''(C) to promote diversity, localism, and competition in American media; and

''(D) to ensure that all radio and television broadcasters—

''(i) are accountable to the local communities they are licensed to serve;

''(ii) offer diverse views on issues of public importance, including local issues; and

''(iii) provide regular opportunities for meaningful public dialogue among listeners, viewers, station personnel, and licensees.

''(2) STANDARDS FOR PUBLIC INTEREST DETERMINATIONS.—The Commission may not issue or renew any license for a broadcasting station based upon a finding that the issuance or renewal serves the public interest, convenience, and necessity unless such station is in compliance with the requirements of this subsection.

''(3) COVERAGE OF ISSUES OF PUBLIC IMPORTANCE.—Each broadcast station licensee shall, consistent with the purposes of this subsection, cover issues of importance to their local communities in a fair manner, taking into account the diverse interests and viewpoints in the local community.

''(4) HEARINGS ON NEEDS AND INTERESTS OF THE COMMUNITY.—Each broadcast station licensee shall hold two public hearings each year in its community of license during the term of each license to ascertain the needs and interests of the communities they are licensed to serve. One hearing shall take place two months prior to the date of application for license issuance or renewal. The licensee shall, on a timely basis, place transcripts of these hearings in the station's public file, make such transcripts available via the Internet or other electronic means, and submit such transcripts to the Commission as a part of any license renewal application. All interested individuals shall be afforded the opportunity to participate in such hearings.

''(5) DOCUMENTATION OF ISSUE COVERAGE.—Each broadcast station licensee shall document and report in writing, on a biannual basis, to the Commission, the programming that is broadcast to cover the issues of public importance ascertained by the licensee under paragraph (4) or otherwise, and on how such coverage reflects the diverse interests and viewpoints in the local community of such station. Such documents shall also be placed, on a timely basis, in the station's public file and made available via the Internet or other electronic means.

''(6) CONSEQUENCES OF FAILURE.—

''(A) PETITIONS TO DENY.—Any interested person may file a petition to deny a license renewal on the grounds of—

''(i) the applicant's failure to afford reasonable opportunities for presentation of opposing points of view on issues of public importance in its overall programming, or the applicant's non-compliance with the Commission's programming rules and policies relating to news staging and sponsorship identification;

''(ii) the failure to hold hearings as required by paragraph (4);

''(iii) the failure to ascertain the needs and interests of the community; or

''(iv) the failure to document and report on the manner in which fairness and diversity have been addressed in local programming.

''(B) COMMISSION REVIEW.—Any petition to deny filed under subparagraph (A) shall be reviewed by the Commission. If the Commission finds that the petition provides prima facie evidence of a violation, the Commission shall conduct a hearing in the local community of license to further investigate the charges prior to renewing the license that is the subject of such petition.

''(C) OTHER REMEDIES.—Nothing in this subsection shall preclude the Commission from imposing on a station licensee any other sanction available under this Act or in law for a failure to comply with the requirements of this subsection.

''(7) ANNUAL REPORT.— The Commission shall report annually to the Congress on petitions to deny received under this subsection, and on the Commission's decisions regarding those petitions.''.

(b) TERM OF LICENSE.—

(1) AMENDMENT.—Section 307(c)(1) of the Communications Act of 1934 (47 U.S.C. 307(c)(1)) is amended by striking ''8 years'' each place it appears and inserting ''4 years''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective with respect to any license granted by the Federal Communications Commission after the date of enactment of this Act.

Ms. CAPITO. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

□ 1115

The SPEAKER pro tempore (Mr. CULBERSON). The question is on ordering the previous question.

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

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

PROVIDING FOR CONSIDERATION OF S. 5, CLASS ACTION FAIRNESS ACT OF 2005

Mr. GINGREY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 96 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 96

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (S. 5) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes. The bill shall be considered as read. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) 90 minutes of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Conyers of Michigan or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for 40 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to commit with or without instructions.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. GINGREY) is recognized for 1 hour.

Mr. GINGREY. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 96 is a structured rule providing 90 minutes of debate for consideration of S. 5, the Class Action Fairness Act of 2005. The rule waives all points of order against consideration of the bill, makes in order one amendment in the nature of a substitute, it waives all points of order against this amendment, and it provides one motion to recommit with or without instructions.

Mr. Speaker, I urge support for the rule because we have before us a fair rule. I could say an excellent rule. The previous gentleman from Massachusetts was rating these rules. But this is fair in both senses of that term, a fair rule that gives Members on both sides of the aisle a chance to discuss their ideas on class action reform. I believe there is a general consensus that our system for class action litigation is flawed.

As demonstrated by the other body, there is bipartisan support for the measure that will be coming before us. In fact, the other body passed this measure by a vote of 72 to 26 with strong bipartisan support. Even with that bipartisan support, however, there are differences of opinion on how to reform our class action system. This bill through granting consideration of a substitute amendment will allow us to openly discuss these opinions and ideas.

Mr. Speaker, our general tort system costs American businesses $129 billion each and every year. Even our smallest companies pay collectively about $33 billion a year, or 26 percent of the overall tort costs to businesses borne by our smallest companies. Class action reform is a first step in litigation reform aimed at providing relief for these small businesses. I am pleased that we are finally seeing the light at the end of the tunnel. This Chamber has passed class action litigation reform on four previous occasions. It is about time that we sent a reform package to the President's desk for his signature.

The underlying bill will make several key reforms including expanding Federal jurisdiction over large interstate class actions as originally intended by our Founding Fathers, create exceptions that keep truly local disputes in State courts, provide an end to the harassment of local businesses as part of this forum shopping game, and create a consumer class action bill of rights.

Mr. Speaker, I would like to again urge my colleagues to support this rule which passed out of the Committee on Rules without objection and to vote in favor of the underlying bill which will provide this much needed reform.

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

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume,

and I thank the gentleman from Georgia (Mr. GINGREY) for yielding me the customary 30 minutes.

Mr. Speaker, for years the Republican majority proposed so-called ''reforms'' to class action lawsuits. Time after time, the House would pass legislation limiting class action plaintiffs only to see their attempts to dismantle the class action system die either with Senate inaction or in conference.

Mr. Speaker, it looks as though the Republican leadership has finally gamed the system to the point where it appears that they will succeed in severely limiting the rights of many of the most vulnerable citizens in this country.

Dismantling the class action lawsuit system has long been a big priority for big business groups. Last year, for instance, the Chamber spent $50 million in lobbying. Now they are getting what they paid for, because this bill obliterating the class action system is one of the first bills to be considered in this Congress.

Mr. Speaker, it is clear to me that despite the McCain-Feingold Campaign Finance Reform law, we still have a pay-to-play system. The other body considered this bill first. The plan was that the House take up the Senate bill if the other body could pass a clean bill without any amendments. The Senate succeeded in passing a bad bill and the House is now following suit.

Let me be clear. Despite the rhetoric on the other side, this is still a bad bill. Today, the other side will tell scary stories about greedy trial lawyers and how awful and unfair their practices are, but the Republican leadership will not talk about how this bill limits the rights of low-wage workers to seek justice from employers who have cheated them out of their wages or have discriminated against them. They will not talk about how they are limiting workers' rights and, with the passage of this bill, are encouraging the bad apples in the big business community to continue cheating their employees out of their hard-earned wages and rights.

In most cases, State laws provide greater civil rights protections than Federal law. Every State has passed a law prohibiting discrimination on the basis of disability. Some States have laws that go beyond the Federal Americans with Disabilities Act.

The same is true with age discrimination. There are also States that provide protections that are not covered by Federal law. These Federal laws are intended to be floors, not ceilings. We should commend States that extend further rights to their citizens, not punish them.

This bill federalizes class action and mass torts, moving these cases from State to Federal courts. If the bill is signed into law, hard-working Americans will be denied the right to use their own State courts to bring class actions against corporations that violate laws that are unique to their State.

Consider, for example, a class action lawsuit brought against a national corporation by employees of a store in Massachusetts because that store discriminates on the basis of ancestry, place of birth, or citizenship status. Massachusetts provides protections afforded by State law, but not by Federal law. Under this bill, except in very rare instances, that case would be sent to a Federal court instead of State court, even though the case is based on a violation of State law.

A class action lawsuit against Wal-Mart was recently filed in Massachusetts. The suit alleges that Wal-Mart failed to pay employees for the time worked and did not give them proper meal and rest breaks. These are serious charges. If the Class Action Fairness Act is signed into law, future cases like this would not be tried in Massachusetts court, but instead would be transferred to Federal court.

Mr. Speaker, we know that the Federal courts are already over burdened, but we also know that the Federal courts are less likely to certify classes or provide relief for violations of State law. In effect, this bill is rigging the system on behalf of the corporations and against the interests of workers.

We often hear a lot of lofty rhetoric on the other side about States rights. Apparently the other side only supports the rights of States if they agree with the laws of those States.

Mr. Speaker, this bill is opposed by the Leadership Conference of Civil Rights; the Alliance for Justice; the National Conference of State Legislatures; 14 State Attorneys General; AFSCME; and environmental groups like Friends of the Earth, Greenpeace, the Sierra Club, and the National Environmental Trust. These are just a few of the groups who oppose this bill, and none of them represent the trial lawyers. They oppose this bill because it will limit fairness, it will limit justice, and it will ultimately hurt everyday Americans.

Mr. Speaker, this is not about trial lawyers; it is about average citizens. The opponents of this bill are committed to fairness. We are committed to justice. And this bill robs the American people of their rights to fairness and justice in the judicial system. It closes the courthouse door in the face of people who need and deserve help.

I oppose this bill, and I urge my colleagues to support the Conyers substitute.

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

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), my colleague on the Committee on Rules.

Mrs. CAPITO. Mr. Speaker, I rise in support of the Class Action Fairness Act because we cannot act fast enough. We have been trying to act to address the dire needs of our Nation's judicial system.

Today, predatory lawyers take advantage of class action law by shopping for venues where they can find sympathetic judges and juries. Each time a lawyer goes venue shopping, it costs taxpayers and it costs our economy by bogging down job creators with frivolous and excessive litigation.

National Review magazine has called my home State of West Virginia one of the worst States because of its cruel legal climate. Data and statistics indicate that since 1978, legal costs in West Virginia have risen more than 10 times faster than the State economy as a whole. As a result, our economy has not grown as fast as the rest of the Nation, and the jobs that West Virginians seek to support their families are not as readily available as they are in other parts of our country.

West Virginia's civil justice system has been ranked as one of the worst when it comes to the treatment of class actions. As a result of West Virginia's relaxation and less vigorous application of procedural rules, courts are generally viewed by lawyers as more favorable and advantageous to plaintiffs, and accordingly West Virginia has become a magnet of mass tort litigation. What is very alarming is when a victim receives little or no compensation.

The Class Action Fairness Act aims to curb class settlements that provide significant fees to a lawyer with marginal benefits to victims. The Class Action Fairness Act takes strong steps to ensure injured consumers recoup real awards from victorious verdicts, rather than settlements that involve coupons, which largely benefit the lawyers.

□ 1130

The Class Action Fairness Act creates important reforms that will reduce lawsuit abuse and protect individuals. It is as simple as that. I urge support for this legislation, and for the fair and balanced rule before us.

Mr. MCGOVERN. Mr. Speaker, I include for the RECORD a letter signed by 14 Attorneys General, including Darrell McGraw, the Attorney General of the State of West Virginia, in opposition to this bill.

STATE OF NEW YORK,
OFFICE OF THE ATTORNEY GENERAL,
Albany, NY, February 7, 2005.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. MAJORITY LEADER AND MR. MINORITY LEADER: On behalf of the Attorneys General of California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont and West Virginia, we are writing in opposition to S. 5, the so-called ''Class Action Fairness Act,'' which will be debated today and is scheduled to be voted on this week. Despite improvements over similar legislation considered in prior years, we believe S. 5 still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 5, almost all class actions brought by private individuals in state court based on state law claims would be removed to federal court, and, as explained below, many of these cases may not be able to continue as class actions. We are concerned with such a limitation on the availability of the class action device because, particularly in these times of tightening state budgets, class actions provide an important ''private attorney general'' supplement to the efforts of state Attorneys General to prosecute violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in both state and federal courts have resulted in only minimal benefits to class members, despite the award of substantial attorneys' fees. While we support targeted efforts to prevent such abuses and preserve the integrity of the class action mechanism, we believe S. 5 goes too far. By fundamentally altering the basic principles of federalism, S. 5, if enacted in its present form, would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL–CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

1. CLASS ACTIONS SHOULD NOT BE ''FEDERALIZED''

S. 5 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need or empirical support for such a sweeping change in our long-established system for adjudicating state law issues. In fact, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. Moreover, S. 5 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a ''citizen'' of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state.

2. CLARIFICATION IS NEEDED THAT S. 5 DOES NOT APPLY TO STATE ATTORNEY GENERAL ACTIONS

State Attorneys General frequently investigate and bring actions against defendants who have caused harm to our citizens, usually pursuant to the Attorney General's parens patriae authority under our respective state consumer protection and antitrust statutes. In some instances, such actions have been brought with the Attorney General acting as the class representative for the consumers of the state. We are concerned that certain provisions of S. 5 might be misinterpreted to impede the ability of the Attorneys General to bring such actions, thereby interfering with one means of protecting our citizens from unlawful activity and its resulting harm. That Attorney General enforcement actions should proceed unimpeded is important to all our constituents, but most significantly to our senior citizens living on fixed incomes and the working poor. S. 5 therefore should be amended to clarify that it does not apply to actions brought by any State Attorney General on behalf of his or her respective state or its citizens. We understand that Senator Pryor will be offering an amendment on this issue, and we urge that it be adopted.

3. MANY MULTI-STATE CLASS ACTIONS CANNOT BE BROUGHT IN FEDERAL COURT

Another significant problem with S. 5 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the laws of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely tbat similar lawsuits will be brought on behalf of the residents of many smaller states. This problem should be addressed by allowing federal courts to certify nationwide class actions to the full extent of their constitutional power—either by applying one state's law with sufficient ties to the underlying claims in the case, or by ensuring that a federal judge does not deny certification on the sole ground that the laws of more than one state would apply to the action. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

4. CIVIL RIGHTS AND LABOR CASES SHOULD BE EXEMPTED

Proponents of S. 5 point to allegedly ''collusive'' consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received ''coupons'' towards the purchase of other goods sold by defendants. Accordingly, this ''reform'' should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

5. THE NOTIFICATION PROVISIONS ARE MISGUIDED

S. 5 requires that federal and state regulators, and in many cases state Attorneys General, be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against ''collusive'' settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. Without clear authority in the legislation to more closely examine defendants on issues bearing on the fairness of the proposed settlement (particularly out-of-state defendants over whom subpoena authority may in some circumstances be limited), the notification provision lacks meaning. Class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States, State Attorneys General and other federal and state regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 5 would effect a sweeping reordering of our nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms, we are likewise committed to maintaining our federal system of justice and safeguarding the interests of the public. For these reasons, we oppose S. 5 in its present form.

Sincerely,

Eliot Spitzer, Attorney General of the State of New York; W.A. Drew Edmondson, Attorney General of the State of Oklahoma; Bill Lockyer, Attorney General of the State of California; Lisa Madigan, Attorney General of the State of Illinois; Tom Miller, Attorney General of the State of Iowa; Gregory D. Stumbo, Attorney General of the State of Kentucky; G. Steven Rowe, Attorney General of the State of Maine; J. Joseph Curran, Attorney General of the State of Maryland; Tom Reilly, Attorney General of the State of Massachusetts; Mike Hatch, Attorney General of the State of Minnesota; Patricia A. Madrid, Attorney General of the State of New Mexico; Hardy Myers, Attorney General of the State of Oregon; William H. Sorrell, Attorney General of the State of Vermont; Darrell McGraw, Attorney General of the State of West Virginia.

Mr. MCGOVERN. Mr. Speaker, I yield 7 minutes to the gentleman from Massachusetts (Mr. MARKEY), the dean of our delegation.

Mr. MARKEY. Mr. Speaker, I thank the gentleman for his excellent work on this very important piece of legislation. I rise in opposition to this rule and I rise in opposition to the underlying legislation.

In the 1960s, President Kennedy used to say, ''Ask not what your country can do for you, but what you can do for your country.'' Today, Republican leaders in Washington have issued a new challenge: ''Ask not what your country can do for you, but what you can do for the country club.''

That is what this bill is all about. It is protecting the country club members from the responsibility for the harm which they potentially inflict from their corporate perspectives on ordinary citizens within our society.

The class-action bill is part of an overall strategy which the Republican Party has put in place in order to harm consumers all across our country, to repeal the protections that have been placed upon the books for two generations that ensure that the individual in our society is given the protection which they need. Here is their strategy. It is a simple, four-part strategy.

Number one, first is the ''borrow and spend'' strategy. That is all part of this idea that Paul O'Neill mentioned, the former Secretary of Treasury for George Bush, when he said that DICK CHENEY said to him, ''Reagan proved that deficits don't matter.''

Of course, the reason they do not matter is that, as Grover Norquist has pointed out quite clearly, the architect of this Republican strategy, the key goal has to be to starve the beast; the beast, of course, being the Federal Government's ability to help ordinary people, to help ordinary citizens, to help

ordinary consumers in our country when they are being harmed.

So this idea that there is less and less money then starves the Federal agencies given the responsibility for protecting the public, the Federal Drug Administration, the Consumer Product Safety Commission; agency after agency left with not enough resources to protect the consumer, which they were intended to do.

Secondly, there is the grim reaper of regulatory relief, where the Office of Management and Budget inside of the Bush administration ensures that any regulation that is meant to protect the consumer is tied up in endless rounds of peer review and cost-benefit analysis, weighing the lives of ordinary consumers against the money that corporations might have to spend in order to make sure that their products are not defective, that they do not harm ordinary citizens across our country.

Then there is stage three, the fox in the hen house. This is where the Bush administration then appoints somebody from the industry that is meant to be regulated as the head of the agency, knowing that that individual has no likelihood of actually putting on the books the kinds of protections which are needed.

Then, finally, after the Federal Government is not capable of really protecting ordinary citizens, their safety, their health, then what they say to the citizen is, by the way, now we are going to make it almost impossible for you to go to court to protect yourself, to bring a case.

That is what this bill is all about, that final step. You cannot even as an individual partner with other people to go to court. And here is what it says. It says that all of these cases are going to Federal Court, unless a significant defendant is in fact a citizen of the State.

Well, think about this. Let us go to New Hampshire. New Hampshire is a perfect example. New Hampshire has a suit which it has brought against 22 oil and chemical companies because of the pollution in the State's waterways with MTBE, a deadly, dangerous material which has harmed people all across our country, but New Hampshire is the best example.

Under this new law, because the principal defendant in the case is Amerada Hess and because it is headquartered in New York and it is the principal defendant, not only Amerada Hess but the other 22 companies, not only is Amerada Hess, this big company, and the other 22 companies who have arrived in New Hampshire, polluting the State, given the relief of not having the case be held in the State of New Hampshire, with New Hampshire judges and New Hampshire citizens, instead it is removed to the Federal Court, so the Republicans can name judges who they know are going to be sympathetic to the companies, not the State of New Hampshire, not their judges, not their people.

That is what this is all about. It is making sure that ordinary citizens in New Hampshire, whose families have been harmed, whose health is permanently ruined, cannot bring a case against large corporations.

Who gets the benefit of this? The defendant. The defendant. They come in from out-of-state, they pollute, they harm, they ruin the lives of people, and then the defendant says, ''I don't want to be tried in New Hampshire. I don't want to be tried in Texas. I don't want to be tried in that State. I want to go some other place.''

What about the plaintiffs? What about the people who have been harmed? What about the mothers? What about the children? What about the people who have lost their health?

This is the final nail that the Republicans are putting in the coffin of the rights of ordinary citizens to be able to protect themselves. All of these cases should be brought in the State courts where the large corporation caused the harm, not in a Federal Court away from the closest people who know what is right and wrong inside of that State.

Mr. Speaker, vote no on this critical bill. Vote no on the rule. Vote to protect the consumers, the families, the children, the seniors in our country who the Republicans are going to allow to be jeopardized by moving the cases from where they live to places where the defendants, the largest corporations, will be able to protect their own selfish self-interests.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in response to some of the comments that were made by the gentleman from Massachusetts, I want to share with my colleagues some facts.

The Class Action Fairness Act contains several provisions specifically designed to ensure that class members, not their attorneys, class members, not their attorneys, are the primary beneficiaries of the class-action process.

For example, the act, number one, requires that judges carefully review all coupon settlements and limit attorney's fees paid in such settlements to the value actually received by the class members.

Second, it requires careful scrutiny of ''net loss'' settlements in which the class members end up losing money.

Thirdly, it bans settlements that award some class members a larger recovery just because they live closer to the court.

Lastly, it allows Federal courts to maximize the benefits of class-action settlements by requiring that unclaimed coupons or settlement funds be donated to charitable organizations.

In addition, the bill would require that notice of proposed settlements be provided to appropriate State and Federal officials, such as State Attorneys General.

Let me also address one other issue raised, and I think this is very important.

This myth is being circulated that the Class Action Fairness Act would move all or virtually all class actions to Federal courts, overwhelming Federal judges and denying State courts the ability to resolve local disputes. Well, a recent study examined class actions in the State courts of Connecticut, Delaware, Maine, Massachusetts, New York and Rhode Island, to determine what effect the bill would have on the class actions filed in those respective States.

Here is what they found in regard to the State of Massachusetts. Sixty-one percent, 30 out of 49 of the reported class actions, would have presumedly remained in State court. At least 10 of the 19 Massachusetts cases that would be affected by this bill, the Class Action Fairness Act, involved nationwide classes, cases primarily involving citizens living in other states.

Mr. Speaker, I am proud to yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN) a former member of the Committee on the Judiciary and an original cosponsor of this bill in the 108th Congress.

Mrs. BLACKBURN. Mr. Speaker, I thank the gentleman from Georgia for providing some of that information. It seems that our colleagues probably are so wrong on this bill they cannot even talk about it. They want to come down here and talk about all sorts of other things that are not involved in class action.

They are talking about protection. Well, I would like the American people to know and our colleagues to know we are talking about protection. We are talking about protecting Americans' pockets books, because our constituents know somebody is going to pay, and if greedy lawyers are getting big settlements, they are going to be paying more at the cash register every single time they go buy something.

An entire industry has grown up over attorneys seeking cash in these class-action lawsuits. Our courts are to be designed for fairness, a forum of fairness and justice, but they have become a virtual ATM for greedy lawyers when it comes to class-action lawsuits. Lawyers go file a class-action lawsuit and collect millions of dollars, just as the gentleman from Georgia was saying; and the clients, who they barely know, most times they have never even met most of these folks, those clients are receiving pennies.

Mr. Speaker, my colleague spoke saying this would not help the victims. I would like people to know the Class Action Fairness Act does not restrict true victims from filing class-action lawsuits. It will prevent attorneys from choosing which State to file in, because we know sometimes they choose where they think they can get the biggest monetary award. We are putting the focus back on justice, back on justice in this bill.

In addition, the reform provides greater consumer protection by allowing our courts to scrutinize those settlements that provide victims with

coupons while those attorneys are getting millions and millions and millions of dollars.

Mr. Speaker, this is an overdue reform. We have worked tirelessly on this in the House, and I urge everyone to support it.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my colleague from Georgia had kind of quoted from a study implying that most of these class-action cases would remain in States, that the whole purpose of this bill is to try to move them to Federal courts.

Let me quote from a CBO cost estimate which says that under this bill, most class-action lawsuits would be heard in Federal District Court, rather than in the State court.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

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

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am always amazed to hear the remarks of my colleagues, and I welcome those remarks, because it is well-known that free and open debate lies at the very heart of the democratic process. But I wonder if we rephrased the terminology ''greedy lawyers'' and made the American people truly understand what the give and take of the judicial process is all about.

□ 1145

I wonder, if we said the lawyers that represented the 9/11 families could be considered greedy lawyers, thousands who lost loved ones, and their engagement in seeking to have redress of their grievances done in a class-action manner, is that evidence of greedy lawyers? Or maybe the thalidomide families, babies who were born deformed in the 1950s and class actions were utilized, is that a signal of greedy lawyers?

Frankly, Mr. Speaker, what we have here is a complete abuse of the democratic process. Why do we not think about a situation where you are a college student enrolled in a world history class, you enter the first day and the professor says, welcome, it is now time to take the final exam. No discussion, no notes, no teaching, no nothing. This is what this rule represents. It is to walk on this floor and take the final exam. It is to close the door of the opportunity for the American people to go into the courthouse and to have a jury of their peers decide whether or not, as a collective class, they have been injured.

If my friends would tell the truth, they would know that plaintiffs prevail in such a small percentage of times all over America that this is ridiculous and ludicrous legislation. They would also refer you to the Cato Institute in 1983 when they talked about attacking liberal legal opportunities, or liberal bills. They said, this is guerilla warfare. We are going after tort litigation, we are going after Social Security, we are going after Medicare. Guerilla warfare.

The reason why this is guerilla warfare is because we have a process, Mr. Speaker. These actions come to our committee, the Committee on the Judiciary and a number of other committees; we have opportunity for amendment, give and take, hearings. This legislation has seen no light of day in any committee. It did not see the light of day on the Senate side, no hearings, no markup; it did not see the light of day on the House side, no hearings, no markup. So the American people are being fooled by the fact that they think we are doing business as the Constitution would want us to do, that we are open to the rules of this House, that we understand that we must have the oversight of this House. And frankly, Mr. Speaker, shame on us, for we are shaming the process, and the American people should rightly be ashamed of this and of us.

I ask my Republicans, we know you have the overwhelming majority, you have the two-thirds, in essence, you have the bully pulpit, and you use it. But the bad thing about it is that you are using it to overwhelm the rules of this House. Mr. Speaker, you are literally ignoring the Rules of the House. And some people would say to me, Congresswoman JACKSON-LEE, this is inside the ball game, inside the ballpark, inside the Beltway. The American people are not interested in process. I believe they are. Because the American people know about school boards and process, they know about the parent-teacher meetings and process, they know about their places of faith and process, and they know that process is to be respected. Here in this House we are not respecting process.

I argue that the one amendment that we have as the manager's amendment should be the amendment that should be accepted, and that is the one that includes the idea of protecting civil rights and wage-and-hour carve-outs and prohibits those companies that have formulated their companies in another country, United States companies incorporated elsewhere, in order to be able to participate in this abusive process.

Let me read what the New York Times said. ''Instead of narrowly focusing on real abuses of the system, the measure that is before us today reconfigures the civil justice system to achieve a significant rollback of corporate accountability and people's rights. The main impact of the bill, which has a sort of propagandistic title normally assigned to such laws as the Class Action Fairness Act will be to funnel nearly all major class-action lawsuits out of State courts and into all overburdened Federal courts. That will inevitably make it harder for Americans to pursue legitimate claims successfully against companies that violate State consumer, health, civil rights, and environmental protection laws.''

Mr. and Mrs. America, let me tell you something. When this legislation passes on the Republican clock, I am going to tell you that the doors of the courthouse will be closed to you; and if you have Johnny Jones, the country lawyer, trying to bring justice to rural America, Johnny Jones will have to take his small-time practice and mortgage his house to get into the Federal court. And not only that, you might get there 50 years from the time that action occurs.

This is the greatest abomination and insult to justice that I have ever seen. It is an outrage, and I ask my colleagues to vote down the rule, vote for the Democratic substitute, and put this terrible bill where it needs to go, packing out of the door.

Mr. Speaker, free and open debate lies at the heart of the democratic process. Without it, true democracy will surely wither away to nothing. It is in this light that I rise to support H. Res. 96—only insofar as it allows consideration of the Democratic substitute that was ruled in order by the Committee on Rules and offered by the distinguished Ranking Member of the Judiciary Committee, Mr. CONYERS. We should have an open rule on this important issue, however.

For real and honest debate to take place on such an important issue as defining diversity jurisdiction in the Federal courts for class actions, we must have available an alternate option to S. 5, the legislation that is before the committee of the whole House. The Democratic substitute creates that option. I congratulate the Rules committee for their foresight in enabling this open debate.

This bill, despite its name, is *not* fair to all complainants who come to the courts for relief. In addition, it fails to render accountability to parties who are in the best financial position. One issue that I planned to address by way of amendment was that of punishing fraudulent parties to class action proceedings by preventing them from removing the matter to Federal court.

I am a co-sponsor of the amendment in nature of a substitute that will be offered by my colleagues. With the provisions that it contains, requirements for Federal diversity jurisdiction will not be watered down resulting in the removal of nearly all class actions to Federal court. A wholesale stripping of jurisdiction from the State courts should not be supported by this body. Therefore, it needs to be made more stringent as to all parties and it needs to contain provisions to protect all claimants and their right to bring suit.

Contained within the amendment in nature of a substitute is a section that I proposed in the context of the Terrorist Penalties Enhancement Act that was included in the bill passed into law. This section relates to holding ''Benedict Arnold corporations'' accountable for their terrorist acts. With respect to S. 5, the right to seek removal to Federal courts will be precluded for Benedict Arnold corporations.

The ''Benedict Arnold corporation'' refers to a company that, in bad faith, takes advantage of loopholes in our tax code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance. A tax-exempt group that monitors corporate influence called ''Citizen Works'' has compiled a list of 25 Fortune

500 Corporations that have the most offshore tax-haven subsidiaries. The percentage of increase in the number of tax havens held by these corporations since 1997 ranges between 85.7 percent and 9,650 percent.

This significant increase in the number of corporate tax havens is no coincidence when we look at the benefits that can be found in doing sham business transactions. Some of these corporations are "Benedict Arnolds" because they have given up their American citizenship; however, they still conduct a substantial amount of their business in the United States and enjoy tax deductions of domestic corporations.

The provision in the substitute amendment will preclude these corporations from enjoying the benefit of removing State class actions to Federal court. Forcing these corporate entities to defend themselves in State courts will ensure that these class action claims will be fairly and fully litigated.

I support the amendment in nature of a substitute.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

I want to address the remarks of the gentlewoman from Texas. I want to remind her that the Committee on Rules voted unanimously in favor of this rule and granted an amendment in order in the form of a substitute that includes each and every one of the provisions that she just spoke of. I also would like to remind my colleagues that each and every one of those amendments were also proffered in the other body, and each and every one of those amendments were voted down in a strong bipartisan vote.

So to suggest, Mr. Speaker, that this is something that had not been looked at and we have not talked about, I would remind my colleague that it was addressed in the 105th Congress, in the 106th Congress, in the 107th Congress, in the 108th Congress, and finally we are here, and we are going to get this rule passed and this bill passed and on to the President for his signature.

Mr. Speaker, I yield 3 minutes to the gentleman from Oklahoma (Mr. COLE), my colleague on the Committee on Rules.

Mr. COLE of Oklahoma. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time and, frankly, for making that important point, that this matter is proceeding to this floor under a bipartisan unanimous vote by the Committee on Rules; and the suggestion that the process was unfair or defective is not borne out by both the nature of the debate in the Committee on Rules and by the unanimous vote that sent this rule to the floor.

Let me move now, Mr. Speaker, to my prepared remarks. I rise today in support of the rule for S. 5, the Class Action Fairness Act of 2005. I believe it to be a fair rule and one that allows us to fully explore the issues surrounding this legislation. Furthermore, it makes in order a substantive amendment in the nature of a substitute that the gentleman from Michigan (Mr. CONYERS) has worked hard to produce. I believe that this will allow a spirited debate and one that will fully explore the many complex issues surrounding class-action reform while still enabling the House to act in an expeditious fashion.

Mr. Speaker, while I fully agree that class-action lawsuits are a legitimate tool in civil procedure, these lawsuits are a tool that has been frequently abused over the past years. There exist a certain small subset of attorneys who do not represent the best traditions of their colleagues in the legal profession and primarily are concerned with lining their pockets by abusing the class-action process. Often, this is done through the popular so-called coupon settlement process, where the class of plaintiffs only receive coupons to use from the very same companies they are suing, while the attorneys walk away from the table with millions in cash.

Mr. Speaker, this legislation is a necessary step to better ensure and protect our citizens' rights. The ongoing flood of meritless labor and employment litigation has often destroyed reputable companies and has resulted in thousands of layoffs and business restructurings that hurt innocent workers and shareholders alike.

This legislation would incentivize only those who have legitimate class-action claims to move forward in the legal process and, at the same time, it would disincentivize lawyers from filing meritless claims by increasing sanctions against those who do so.

Mr. Speaker, this legislation is a necessary first step and the rule that accompanies it is one that I believe all Members should support. Those who support another approach have the full opportunity to explore it in the minority's amendment in the nature of a substitute. Therefore, I urge all Members to support the rule and the underlying legislation.

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is interesting to hear the distinguished gentleman from Georgia mention the Committee on Rules, and I respect the power of the Committee on Rules. The Committee on Rules is not a jurisdictional committee. This bill did not go through the committee process on the Senate side or on the House side.

I might also say when we talk about coupons and the amount of dollars that lawyers may receive, might I remind the body that we are talking about thousands upon thousands of plaintiffs in a class action who would never have their grievances addressed and the corporate culprit would have never been punished had it not been for this class action. So to manipulate it to suggest that it is abused is manipulation, just that.

This did not go through the committee process. We are avoiding the committee process. Therefore, we are stamping on democracy and this rule and this bill should be voted down enthusiastically.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

In response to the gentlewoman from Texas, the Committee on Rules has jurisdiction, and anybody that knows the history of this body knows and understands that the Committee on Rules certainly has jurisdiction.

Let me just give a little history for my colleagues and particularly for the gentlewoman from Texas in regard to this bill. Again, in the 105th Congress, Senate bill 2083, the Class Action Fairness Act, Senate held hearing, reported by subcommittee. House Resolution 3789, Class Action Jurisdiction Act of 1998, committee hearing and markup held, reported from the House Committee on the Judiciary, 17 to 12.

Mr. Speaker, in the 106th Congress, H.R. 1875, Interstate Class Action Jurisdiction Act of 1999. Committee hearing and markup held, passed floor 222 to 207.

In the 107th Congress, H.R. 2341, Class Action Fairness Act of 2001. Committee hearing and markup held; passed floor, 233 to 190.

In the 108th Congress, H.R. 1115, Class Action Fairness Act of 2003, committee hearing and markup held, passed floor, 253 to 170.

No hearings? Indeed.

Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time.

Mr. Speaker, I rise today in strong support of both the rule and the underlying class-action reform legislation.

Mr. Speaker, the bottom line is that class-action reform is badly needed. Currently, certain crafty lawyers are able to game the system by filing large, nationwide class-action suits in certain preferred State courts such as Madison County, Illinois, where judges are quick to certify classes and quick to approve settlements that give millions of dollars to attorneys and only worthless coupons to their clients.

Looking at this chart, for example, we can see the history of Madison County, Illinois, which has been called the number one judicial hellhole in the United States. There were 77 class-action filings in 2002, and 106 class-action lawsuits filed in 2003. Now, the movie Bridges of Madison County was a love story. ''The Judges of Madison County'' would be a horror flick.

Unfortunately, all too often, it is the lawyers who drive these class-action suits and not the individuals who allegedly have been injured. For example, in a suit against Blockbuster over late fees, the attorneys received $9.25 million; their clients got a $1 off coupon for their next video rental. Similarly, in a lawsuit against the company that makes Cheerios, the attorneys received $2 million for themselves, while their clients received a coupon for a free box of Cheerios. In a nutshell, these out-of-control class-action lawsuits are killing jobs, they are hurting small business people who cannot afford to defend

themselves, and they are hurting consumers who have to pay a higher price for goods and services.

Fortunately, this legislation provides much-needed reform in 2 key areas. First, it eliminates much of the forum shopping by requiring that most of the nationwide class-action suits be filed in Federal court. Second, it cracks down on these coupon-based class-action settlements by requiring that attorney fee awards be based on either the value of the coupons actually redeemed, or by the hours actually billed by the attorney prosecuting the case.

Mr. Speaker, this legislation will and should comfortably pass the House of Representatives. Last week, this exact bill received 72 votes in the U.S. Senate, and last year we passed a similar bill with 253 votes. I urge my colleagues to vote yes on the bill and vote yes on the rule.

□ 1200

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I guess it is politically popular to attack lawyers and judges, but what I am concerned about is what this bill will do to average people who are seeking remedies for being mistreated.

I want to read an excerpt from the Leadership Conference on Civil Rights, AFL/CIO, and the Alliance for Justice statement. One of things they point out is that nowhere has a case been made that abuses exist in anti-discrimination and wage and hour class action litigation.

They point out by allowing dozens of employees to bring one lawsuit together, the class action device is frequently the only means for low-wage workers who have been denied mere dollars a day to recover their lost wages. Moreover, class actions are also often the only means to effectively change a policy of discrimination.

Wage and hour class actions are most often brought in States under the law of the State in which the claim arises. The reason is that State wage and hour laws typically provide more complete remedies for victims of wage and hour violations than the Federal wage and hour statute. For instance, the Federal Fair Labor Standards Act offers no protection, no protection for a worker who works 30 hours and is paid for 20, so long as the worker's total pay for the 30 hours worked exceeds the Federal minimum wage. However, many States have payment of wage laws that would require that the workers be fully paid for those additional 10 hours of work.

Also, Federal law provides no remedy for part-time workers who often work 10- to 16-hour days, yet earn no overtime because they work less than 40 hours per week. At least six States and territories, however, including California and Alaska, require payment of overtime after a prescribed number of hours of work in a single day. Likewise, State laws increasingly provide greater civil rights protections than Federal laws. For example, every State has passed a law prohibiting discrimination on the basis of disability. Some of these State statutes provide a broader definition of disability and a greater range of protection in comparison to the Federal Americans with Disabilities Act, including California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia.

In addition, every State has enacted a law prohibiting age discrimination in employment. Some of these State laws, including those in California, Michigan, Ohio and the District of Columbia, contain provisions affording greater protection to older workers than comparable provisions of the Federal Age Discrimination and Employment Act. In addition, many State laws provide protections to classifications not covered by Federal law. For example, many States provide expanded benefits based on marital status, and I could go on and on and on.

The point of the matter here is that this legislation is basically denying people the rights and the protections that many of them have fought so hard to earn in their States, and it leads to more injustice and more unfairness.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS, ALLIANCE FOR JUSTICE, AFL–CIO,

Washington, DC, February 2, 2005.

EXEMPT CIVIL RIGHTS AND WAGE AND HOUR CASES FROM S. 5

DEAR SENATORS, On behalf of the undersigned civil rights and labor organizations, we write to urge you to support an amendment being offered by Senators Kennedy and Cantwell to the Class Action Fairness Act (S. 5), which would exempt civil rights and wage and hour state law cases. The amendment is necessary in order to ensure that S. 5 does not adversely impact the workplace and civil rights of ordinary Americans by making it extremely difficult to enforce civil rights and labor rights.

During Congress' extensive examination of the merits of class action lawsuits, nowhere has a case been made that abuses exist in anti-discrimination and wage and hour class-action litigation. By allowing dozens of employees to bring one lawsuit together, the class-action device is frequently the only means for low wage workers who have been denied mere dollars a day to recover their lost wages. Moreover, class actions also are often the only means to effectively change a policy of discrimination. These suits level the playing field between individuals and those with more power and resources, and permit courts to decide cases more efficiently.

Wage and hour class actions are most often brought in state courts under the law of the state in which the claims arise. The reason is that state wage and hour laws typically provide more complete remedies for victims of wage and hour violations than the federal wage and hour statute. For instance, the federal Fair Labor Standards Act (FLSA) offers no protection for a worker who works 30 hours and is paid for 20, so long as the worker's total pay for the 30 hours worked exceeds the federal minimum wage. However, many states have ''payment of wage'' laws that would require that the worker be fully paid for those additional 10 hours of work. Also, federal law provides no remedy for part-time workers who often work 10–16 hour days, yet earn no overtime because they work less than 40 hours per week. At least six states and territories, however, including California and Alaska, require payment of overtime after a prescribed number of hours are worked in a single day.

Likewise, state laws increasingly provide greater civil rights protection than federal law. For example, every state has passed a law prohibiting discrimination on the basis of disability. Some of these states statutes provide a broader definition of disability and a greater range of protection in comparison to the federal Americans with Disabilities Act, including California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia. In addition, every state has enacted a law prohibiting age discrimination in employment, and some of these state laws—including those of California, Michigan, Ohio and the District of Columbia—contain provisions affording greater protection to older workers than comparable provisions of the federal Age Discrimination in Employment Act (ADEA).

In addition, many state laws provide protections to classifications not covered by federal law. For example, the following states provide protection for marital status: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maryland, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Virginia, Washington, and Wisconsin. Moreover, several states have expanded Title VII's ban on national origin discrimination to prohibit discrimination on the basis of ancestry, or place of birth, or citizenship status. These states include Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Kansas, Maine, Massachusetts, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, South Dakota, Vermont, West Virginia, Wisconsin, Wyoming, and the Virgin Islands.

Finally, 31 states have enacted legislation prohibiting genetic discrimination in the workplace—an important protection given the rapid increase in the ability to gather this type of information. The 31 states are Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin. In addition, Florida and Illinois have enacted more limited protections against genetic discrimination.

Under S. 5, citizens are denied the right to use their own state courts to bring class actions against corporations that violate these state wage and hour and state civil rights laws, even where that corporation has hundreds of employees in that state. Moving these state law cases into federal court will delay and likely deny justice for working men and women and victims of discrimination. The federal courts are already overburdened. Additionally, federal courts are less likely to certify classes or provide relief for violations of state law.

In light of the lack of any compelling need to sweep state wage and hour and civil rights claims into the scope of the bill, we urge you to support an amendment to exempt these claims from the provisions of S. 5. If you have any questions, or need further information, please call Nancy Zirkin, Deputy Director of the Leadership Conference on Civil Rights (202–263–2880); Sandy Brantley, Legislative Counsel, Alliance for Justice (202–822–6070); or Bill Samuel, Legislative Director, AFL–CIO (202–637–5320).

Sincerely,

AARP.

AFL–CIO.
Alliance for Justice.
American-Arab Anti-Discrimination Committee.
American Association of People with Disabilities.
American Association of University Women.
American Civil Liberties Union.
American Federation for the Blind.
American Federation of Government Employees.
American Federation of School Administrators.
American Federation of State, County & Municipal Employees.
American Federation of Teachers.
American Jewish Committee.
Americans for Democratic Action.
The Arc of the United States.
Association of Flight Attendants.
Bazelon Center for Mental Health Law.
Center for Justice and Democracy.
Coalition of Black Trade Unionists.
Communications Workers of America.
Consortium for Citizens with Disabilities Civil Rights Task Force.
Department for Professional Employees, AFL–CIO.
Disability Rights Education and Defense Fund.
Epilepsy Foundation.
Federally Employed Women.
Federally Employed Women's Legal & Education Fund, Inc.
Food & Allied Service Trades Department, AFL–CIO.
Human Rights Campaign.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.
International Brotherhood of Electrical Workers.
International Brotherhood of Teamsters.
International Federation of Professional & Technical Engineers.
International Union of Bricklayers and Allied Craftworkers.
International Union of Painters and Allied Trades of the United States and Canada.
International Union, United Automobile, Aerospace & Agricultural Workers of America.
Jewish Labor Committee.
Lawyers' Committee for Civil Rights Under Law.
Leadership Conference on Civil Rights.
Legal Momentum.
Mexican American Legal Defense and Educational Fund.
NAACP.
NAACP Legal Defense & Educational Fund, Inc.
National Alliance of Postal and Federal Employees.
National Asian Pacific American Legal Consortium.
National Association for Equal Opportunity in Higher Education.
National Association of Protection and Advocacy Systems.
National Association of Social Workers.
National Employment Lawyers Association.
National Fair Housing Alliance.
National Organization for Women.
National Partnership for Women and Families.
National Women's Law Center.
Paper, Allied-Industrial, Chemical and Energy Workers International Union.
Paralyzed Veterans of America.
People For the American Way.
Pride At Work, AFL–CIO.
Service Employees International Union.
Transport Workers Union of America.
Transportation Communications International Union.
UAW.
Unitarian Universalist Association of Congregations.
UNITE!
United Cerebral Palsy.
United Food and Commercial Workers International Union.
United Steelworkers of America.
Utility Worker Union of America.
Women Employed.

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

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. WESTMORELAND), the former minority leader of the Georgia House of Representatives.

Mr. WESTMORELAND. Mr. Speaker, I rise today to support the rule and the underlying legislation; and I want to thank my colleague from Georgia for yielding me time.

Mr. Speaker, we have all received the class action settlement notices in our mail boxes, I know I have, not even realizing we were part of a class action lawsuit nor ever asking to be part of the lawsuit. And not only that, but you never get to meet this attorney who will represent you.

As consumers, we need to know that we will eventually bear the cost of these companies that have to settle large class actions because it is easier to settle than to try to litigate against the trial lawyers.

Earlier this week, the Georgia General Assembly moved forward with major legislation to reform the legal system, something I fought for during my time there. This legislation continues that effort and takes a huge step forward to protect consumers by limiting these huge interstate class action lawsuits.

Mr. Speaker, Federal courts have had jurisdiction over substantial cases between citizens of different States since the founding of this Nation. But due to the interpretations of the laws, State courts have had to bear the brunt of class action lawsuits in this country.

This legislation is a fantastic bipartisan effort to reform the legal system and is a good first step toward addressing the costs of litigation on small businesses, large businesses, and all Americans. I encourage my colleagues to support this effort; and I appreciate the leadership shown by the Speaker, the majority leader, and the chairman of the Committee on the Judiciary towards getting this legislation passed through the Senate and on the desk of the President.

I urge my colleagues to support this measure, the rule and the legislation.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to read a couple of cases here.

Mrs. Higgins of Tennessee was a 39-year-old woman who died of a sudden heart attack after taking Vioxx. She was the mother of a 9-year-old son. When she was diagnosed with the early onset of rheumatoid arthritis, Vioxx was prescribed. She had no former cardiac problems or family history. According to her medical records, Mrs. Higgins was in otherwise excellent health; but on September 25, 2004, she died of a sudden heart attack, less than a month after she started taking Vioxx. She was buried on the very day in September that Merck took Vioxx off the market.

On October 28, 2004, her husband, Monty, filed a claim against Merck in the Superior Court of New Jersey, Atlantic City Division.

Why New Jersey? This couple is from Tennessee. Because that is the State where Merck is headquartered. In an interview on ''60 Minutes,'' Mr. Higgins said, ''I believe my wife would be here if Merck had decided to take Vioxx off the market just 1 month earlier.''

Then there is Richard ''Dickie'' Irvin of Florida who was a 53-year-old former football coach and president of the Athletic Booster Association. He had received his college football scholarship and was inducted into the school's football hall of fame. He went on to play in Canadian league football until suffering a career-ending injury. In addition to coaching, he worked at a family-owned seafood shop where he was constantly moving crates of seafood. He rarely went to see a doctor and had no major medical problems.

In April of 2001, Mr. Irvin was prescribed Vioxx for his football knee injury from years ago. Approximately 23 days after he began taking Vioxx, Mr. Irvin died from a sudden, unexpected heart attack. An autopsy revealed that his heart attack was caused by a sudden blood clot. This is the exact type of injury that has been associated with Vioxx use. Mr. Irvin and his wife of 31 years had four children and three grandchildren.

I could read more cases involving Vioxx, but most people in this House, Mr. Speaker, probably agree with me that Merck should be held accountable if they knew about the harmful effects of Vioxx.

The class action section of this bill, however, would allow Merck and other corporate defendants to delay their day of reckoning for years and years and years; and justice for these individuals' families would be delayed; and justice delayed is justice denied. Again, this bill should be defeated.

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

Mr. GINGREY. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman from Georgia (Mr. GINGREY) has 10 minutes remaining.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Massachusetts (Mr. MCGOVERN) presented that case; and I want to present the real crux of this problem, and let me read a suit, Shields, et al v. Bridgestone/Firestone, Incorporated in Texas, a suit in Texas.

This suit involves customers who had Firestone tires that were among those that the National Highway Traffic Safety Administration investigated or recalled but who did not suffer any personal injury or property damage. After a Federal appeals court rejected class certification, plaintiffs' counsel and Firestone negotiated a settlement which has now been approved by a Texas State court. Under the settlement, the company has agreed to redesign certain tires, a move that was already underway irrespective of the suit, and to develop a 3-year consumer education and awareness campaign, but the members of the class received nothing. The lawyers, they got $19 million.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a former member for 4 years of the Committee on the Judiciary and an original co-sponsor of H.R. 1115.

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

Ms. HART. Mr. Speaker, I would like to thank the gentleman for the opportunity to speak on this bill today. He has been leading a very important discussion and one that I am very pleased has finally come to fruition.

Mr. Speaker, there has been a lot of discussion today about class actions and what they do to the economy; class actions, what they have done to law, because State courts are making national law. But I think the most important point about a class action is that a class action's purpose is to award the plaintiffs who have been injured. The intent of these suits is to allow large groups who were similarly harmed by something to recover damages.

Unfortunately, it is the attorneys who have been recovering more money. The injured plaintiffs in many cases are recovering basically nothing. First, they are denied real relief, and then the attorneys pocket huge amounts of money. Examples, Bank of Boston case, the lawyers got 8.5 million. The plaintiffs actually lost money. In the Blockbuster case, the lawyers, 9.25 million. The plaintiffs got $1 off their next movie. The Coca-Cola case, the lawyers got 1.5 million; the plaintiffs, a 50-cent coupon.

Obviously, these lawsuits are not helping their intended beneficiaries. This act will create a consumer class action bill of rights. It will protect consumers from the egregious abuses of the class action practice today. The plan will require the judges carefully review the settlement and limit the attorneys fees when the value of the settlement received by those class members is minor in comparison or when there is a net loss in the settlement, such as this example where the class members could end up losing money.

It also will ban settlements that award some class members a large recovery because they live closer to the court. It will also allow Federal courts to maximize the benefit of class action settlements by requiring that unclaimed settlement funds be donated to charitable organizations.

Mr. Speaker, it is just obvious to me that this is a long-overdue bill. I encourage my colleagues to support it. I encourage my colleagues to ensure that the plaintiffs actually receive their due in these cases.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Let me close by saying, this bill is not about lawyers. It is about people, and it is about State governments and attorney generals being able to pass laws in their own States to better protect their people. And it is ironic and it is almost kind of laughable that the majority, which has made it a point to argue on behalf of States right, is basically turning its back on what States have done to protect their people.

The previous speaker talked about making sure that the plaintiffs got what they deserved. Well, we are concerned about making sure that the plaintiffs get their day in court. And under this bill it makes it more difficult, especially for low-wage workers, for people who are battling discrimination to be able to have their day in court.

The system clearly can be improved. Nobody is arguing that. What I am saying here is that the bill before us does not provide the justice and the fairness that I think is appropriate. So I would urge my colleagues to oppose this bill.

NATIONAL CONFERENCE
OF STATE LEGISLATURES,
February 2, 2005.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of the National Conference of State Legislatures (NCSL), I am urging you to oppose passage of S. 5, the ''Class Action Fairness Act of 2005.'' This legislation will federalize class actions involving only state law claims. S. 5 undermines our system of federalism, disrespects our state court system, and clearly preempts carefully crafted state judicial processes which have been in place for decades regarding the treatment of class action lawsuits. The overall tenor of S. 5 sends a disturbing message to the American people that state court systems are somehow inferior or untrustworthy.

S. 5 amends the Federal Rules of Civil Procedure to grant federal district courts original diversity jurisdiction over any class action lawsuit where the amount in controversy exceeds $5,000,000 or where any plaintiff is a citizen of a different state than any defendant, or in other words, any class action lawsuit. The effect of S. 5 on state legislatures is that state laws in the areas of consumer protection and antitrust which were passed to protect the citizens of a particular state against fraudulent or illegal activities will almost never be heard in state courts. Ironically, state courts, whose sole purpose is to interpret state laws, will be bypassed and the federal judiciary will be asked to render judgment in these cases. The impact of S. 5 is that state processes will be preempted by federal ones which aren't necessarily better.

NCSL opposes the passage of federal legislation, such as S. 5 which preempts established state authority. State courts have traditionally and correcdy been the repository for most class action lawsuits because state laws, not federal ones, are at issue. Congress should proceed cautiously before permitting the federal government to interfere with the authority of states to set their own laws and procedures in their own courts.

NCSL urges Congress to remember that state policy choices should not be overridden without a showing of compelling national need. We should await evidence demonstrating that states have broadly overreached or are unable to address the problems themselves. There must be evidence of harm to interests of national scope that require a federal response, and even with such evidence, federal preemption should be limited to remedying specific problems with tailored solutions, something that S. 5 does not do.

I urge you to oppose this legislation. Please contact Susan Parnas Frederick at the National Conference of State Legislatures at 202–624–3566 or *susan.frederick@ncsl.org* for further information.

Sincerely,

MICHAEL BLABONI,
New York State Senator; and Chair,
NCSL Law and Criminal Justice Committee.

Re environmental harm cases do not belong in class action bill.

FEBRUARY 7, 2005.

DEAR SENATOR: Our organizations are opposed to the sweepingly drawn and misleadingly named ''Class Action Fairness Act of 2005.'' This bill is patently unfair to citizens harmed by toxic spills, contaminated drinking water, polluted air and other environmental hazards involved in class action cases based on state environmental or public health laws. S. 5 would allow corporate defendants in many pollution class actions and ''mass tort'' environmental cases to remove these kinds of state environmental matters from state court to federal court, placing the cases in a forum that could be more costly, more time-consuming, and disadvantageous to your constituents harmed by toxic pollution. State law environmental harm cases do not belong in this legislation and we urge you to exclude such pollution cases from the class action bill.

Class actions protect the public's health and the environment by allowing people with similar injuries to join together for more efficient and cost-effective adjudication of their cases. All too often, hazardous spills, water pollution, or other toxic contamination from a single source affects large numbers of people, not all of whom may be citizens or residents of the same state as that of the defendants who caused the harm. In such cases, a class action lawsuit in state court based on state common law doctrines of negligence, nuisance or trespass, or upon rights and duties created by state statutes in the state where the injuries occur, is often the best way of fairly resolving these claims.

For example, thousands of families around the country are now suffering because of widespread groundwater contamination caused by the gasoline additive MTBE, which the U.S. government considers a potential human carcinogen. According to a May, 2002 GAO report, 35 states reported that they find MTBE in groundwater at least 20 percent of the time they sample for it, and 24 states said that they find it at least 60 percent of the time. Some communities and individuals have brought or soon will bring suits to recover damages for MTBE contamination and hold the polluters accountable, but under this bill, MTBE class actions or ''mass actions'' based on state law could be removed to federal court by the oil and gas companies in many of these cases.

This could not only make these cases more expensive, more time-consuming and more difficult for injured parties, but could also result in the dismissal of legitimate cases by federal judges who are unfamiliar with, or less respectful of, state-law claims. For example, in at least one MTBE class action, a federal court dismissed the case based on oil companies' claims that the action was barred by the federal Clean Air Act (even though that law contains no tort liability waiver for MTBE). Yet a California state court rejected a similar federal preemption argument and let the case go to a jury, which found oil refineries, fuel distributors, and others liable for damages. These cases highlight how a state court may be more willing to uphold legitimate state law claims. Other examples of state-law cases that would be weakened by this bill include lead contamination cases, mercury contamination, perchlorate pollution and other ''toxic tort'' cases.

In a letter to the Senate last year, the U.S. Judicial Conference expressed their continued opposition to such broadly written class action removal legislation. Notably, their letter states that, even if Congress determines that some ''significant multi-state class actions'' should be brought within the removal jurisdiction of the federal courts, Congress should include certain limitations and exceptions, including for class actions ''in which plaintiff class members suffered personal injury or personal property damage within the state, as in the case of a serious environmental disaster.'' The Judicial Conference's letter explains that this ''environmental harm'' exception should apply ''to all individuals who suffered personal injuries or losses to physical property, whether or not they were citizens of the state in question.''

We agree with the Judicial Conference that cases involving environmental harm are not even close to the type of cases that proponents of S. 5 cite when they call for reforms to the class action system. Including such cases in the bill penalizes injured parties in those cases for no reason other than to benefit the polluters. No rationale has been offered by the bill's supporters for including environmental cases in S. 5's provisions. We are unaware of any examples offered by bill supporters of environmental harm cases that represent alleged abuses of the state class actions.

More proof of the overreaching of this bill is that the so-called ''Class Action Fairness Act'' is not even limited to class action cases. The bill contains a provision that would allow defendants to remove to federal court all environmental ''mass action'' cases involving more than 100 people—even though these cases are not even filed as class actions. For example, the bill would apply to cases similar to the recently concluded state-court trial in Anniston, Alabama, where a jury awarded damages to be paid by Monsanto and Solutia for injuring more than 3,500 people that the jury found had been exposed over many years—with the companies' knowledge—to cancer-causing PCBs.

There is little doubt in the Anniston case that, had S. 5 been law, the defendants would have tried to remove the case from the state court that serves the community that suffered this devastating harm. Even in the best-case scenario, S. 5 would put plaintiffs like those in Anniston in the position of having to fight costly and time-consuming court battles in order to preserve their chosen forum for litigating their claims. In any case, it would reward the kind of reckless corporate misbehavior demonstrated by Monsanto and Solutia by giving defendants in such cases the right to remove state-law cases to federal court over the objections of those they have injured.

The so-called ''Class Action Fairness Act'' would allow corporate polluters who harm the public's health and welfare to exploit the availability of a federal forum whenever they perceive an advantage to doing so. It is nothing more than an attempt to take legitimate state-court claims by injured parties out of state court at the whim of those who have committed the injury.

Cases involving environmental harm and injury to the public from toxic exposure should not be subject to the bill's provisions; if these environmental harm cases are not excluded, we strongly urge you to vote against S. 5.

Sincerely,

S. Elizabeth Birnbaum, Vice President for Government Affairs, American Rivers.

Doug Kendall, Executive Director, Community Rights Counsel.

Mary Beth Beetham, Director of Legislative Affairs, Defenders of Wildlife.

Sara Zdeb, Legislative Director, Friends of the Earth.

Anne Georges, Acting Director of Public Policy, National Audubon Society.

Karen Wayland, Legislative Director, Natural Resources Defense Council.

Tom Z. Collina, Executive Director, 20/20 Vision.

Linda Lance, Vice President for Public Policy, The Wilderness Society.

Paul Schwartz, National Campaigns Director, Clean Water Action.

James Cox, Legislative Counsel, Earthjustice.

Ken Cook, Executive Director, Environmental Working Group.

Rick Hind, Legislative Director, Toxics Campaign, Greenpeace U.S.

Kevin S. Curtis, Vice President, National Environmental Trust.

Ed Hopkins, Director, Environmental Quality Programs, Sierra Club.

Julia Hathaway, Legislative Director, The Ocean Conservancy.

Anna Aurilio, Legislative Director, U.S. Public Interest Research Group.

Mr. MCGOVERN. Mr. Speaker, I yield back the balance of my time.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a fair rule for legislation that will help restore fairness and common sense to the current class action system.

Like H.R. 1115, which overwhelmingly passed the House last Congress, S. 5 expands Federal diversity jurisdiction over interstate class actions in a manner consistent with the framers' constitutional intent that Federal court preside over controversies between citizens of different States. S. 5 also protects consumers from these bogus coupon settlements that reward trial lawyers with millions in windfall fees while clients who never hired them get coupons in the mail.

Mr. Speaker, I want to call attention to this slide before me. This is from the Washington Post, November of 2002. The Washington Post is not exactly the most conservative newspaper in the country: ''The clients get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix.''

□ 1215

The Senate's overwhelming passage of S. 5 by a vote of 72 to 26 just last week reflects a strong bipartisan consensus in favor of reforming a class-action system that is prone to systematic abuse. Of those 26, 18 were Democrats, and each one of those provisions in that amendment in the nature of a substitute were offered in the Senate, and each one of them were voted down in a bipartisan fashion.

I think we all, in both the Senate and the House, and both Republicans and Democrats, we want to do the right thing here, and we want to make sure that, as the Washington Post says, that we eliminate this extortion racket and bring some fairness to this class-action system. After all, it is the injured person, it is the plaintiff that deserves a fair and just settlement, and it should not be just a lottery windfall for lawyers who venue shop, looking for places like, and we have heard it during this hour's discussion, Madison County, Illinois, the epicenter of this class-action lawsuit abuse. What happens in Madison County, Illinois, affects the whole country.

So I encourage my colleagues to vote for the rule, vote for S. 5 tomorrow.

Mr. Speaker, I yield back the remaining portion of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

BROADCAST DECENCY ENFORCEMENT ACT OF 2005

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the pending business is the vote on ordering the previous question on House Resolution 95, on which the yeas and nays were ordered

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 230, nays 198, not voting 5, as follows:

[Roll No. 34]

YEAS—230

Aderholt	Boehlert	Calvert
Akin	Boehner	Camp
Alexander	Bonilla	Cannon
Bachus	Bonner	Cantor
Baker	Bono	Capito
Barrett (SC)	Boozman	Carter
Bartlett (MD)	Boustany	Castle
Barton (TX)	Bradley (NH)	Chabot
Bass	Brady (TX)	Chocola
Beauprez	Brown (SC)	Coble
Biggert	Brown-Waite, Ginny	Cole (OK)
Bilirakis	Burgess	Conaway
Bishop (UT)	Burton (IN)	Cox
Blackburn	Buyer	Crenshaw
Blunt		Cubin