogers (KY)
Bonilla	Hobson	Rogers (MI)
Bono	Hoekstra	Rohrabacher
Boozman	Holden	Ros-Lehtinen
Boucher	Horn	Roukema
Boyd	Hostettler	Royce
Brady (TX)	Houghton	Ryan (WI)
Brown (SC)	Hulshof	Ryun (KS)
Bryant	Hunter	Saxton
Burr	Hyde	Schaffer
Burton	Isakson	Schrock
Buyer	Issa	Sensenbrenner
Callahan	Jenkins	Sessions
Calvert	John	Shadegg
Camp	Johnson (CT)	Shaw
Cantor	Johnson (IL)	Shays
Capito	Johnson, Sam	Sherwood
Castle	Jones (NC)	Shimkus
Chabot	Keller	Shuster
Chambliss	Kelly	Simmons
Coble	Kennedy (MN)	Simpson
Collins	Kerns	Skeen
Combest	Kind (WI)	Smith (MI)
Cooksey	King (NY)	Smith (NJ)
Cox	Kingston	Smith (TX)
Cramer	Kirk	Smith (WA)
Crane	Knollenberg	Souder
Crenshaw	Kolbe	Stearns
Cubin	LaHood	Stenholm
Culberson	Latham	Stump
Cunningham	LaTourette	Sullivan
Davis, Jo Ann	Leach	Sununu
Davis, Tom	Lewis (CA)	Sweeney
Deal	Lewis (KY)	Tancredo
DeLay	Linder	Tanner
DeMint	LoBiondo	Tauzin
Diaz-Balart	Lucas (KY)	Taylor (MS)
Dooley	Lucas (OK)	Taylor (NC)
Doolittle	Manzullo	Terry
Dreier	McCrery	Thomas
Duncan	McHugh	Thornberry
Dunn	McInnis	Thune
Ehlers	McKeon	Tiahrt
Ehrlich	Mica	Tiberi
Emerson	Miller, Dan	Toomey
English	Miller, Gary	Upton
Everett	Miller, Jeff	Vitter
Ferguson	Moran (KS)	Walden
Flake	Moran (VA)	Walsh
Fletcher	Morella	Wamp
Foley	Myrick	Waters
Forbes	Nethercutt	Watkins (OK)
Fossella	Ney	Watts (OK)
Frelinghuysen	Northup	Weldon (FL)
Gallegly	Norwood	Weldon (PA)
Ganske	Nussle	Weller
Gekas	Osborne	Whitfield
Gibbons	Ose	Wicker
Gilchrest	Otter	Wilson (NM)
Gillmor	Oxley	Wilson (SC)
Goode	Paul	Wolf
Goodlatte	Pence	Young (AK)
Goss	Peterson (PA)	Young (FL)

NOT VOTING—9

Barrett	Davis (IL)	Kilpatrick
Bentsen	Eshoo	Murtha
Blagojevich	Hinojosa	Traficant

□ 1728

So the amendment, as modified, was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. CANNON. Mr. Chairman, on rollcall No. 60, I inadvertently voted ''aye'' but I meant to vote ''no.''

The CHAIRMAN pro tempore. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. GILCHREST) having assumed the chair, Mr. SHIMKUS, 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. 2341) 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 367, 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 any 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 amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading.

The bill was ordered to be engrossed and read a third time, and was read the third time.

□ 1730

MOTION TO RECOMMIT OFFERED BY MR. SANDLIN

Mr. SANDLIN. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore (Mr. GILCHREST). Is the gentleman opposed to the bill?

Mr. SANDLIN. Yes, Mr. Speaker, I am opposed to the bill in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. SANDLIN moves to recommit the bill H.R. 2341 to the Committee on the Judiciary with instructions that the Committee report the same back to the House with the following amendment:

Page 19, add the following after line 25:

Any defendant who is a knowing participant in any conspiracy to hijack any aircraft or commit an act of terrorism shall not be entitled to remove a class action to federal court pursuant to section 1332(d) of title 28, as added by section 4 of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. SANDLIN) is recognized for 5 minutes in support of his motion.

Mr. SANDLIN. Mr. Speaker, by matter of correction, retraction and addition, the reference is section 1332(d).

Mr. Speaker, today's debate has illustrated a number of very serious problems with the bill before us. By federalizing class actions, it would make it far more burdensome, expensive, and time-consuming for groups of injured victims to obtain access to justice and far more difficult to protect our citizens against violations of fraud, consumer health, safety, and environmental laws.

The legislation goes so far as to prevent State courts from considering class actions which involve solely violations of State laws such as State consumer protection laws. In the post-Enron world, when we are trying to hold corporate wrongdoers accountable for their actions, this bill takes us in exactly the wrong direction.

The motion to recommit responds to another very serious problem with this legislation: the fact that it would permit parties who engage in terrorism to remove a class action brought against them in Federal court. As the bill is presently written, if a terrorist released a nuclear device or an anthrax cloud, the harmed victims could very well lose their ability to seek redress as a class in their local State court.

For example, if a class composed of mostly New Yorkers, but some citizens in New Jersey and Connecticut, want to pursue a terrorist in New York State court, I believe they should have that option. It is a matter of national security. This bill today prevents that.

The language in the motion would eliminate this problem by removing terrorists from the party defendants whose rights are enhanced by the bill. The language is based on the text of the airline bailout bill and the airport security bill we approved last fall. Any defendant who is a knowing participant in any conspiracy to hijack any aircraft or commit terrorist acts should not get the benefits of the bill.

The bills we passed previously provided for protections and limitations on liability to protect airlines, airplane manufacturers, the City of New York, and others, but we agreed on a bipartisan basis that nothing in the reform should in any way assist terrorist defendants. We should do the same thing in this bill.

Let me repeat, since September 11, every single liability bill we have passed has included an exclusion for terrorists based on the language of this motion. We have excluded terrorists. The last thing we should be doing today is anything that will make the terrorists lives easier.

Let us vote yes on the motion, send the bill back to committee, and let us fix this bill.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

Mr. Speaker, this is not the usual motion to recommit that this House considers at the end of legislation. Those motions direct the committee of jurisdiction to report the legislation back to the House forthwith with an amendment. The motion to recommit of the gentleman from Texas omits the word ''forthwith,'' and that means that if this motion is adopted, the bill will go back to the Committee on the Judiciary and will come out sometime in the future to be brought up under another rule where the House will spend another day listening to the same arguments that we have debated and rejected repeatedly through the amendment process.

So for that reason alone, the motion to recommit should be rejected.

Now, secondly, litigation resulting from a massive terrorist attack is precisely the type of complex legislation envisioned to be decided in our Federal courts. That type of litigation involves multiple parties from different districts asserting multiple laws, but having the same set of facts that the court will decide.

The House has already dealt with this issue when, earlier last year, it passed H.R. 860 by voice vote. This was supported by Members on both sides of the aisle and unanimously reported by the Committee on the Judiciary. This legislation is known as the multi-multi-multi bill, which is in direct response to air crash cases and multiple tort cases such as a terrorist attack, and it directs which Federal court those types of cases can be consolidated in. So the House has already dealt with that issue.

The amendment is unnecessary because it does not require the bill to be brought back forthwith. It is a sneaky way to attempt to kill the bill by referring it to the committee, and I would urge Members to oppose this motion simply to get rid of this issue and to send it on its way to the other body.

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

Mr. GOODLATTE. Mr. Speaker, I thank the chairman of the Committee on the Judiciary for yielding me this time, and for his leadership in moving this legislation through the House.

This is a good, bipartisan bill. I was pleased to introduce it with the gentleman from Virginia (Mr. BOUCHER) and the gentleman from Virginia (Mr. MORAN). We need bipartisan support to pass this legislation.

We have all day long from the opponents of this bill seen obfuscation. This

bill is not about terrorists, it is not about Enron, it is not about shredding documents; what it is about is good, common-sense class action lawsuit reform to end this kind of abuse, where the lawyers get $2 million in attorneys' fees and the plaintiffs, the American families, get a box of Cheerios.

It is about a case where the plaintiffs get a $25 coupon off a $250 future plane flight, a 10 percent reduction, and the attorneys get $16 million in attorneys' fees.

It is about this great case wherein the Bank of Boston, the attorneys got $8.5 million in fees and then sued, sued their own clients for an additional $25 million.

It is about this Blockbuster case, 23 class action lawsuits settled for $1-off coupons; the attorneys got an estimated $9.2 million in attorneys' fees.

Here is my favorite one. The attorneys got $4 million in their suit against Chase Manhattan Bank; the plaintiffs, including this plaintiff, 33 cents. But there is a catch to the 33 cents. There it is, 33 cents; the catch is that in order to accept the settlement, you had to use a 34-cent stamp to send in the acceptance, and so you came out 1 penny short.

Our friends at the Washington Post summed it up best when they said, Having invented a client, the lawyers also get to choose a court. Under the current absurd rules, national class actions can be filed in just about any court in the country. This bill changes that. This bill treats American families with more than pennies; it restores integrity to our judicial system. Vote against this obfuscating motion to recommit and for this good legislation.

Again, the Washington Post: That it is controversial at all reflects less on the merits of the proposal than on the grip that the trial lawyers have on many Democrats.

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. SANDLIN. 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 passage.

The vote was taken by electronic device, and there were—ayes 191, noes 235, not voting 8, as follows:

[Roll No. 61]

AYES—191

Abercrombie	Baldacci	Berry
Ackerman	Baldwin	Bishop
Allen	Becerra	Blumenauer
Andrews	Bentsen	Bonior
Baca	Berkley	Borski
Baird	Berman	Boswell
Boyd	Jackson-Lee (TX)	Pastor
Brady (PA)	Jefferson	Payne
Brown (FL)	Johnson, E. B.	Pelosi
Brown (OH)	Jones (OH)	Peterson (MN)
Capps	Kanjorski	Phelps
Capuano	Kaptur	Pomeroy
Cardin	Kennedy (RI)	Price (NC)
Carson (IN)	Kildee	Rahall
Carson (OK)	Kleczka	Rangel
Clay	Kucinich	Reyes
Clayton	LaFalce	Rivers
Clement	Lampson	Rodriguez
Clyburn	Langevin	Roemer
Condit	Lantos	Ross
Conyers	Larsen (WA)	Rothman
Costello	Larson (CT)	Roybal-Allard
Coyne	Lee	Rush
Crowley	Levin	Sabo
Cummings	Lewis (GA)	Sanchez
Davis (CA)	Lipinski	Sanders
Davis (FL)	Lofgren	Sandlin
DeFazio	Lowey	Sawyer
DeGette	Luther	Schakowsky
Delahunt	Lynch	Schiff
DeLauro	Maloney (CT)	Scott
Deutsch	Maloney (NY)	Serrano
Dicks	Markey	Sherman
Dingell	Mascara	Shows
Doggett	Matheson	Skelton
Doyle	Matsui	Slaughter
Edwards	McCarthy (MO)	Smith (WA)
Engel	McCarthy (NY)	Snyder
Etheridge	McCollum	Solis
Evans	McDermott	Spratt
Farr	McGovern	Stark
Fattah	McIntyre	Strickland
Filner	McKinney	Stupak
Ford	McNulty	Tauscher
Frank	Meehan	Thompson (CA)
Frost	Meek (FL)	Thompson (MS)
Gephardt	Meeks (NY)	Thurman
Gonzalez	Menendez	Tierney
Gordon	Millender-McDonald	Towns
Green (TX)	Miller, George	Turner
Gutierrez	Mink	Udall (CO)
Hall (OH)	Mollohan	Udall (NM)
Harman	Moore	Velazquez
Hastings (FL)	Nadler	Visclosky
Hill	Napolitano	Waters
Hilliard	Neal	Watson (CA)
Hinchey	Oberstar	Watt (NC)
Hoeffel	Obey	Waxman
Holt	Olver	Weiner
Honda	Ortiz	Wexler
Hooley	Owens	Woolsey
Hoyer	Pallone	Wu
Inslee	Pascrell	Wynn
Israel		
Jackson (IL)		

NOES—235

Aderholt	Combest	Gilman
Akin	Cooksey	Goode
Armey	Cox	Goodlatte
Bachus	Cramer	Goss
Baker	Crane	Graham
Ballenger	Crenshaw	Granger
Barcia	Cubin	Graves
Barr	Culberson	Green (WI)
Bartlett	Cunningham	Greenwood
Barton	Davis, Jo Ann	Grucci
Bass	Davis, Tom	Gutknecht
Bereuter	Deal	Hall (TX)
Biggert	DeLay	Hansen
Bilirakis	DeMint	Hart
Blunt	Diaz-Balart	Hastings (WA)
Boehlert	Dooley	Hayes
Boehner	Doolittle	Hayworth
Bonilla	Dreier	Hefley
Bono	Duncan	Herger
Boozman	Dunn	Hilleary
Boucher	Ehlers	Hobson
Brady (TX)	Ehrlich	Hoekstra
Brown (SC)	Emerson	Holden
Bryant	English	Horn
Burr	Everett	Hostettler
Burton	Ferguson	Houghton
Buyer	Flake	Hulshof
Callahan	Fletcher	Hunter
Calvert	Foley	Hyde
Camp	Forbes	Isakson
Cannon	Fossella	Issa
Cantor	Frelinghuysen	Istook
Capito	Gallegly	Jenkins
Castle	Ganske	John
Chabot	Gekas	Johnson (CT)
Chambliss	Gibbons	Johnson (IL)
Coble	Gilchrest	Johnson, Sam
Collins	Gillmor	Jones (NC)
Keller	Oxley	Smith (MI)
Kelly	Paul	Smith (NJ)
Kennedy (MN)	Pence	Smith (TX)
Kerns	Peterson (PA)	Souder
Kind (WI)	Petri	Stearns
King (NY)	Pickering	Stenholm
Kingston	Pitts	Stump
Kirk	Platts	Sullivan
Knollenberg	Pombo	Sununu
Kolbe	Portman	Sweeney
LaHood	Pryce (OH)	Tancredo
Latham	Putnam	Tanner
LaTourette	Quinn	Tauzin
Leach	Radanovich	Taylor (MS)
Lewis (CA)	Ramstad	Taylor (NC)
Lewis (KY)	Regula	Terry
Linder	Rehberg	Thomas
LoBiondo	Reynolds	Thornberry
Lucas (KY)	Riley	Thune
Lucas (OK)	Rogers (KY)	Tiahrt
Manzullo	Rogers (MI)	Tiberi
McCrery	Rohrabacher	Toomey
McHugh	Ros-Lehtinen	Upton
McInnis	Roukema	Vitter
McKeon	Royce	Walden
Mica	Ryan (WI)	Walsh
Miller, Dan	Ryun (KS)	Wamp
Miller, Gary	Saxton	Watkins (OK)
Miller, Jeff	Schaffer	Watts (OK)
Moran (KS)	Schrock	Weldon (FL)
Moran (VA)	Sensenbrenner	Weldon (PA)
Morella	Sessions	Weller
Myrick	Shadegg	Whitfield
Nethercutt	Shaw	Wicker
Ney	Shays	Wilson (NM)
Northup	Sherwood	Wilson (SC)
Norwood	Shimkus	Wolf
Nussle	Shuster	Young (AK)
Osborne	Simmons	Young (FL)
Ose	Simpson	
Otter	Skeen	

NOT VOTING—8

Barrett	Eshoo	Murtha
Blagojevich	Hinojosa	Traficant
Davis (IL)	Kilpatrick	

□ 1802

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. GILCHREST). 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 233, nays 190, not voting 11, as follows:

[Roll No. 62]

YEAS—233

Aderholt	Bryant	Davis, Jo Ann
Akin	Burr	Davis, Tom
Armey	Burton	Deal
Bachus	Buyer	DeLay
Baker	Callahan	DeMint
Ballenger	Calvert	Dooley
Barcia	Camp	Doolittle
Barr	Cannon	Dreier
Bartlett	Cantor	Duncan
Barton	Capito	Dunn
Bass	Castle	Ehlers
Bereuter	Chabot	Ehrlich
Biggert	Chambliss	Emerson
Bilirakis	Coble	English
Blunt	Collins	Everett
Boehlert	Combest	Ferguson
Boehner	Cooksey	Flake
Bonilla	Cox	Foley
Bono	Cramer	Forbes
Boozman	Crane	Fossella
Boucher	Crenshaw	Frelinghuysen
Boyd	Cubin	Gallegly
Brady (TX)	Culberson	Ganske
Brown (SC)	Cunningham	Gekas

Gibbons	Leach	Ryun (KS)
Gilchrest	Lewis (CA)	Saxton
Gillmor	Lewis (KY)	Schaffer
Goode	Linder	Schrock
Goodlatte	LoBiondo	Sensenbrenner
Gordon	Lucas (KY)	Sessions
Goss	Lucas (OK)	Shadegg
Graham	Manzullo	Shaw
Granger	McCrery	Shays
Graves	McHugh	Sherwood
Green (WI)	McInnis	Shimkus
Greenwood	McKeon	Shuster
Grucci	Mica	Simmons
Gutknecht	Miller, Dan	Simpson
Hall (TX)	Miller, Gary	Skeen
Hansen	Miller, Jeff	Smith (MI)
Harman	Moran (KS)	Smith (NJ)
Hart	Moran (VA)	Smith (TX)
Hastings (WA)	Morella	Souder
Hayes	Myrick	Stearns
Hayworth	Nethercutt	Stenholm
Hefley	Ney	Stump
Herger	Northup	Sullivan
Hilleary	Norwood	Sununu
Hobson	Nussle	Sweeney
Hoekstra	Osborne	Tancredo
Holden	Ose	Tanner
Horn	Otter	Tauzin
Hostettler	Oxley	Taylor (MS)
Houghton	Paul	Taylor (NC)
Hulshof	Pence	Thomas
Hunter	Peterson (MN)	Thornberry
Hyde	Peterson (PA)	Thune
Isakson	Petri	Tiahrt
Issa	Pickering	Tiberi
Istook	Pitts	Toomey
Jenkins	Platts	Upton
John	Pombo	Vitter
Johnson (CT)	Portman	Walden
Johnson (IL)	Pryce (OH)	Walsh
Johnson, Sam	Putnam	Wamp
Jones (NC)	Quinn	Watkins (OK)
Keller	Radanovich	Watts (OK)
Kelly	Ramstad	Weldon (FL)
Kennedy (MN)	Regula	Weldon (PA)
Kerns	Rehberg	Weller
Kingston	Reynolds	Whitfield
Kirk	Riley	Wicker
Knollenberg	Rogers (KY)	Wilson (NM)
Kolbe	Rogers (MI)	Wilson (SC)
LaHood	Rohrabacher	Wolf
Larson (CT)	Roukema	Young (AK)
Latham	Royce	Young (FL)
LaTourette	Ryan (WI)	

NAYS—190

Abercrombie	Diaz-Balart	Kleczka
Ackerman	Dicks	Kucinich
Allen	Dingell	LaFalce
Andrews	Doggett	Lampson
Baca	Doyle	Langevin
Baird	Edwards	Lantos
Baldacci	Engel	Larsen (WA)
Baldwin	Etheridge	Lee
Becerra	Evans	Levin
Bentsen	Farr	Lewis (GA)
Berkley	Filner	Lipinski
Berman	Ford	Lofgren
Berry	Frank	Lowey
Bishop	Frost	Luther
Blumenauer	Gephardt	Lynch
Bonior	Gilman	Maloney (CT)
Borski	Gonzalez	Maloney (NY)
Boswell	Green (TX)	Markey
Brady (PA)	Gutierrez	Mascara
Brown (FL)	Hall (OH)	Matheson
Brown (OH)	Hastings (FL)	Matsui
Capps	Hill	McCarthy (MO)
Capuano	Hilliard	McCarthy (NY)
Cardin	Hinchey	McCollum
Carson (IN)	Hoeffel	McDermott
Carson (OK)	Holt	McGovern
Clay	Honda	McIntyre
Clayton	Hooley	McKinney
Clement	Hoyer	McNulty
Clyburn	Inslee	Meehan
Condit	Israel	Meek (FL)
Conyers	Jackson (IL)	Meeks (NY)
Costello	Jackson-Lee (TX)	Menendez
Coyne	Jefferson	Millender-McDonald
Crowley	Johnson, E. B.	Miller, George
Cummings	Jones (OH)	Mink
Davis (CA)	Kanjorski	Mollohan
Davis (FL)	Kaptur	Moore
DeFazio	Kennedy (RI)	Nadler
DeGette	Kildee	Napolitano
Delahunt	Kind (WI)	Neal
DeLauro	King (NY)	Oberstar
Deutsch	Obey	Roybal-Allard
Olver	Sabo	Tauscher
Ortiz	Sanchez	Terry
Owens	Sanders	Thompson (CA)
Pallone	Sandlin	Thompson (MS)
Pascrell	Sawyer	Thurman
Pastor	Schakowsky	Tierney
Payne	Schiff	Towns
Pelosi	Scott	Turner
Phelps	Serrano	Udall (CO)
Pomeroy	Sherman	Udall (NM)
Price (NC)	Shows	Velazquez
Rahall	Skelton	Visclosky
Rangel	Slaughter	Waters
Reyes	Smith (WA)	Watson (CA)
Rivers	Snyder	Watt (NC)
Rodriguez	Solis	Waxman
Roemer	Spratt	Weiner
Ros-Lehtinen	Stark	Wexler
Ross	Strickland	Woolsey
Rothman	Stupak	Wu
		Wynn

NOT VOTING—11

Barrett	Fattah	Murtha
Blagojevich	Fletcher	Rush
Davis (IL)	Hinojosa	Traficant
Eshoo	Kilpatrick	

□ 1812

Ms. BROWN of Florida changed her vote from ''yea'' to ''nay''.

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. KILPATRICK. Mr. Speaker, due to business in the District, I was unavoidably detained on Wednesday, March 13. Had I been present, I would have voted as follows on the amendments to H.R. 2341, the Class Action Fairness Act: ''aye'' on the Waters Amendment (Roll-call No. 56); ''aye'' on the Conyers Amendment (Roll-call No. 58); ''aye'' on the Jackson-Lee Amendment (Roll-call No. 59) and ''aye'' on the Frank Amendment (Roll-call No. 60).

Finally, I would have voted ''aye'' on the motion to recommit offered by Mr. SANDLIN (Roll-call No. 61) and ''nay'' on final passage of H.R. 2341 (Roll-call No. 61).

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 to include extraneous material on H.R. 2341, the bill just passed.

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

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3694

Mr. CALLAHAN. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 3694.

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

There was no objection.

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, on March 7 I had to return to my district on official business. On Rollcall No. 51, if I had been present, I would have voted no.

On Rollcall No. 52, H.R. 3090, the economic stimulus package to increase the unemployment benefits for laid-off workers, I would have voted aye.

On March 12, 2002, Rollcall No. 53, H.R. 1885, Enhanced Border Security and Visa Entry Reform Act of 2002, I was unavoidably detained in my district. If I had been present, I would have voted aye.

Mr. Speaker, my final one, today, March 13, 2002, on Rollcall No. 54, the Journal vote, I was delayed because of air travel. I was coming from my district. If I had been present, I would have voted aye.

CUBANS SEEKING POLITICAL CHANGE

(Mr. FLAKE asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include therein extraneous material.)

Mr. FLAKE. Mr. Speaker, I rise today to talk about a remarkable event that occurred last Thursday on the island of Cuba. According to Reuters, ''In an apparently unprecedented move during Fidel Castro's 43-year rule, a group of dissidents says it has gathered 10,000 signatures to ask the Cuban parliament for a referendum on political reforms.''

''We are proposing a consultation with the people so that they can decide about change,'' a leading moderate dissident, Oswaldo Paya, who is the main promoter of the so-called Varela Project, told Reuters late on Wednesday.

The project, named for the pro-independence Catholic Priest Felix Varela, is based on Article 88 of the Cuban constitution, which says new legislation may be proposed by citizens if more than 10,000 voters support them.

The proposed referendum, Paya says, would be on the need to guarantee rights of freedom of expression and association and amnesty for political prisoners; more opportunities for private businesses; and new electoral law and a general election.

Unfortunately, it is virtually certain that the National Assembly will reject the referendum.

Mr. Speaker, I include these two articles and state for the RECORD that these dissidents from Cuba deserve to be seen and heard.

[From the Associated Press, Mar. 8, 2002]

CUBANS SEEKING POLITICAL CHANGE

(By Anita Snow)

HAVANA.—Cuban dissidents said Friday they have collected 10,000 signatures needed to force a referendum on overhauling the government, a move unprecedented in communist Cuba.

Miguel Saludes of Cuba's Christian Liberation Movement said activists were checking the signatures to verify their authenticity. The petition will then be delivered to Cuba's National Assembly, he said.