Unfortunately, the defenders of the status quo in education succeeded in turning the President's original vision for education reform into a huge increase in the Federal Government's role in our local schools and, regrettably, they are at it again, as No Child Left Behind II, with national testing for high school students, comes to Congress.

The American people have always known the government that governs least governs best in those functions of government closest to the family. However well-intentioned, one more unfunded mandate from Washington, D.C. will not cure what ails our local schools. Resources that promote reform through competition and school choice will.

There is nothing that ails our local schools that parents and teachers of America cannot solve with the resources and the freedom to choose. Let us say no to more national testing. Let us say no to No Child Left Behind II.

## CLASS ACTION FAIRNESS ACT OF 2005

Mr. SENSENBRENNER. Madam Speaker, pursuant to House Resolution 96, I call up the Senate 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, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mrs. CAPITO). Pursuant to House Resolution 96, the bill is considered as read.

The text of S. 5 is as follows:

S. 5

*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 2005''.

(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.—Congress finds the following:

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

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

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

(B) adversely affected interstate commerce; and

(C) undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where—

(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

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

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

(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—

(A) keeping cases of national importance out of Federal court;

(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.

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

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

(2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

(3) 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. Definitions**

''In this chapter:

''(1) CLASS.—The term 'class' means all of the class members in a class action.

''(2) CLASS ACTION.—The term 'class action' means any civil action filed in a district court of the United States under 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 under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.

''(3) 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.

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

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

''(6) PROPOSED SETTLEMENT.—The term 'proposed settlement' means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

**''§ 1712. Coupon settlements**

''(a) CONTINGENT FEES IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

''(b) OTHER ATTORNEY'S FEE AWARDS IN COUPON SETTLEMENTS.—

''(1) IN GENERAL.—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney's fee to be paid to class counsel, any attorney's fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

''(2) COURT APPROVAL.—Any attorney's fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney's fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees.

''(c) ATTORNEY'S FEE AWARDS CALCULATED ON A MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

''(1) that portion of the attorney's fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

''(2) that portion of the attorney's fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

''(d) SETTLEMENT VALUATION EXPERTISE.—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

''(e) JUDICIAL SCRUTINY OF COUPON SETTLEMENTS.—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys' fees under this section.

**''§ 1713. 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 substantially outweigh the monetary loss.

**"§ 1714. 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.

**"§ 1715. Notifications to appropriate Federal and State officials**

''(a) DEFINITIONS.—

''(1) APPROPRIATE FEDERAL OFFICIAL.—In this section, the term 'appropriate Federal official' means—

''(A) the Attorney General of the United States; or

''(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

''(2) APPROPRIATE STATE OFFICIAL.—In this section, the term 'appropriate State official' means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

''(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

''(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

''(2) notice of any scheduled judicial hearing in the class action;

''(3) any proposed or final notification to class members of—

''(A)(i) the members' rights to request exclusion from the class action; or

''(ii) if no right to request exclusion exists, a statement that no such right exists; and

''(B) a proposed settlement of a class action;

''(4) any proposed or final class action settlement;

''(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

''(6) any final judgment or notice of dismissal;

''(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or

''(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

''(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

''(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

''(1) FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

''(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

''(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

''(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

''(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member demonstrates that the notice required under subsection (b) has not been provided.

''(2) LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

''(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.''.

(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 FOR 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 under 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 1 or more representative persons as a class action;

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

''(D) the term 'class members' means the persons (named or unnamed) 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 $5,000,000, 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) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

''(A) whether the claims asserted involve matters of national or interstate interest;

''(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

''(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

''(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

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

''(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

''(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

''(A)(i) over a class action in which—

''(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

''(II) at least 1 defendant is a defendant—

''(aa) from whom significant relief is sought by members of the plaintiff class;

''(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

''(cc) who is a citizen of the State in which the action was originally filed; and

''(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

''(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

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

''(5) Paragraphs (2) through (4) shall not apply to any class action in which—

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

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

''(6) 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 $5,000,000, exclusive of interest and costs.

''(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

''(8) 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.

''(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

''(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

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

''(C) 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 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

''(10) For purposes of this subsection and section 1453, 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.

''(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

''(B)(i) As used in subparagraph (A), the term 'mass action' means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

''(ii) As used in subparagraph (A), the term 'mass action' shall not include any civil action in which—

''(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

''(II) the claims are joined upon motion of a defendant;

''(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

''(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

''(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

''(ii) This subparagraph will not apply—

''(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

''(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

''(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting ''subsection (a) or (d) of'' before ''section 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' shall have the meanings given such terms under section 1332(d)(1).

''(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(b) shall not apply), 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 by any defendant without the consent of all defendants.

''(c) REVIEW OF REMAND ORDERS.—

''(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

''(2) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

''(3) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

''(A) all parties to the proceeding agree to such extension, for any period of time; or

''(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

''(4) DENIAL OF APPEAL.—If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

''(d) EXCEPTION.—This section shall not apply to any class action that solely involves—

''(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

''(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 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).''.

(b) 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. REPORT ON CLASS ACTION SETTLEMENTS.**

(a) IN GENERAL.—Not later than 12 months after the date of 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 the House of Representatives a report on class action settlements.

(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 that 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 attorneys' fees.

**SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE RECOMMENDATIONS.**

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

**SEC. 8. RULEMAKING AUTHORITY OF SUPREME COURT AND JUDICIAL CONFERENCE.**

Nothing in this Act shall restrict in any way the authority of the Judicial Conference and the Supreme Court to propose and prescribe general rules of practice and procedure under chapter 131 of title 28, United States Code.

**SEC. 9. EFFECTIVE DATE.**

The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.

The SPEAKER pro tempore. After 90 minutes of debate on the bill, it shall be in order to consider the amendment in the nature of a substitute printed in House Report 109–7, if offered by the gentleman from Michigan (Mr. CONYERS) or his designee, which shall be considered read and shall be debatable for 40 minutes equally divided and controlled by the proponent and opponent.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 45 minutes of debate on the bill.

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

GENERAL LEAVE

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

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

There was no objection.

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

Madam Speaker, I rise in strong support of S. 5, the Class Action Fairness Act of 2005. Today marks the culmination of nearly a decade of legislative efforts to end systematic abuse of our Nation's class action system. We stand on the cusp of sending landmark legislation on civil-justice reform to the President that has been approved by increasing majorities each time it has been considered by the House in each of the last three Congresses and which passed the other body last week with an overwhelming majority of 72 votes.

Since these reforms were first proposed, the magnitude of the class action crisis, the need to address it has become more and more urgent. The crisis now threatens the integrity of our civil justice system and undermines the economic vitality upon which job creation depends.

A major element of the worsening crisis is the exponential increase in State class action cases in a handful of ''magnet'' or ''magic'' jurisdictions, many of which deal with national issues in classes. In the last 10 years, State court class actions filings nationwide have increased over 1,315 percent. The infamous handful of magnet courts known for certifying even the most speculative class action suits, the increase in filings now exceeds 5,000 percent. The only explanation for this phenomenon is aggressive forum shopping by trial lawyers to find courts and judges who will act as willing accomplices in a judicial power grab, hearing nationwide cases and setting policy for the entire country.

A second major feature of the present class action crisis is a system producing outrageous settlements that benefit only lawyers and trample the rights of class members. Class actions were originally created to efficiently address a large number of similar claims by people suffering small harms. Today they are too often used to efficiently transfer the large fees to a small number of trial lawyers, with little benefit to the plaintiffs.

The present rules encourage a race to any available State courthouse in the hopes of a rubber-stamped nationwide settlement that produces millions in attorney's fees for the winning plaintiff's attorney. The race to settle produces outcomes that favor expediency and profits for lawyers over justice and fairness for consumers. The losers in this race are the victims who often gain little or nothing through the settlement, yet are bound by it in perpetuity. And all Americans bear the cost of these settlements through increased prices for goods and services.

The bill before the House today offers commonsense procedural changes that will end the most serious abuses by allowing more interstate class actions to be heard in Federal courts while keeping truly local cases in State courts. Its core provisions are similar to those passed by this body in the last three Congresses. S. 5 also implements a consumer bill of rights that will keep class members from being used by the lawyers they never hired to engage in litigation they do not know about or to extort money they will never see.

Madam Speaker, when the House considered this important reform in the last Congress, I remarked that, ''The class action judicial system has become a joke, and no one is laughing except the trial lawyers . . . all the way to the bank.''

I imagine that laughter turned to nervous chuckles when S. 5 emerged unscathed from the gauntlet in the other body with 72 votes last week. Today, as the House prepares to pass this bill, I suspect you could hear a pin drop in the halls of infamous courthouses located in Madison County, Illinois and Jefferson County, Texas, where for so long the good times have rolled for forum-shopping plaintiffs' attorneys and the judges who enable them. And when this legislation is signed by the President one day soon, those same halls may echo with sobs and curses because this time justice and fairness and the American people will have the last laugh.

Madam Speaker, after years of toil, the moment has arrived. The opportunity to restore common sense, rationality, and dignity to our class action system is now before us, and the need for reform has never been more certain. I urge my colleagues to support the Class Action Fairness Act of 2005.

Madam Speaker, I reserve the balance of my time.

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

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

Madam Speaker, with the consideration of this legislation, the majority begins their assault on our Nation's civil justice system. Today we will attempt to preempt State class actions. Next month we will take up a bankruptcy bill that massively tilts the playing field in favor of credit card companies and against ordinary consumers and workers alike. On deck and pending are equally one-sided medical malpractice bills and asbestos bills that both cap damages and eliminate liability to protect some of the most egregious wrongdoers in America.

The majority's assault on victims and consumers is unprecedented in its scope and stunning in its breadth. Collectively, these measures will close the courthouse doors on millions of Americans harmed by intentional wrongdoing, negligence, and fraud. And so, long after the 109th Congress has forgotten, American consumers and workers will be paying the price for these special interest bills through needless injuries and uncompensated harm.

This legislation will remove class actions involving State law issues from State courts, the forum most convenient for victims of wrongdoing and with the judges most familiar with the substantive law, and this legislation will move it to the Federal courts where the case will take far longer to resolve and is far less likely to be certified.

Now, you do not need to take my word for it. Let us just ask big business itself. The Nation's largest bank, Citicorp admits ''the practical effect (of the bill will) be that many cases will never be heard. Federal judges facing overburdened dockets and ambiguities about applying State laws in a Federal court, often refuse to grant standing to class action plaintiffs.''

Forbes Magazine writes, ''The legislation will . . . make it more difficult for plaintiffs to prevail, since . . . federal courts are . . . less open to considering . . . class action claims.''

Passage of this legislation would be particularly devastating for civil rights cases and labor law cases. As the Lawyers Committee For Civil Rights Under The Law explained, ''The consequences of the legislation for civil rights class actions . . . will be astounding and, in our view, disastrous. Redirecting State law class actions to the Federal courts will choke Federal court dockets and delay or foreclose the timely and effective determination of Federal (civil rights) cases.''

Since the November election we have heard a lot of talk about values, and that is fine; but will someone during this discourse today tell me where the value is in denying senior citizens who suffered heart attacks because they took Vioxx for their arthritis? Where is the morality in preventing poor workers from joining together to obtain compensation when unscrupulous employers pay them slave-labor wages?

Where is the righteousness in telling victims of discrimination that they will have to wait years for a Federal court to consider violations of their own State laws?

If we have learned anything from the Enron, TYCO, Firestone, and other legal debacles, it is that our citizens need more protection against wrongdoers in our society, not less. And yet the class action bill before us takes us in precisely the opposite direction.

The House should reject this one-sided, anti-consumer and anti-civil rights legislation.

Madam Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. BOUCHER) to show the breadth of the bipartisan support of this legislation.

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

Mr. BOUCHER. Madam Speaker, I thank the gentleman from Wisconsin (Mr. SENSENBRENNER) for yielding me time.

Madam Speaker, I am pleased to rise this morning in support of the bill before us. In the two decades that I have been privileged to serve in the House, the class action measure that is before us today is the most modest litigation reform that has been debated, and it strikes in a narrow and appropriate way at an egregious abuse of justice.

The bill before us makes procedural changes only. There are no restrictions on the substantive rights of plaintiffs. There are no caps on damages. There is no elimination on the rights of plaintiffs to recover.

The bill simply permits the removal to Federal courts of class actions that are truly national in scope, with plaintiffs living across the Nation and the large corporate defendant, even if the current diversity of citizenship rules are not strictly met.

This change is much needed. Cases that are truly national in scope are being filed as State class actions before certain favored judges who employ an almost ''anything goes'' approach that remedies virtually any controversy subject to certification as a class action. Once certification occurs, there is then a rush to settle the cases. The lawyer who filed the case makes an offer that is hard for the corporate defendant to refuse.

□ 1030

He asks for large fees in the millions of dollars for himself and coupons for the plaintiff class members that he represents. Rather than go through years of expensive litigation, the defendant settles. The judge who certified the class quickly approves the settlement. The lawyer who filed the case gets rich. The plaintiff class members get virtually nothing.

That is the problem that this bill is designed to address. It permits the removal of these national cases to the Federal court in the State in which the State class action has been filed.

In the Federal court, the rights of plaintiffs will be more carefully observed. Any settlement involving noncash compensation will be carefully reviewed to assure that it is fair. Under the bill, cases that are local in scope will remain in the State court where they are initially filed.

I want to commend the gentleman from Virginia (Mr. GOODLATTE) for the thoughtful leadership that he has provided in steering this measure to the point of passage today. The gentleman from Virginia (Mr. GOODLATTE) has exhibited both foresight and patience and as chief sponsor of the bill through three Congresses deserves tremendous credit for the success that we are now on the brink of achieving.

I also want to commend the gentleman from Wisconsin (Mr. SENSENBRENNER) for the wise course that he has followed as chairman of the House Committee on the Judiciary in permitting the Senate to act in advance of our action today.

I want to commend our former House colleague, Senator Tom Carper, for the outstanding work he performed in negotiating changes to the measure which resulted in 72 Members of the Senate voting to approve this reform.

I hope the House will also lend its support to this reform.

Mr. CONYERS. Madam Speaker, I yield myself as much time as I may consume.

The gentleman from Virginia (Mr. BOUCHER) is a dear friend of mine, and I merely want to take one observation that he made, that this is just a procedural process and that there is no substantive changes, but I say to him, if the legal system is rigged and the rules are stacked against you, you never have to get to the substance; you do not even get your day in court.

That is the problem with this bill. It is a procedural process that prevents people from bringing actions in State courts, and we are sending it to the Federal courts when both the Federal judiciary has spoken against this measure and the State judges have spoken against this measure as well. I think that that should be a very instructive criticism against this bill.

The proposal before us is opposed by both State and Federal judiciaries. It is opposed by the National Council of State Legislatures; consumers and public interest groups, including Public Citizen, the Consumers Federation of America, the Consumers Union, the United States PIRG; a coalition of environmental advocates; health advocates, including the Campaign for Tobacco Free Kids; civil rights groups such as the Alliance for Justice, the Leadership Conference on Civil Rights, the National Association for the Advancement of Colored People, and the Lawyers' Committee for Civil Rights and labor such as the American Federation of Labor-Congress of Industrial Organizations, AFL–CIO.

This legislation is also opposed by many of the Nation's editorial boards in the newspaper business. A New York Times editorial board just this weekend wrote this about the measure that is before the House today: ''Instead of narrowly focusing on real abuses of the system, the measure 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 the sort of propagandistic title normally assigned to such laws, the Class Action Fairness Act, will be to funnel nearly all major class action lawsuits out of State courts and into already 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.''

Madam Speaker, I reserve the balance of my time.

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

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

Mr. SENSENBRENNER. Madam Speaker, first, I have a lengthy additional statement explaining how this bill is to work. We do not have the time in general debate for me to give this statement on the floor, so I will insert the statement relative to the intent of the managers of the bill in the RECORD at this point.

Madam Speaker, I would like to provide a brief summary of the provisions in Sections 4 and 5 of S. 5, the Class Action Fairness Act of 2005. Section 4 gives Federal courts jurisdiction over class action lawsuits in which the aggregate amount in controversy exceeds $5 million, and at least one plaintiff and one defendant are diverse. Overall, new section 1332(d) is intended to expand substantially Federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong preference that interstate class actions should be heard in a Federal court if removed by any defendant. If a purported class action is removed under these jurisdictional provisions, the named plaintiff(s) should bear the burden of demonstrating that the removal was improper. And if a Federal court is uncertain about whether the $5 million threshold is satisfied, the court should err in favor of exercising jurisdiction over the case.

The Sponsors intend that in a case seeking injunctive relief, a matter be subject to Federal jurisdiction under this provision if the value of the matter in litigation exceeds $5 million either from the viewpoint of the plaintiff or the defendant, and regardless of the type of relief sought (e.g., damages, injunctive relief, or declaratory relief). Similarly, in assessing the jurisdictional amount in declaratory relief cases, the Federal court should include in its assessment the value of all relief and benefits that would logically flow from granting the declaratory relief sought by the claimants. For example, a declaration that a defendant's conduct is unlawful or fraudulent will carry certain consequences, such as the need to cease and desist from that conduct, that will often ''cost''

the defendant in excess of $5 million. In addition, the law is clear that, once a Federal court properly has jurisdiction over a case removed to Federal court, subsequent events cannot ''oust'' the Federal court of jurisdiction. While plaintiffs can seek to avoid Federal jurisdiction by defining a proposed class in particular ways, they lose that power once the case was properly removed.

New subsections 1332( d)(3) and (d)(4)(B) address the jurisdictional principles that will apply to class actions filed against a defendant in its home State, dividing such cases into three categories. First, for cases in which two-thirds or more of the members of the plaintiff class and the primary defendants are citizens of the State in which the suit was filed, subsection 1332(d)(4)(B) states that such cases will remain in State court. Second, cases in which more than two-thirds of the members of the plaintiff class or one or more of the primary defendants are not citizens of the forum State will be subject to Federal jurisdiction since such cases are predominantly interstate in nature. Finally, there is a middle category of class actions in which more than one-third but fewer than two-thirds of the members of the plaintiff class and the primary defendants are all citizens of the State in which the action was filed. In such cases, the numbers alone may not always confirm that the litigation is more fairly characterized as predominantly interstate in character. New subsection 1332(d)(3) therefore gives Federal courts discretion, in the ''interests of justice,'' to decline to exercise jurisdiction over such cases based on the consideration of five factors.

First, the court should consider whether the claims asserted are of ''significant national or interstate interest.'' Under this factor, if a case presents issues of national or interstate significance, that argues in favor of the matter being handled in Federal court. Second, the court should consider whether the claims asserted will be governed by laws other than those of the forum State. Under this factor, if the Federal court determines that multiple State laws will apply to aspects of the class action, that determination would favor having the matter heard in the Federal court system, which has a record of being more respectful of the laws of the various States in the class action context. The third factor is whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction. The purpose of this inquiry is to determine whether the plaintiffs have proposed a ''natural'' class that encompasses all of the people and claims that one would expect to include in a class action, as opposed to proposing a class that appears to be gerrymandered solely to avoid Federal jurisdiction by leaving out certain potential class members or claims. If the Federal court concludes evasive pleading is involved, that factor would favor the exercise of Federal jurisdiction. The fourth factor considers whether there is a ''distinct'' nexus between: (a) The forum where the action was brought, and (b) the class members, the alleged harm, or the defendants. This factor is intended to take account of a major concern that led to this legislation—the filing of lawsuits in out-of-the-way ''magnet'' State courts that have no real relationship to the controversy at hand. Thus, for example, if the majority of proposed class members and the defendant reside in the county where the suit is brought, the court might find a distinct nexus exists.

The fifth factor asks whether the number of citizens of the forum State in the proposed plaintiff class(es) is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class(es) is dispersed among a substantial number of States. If all of the class members who do not reside in the State where the action was filed are widely dispersed among many other States, that point would suggest that the interests of the forum State in litigating the controversy are preeminent. However, if a court finds that the citizenship of the other class members is not widely dispersed, the opposite balance would be indicated and a Federal forum would be favored. Finally, the sixth factor is whether one or more class actions asserting the same or similar claims on behalf of the same or other persons have been filed in the last three years. The purpose of this factor is efficiency and fairness: To determine whether a matter should be subject to Federal jurisdiction so that it can be coordinated with other overlapping or parallel class actions. If other class actions on the same subject have been (or are likely to be) filed elsewhere, the Sponsors intend that this consideration would strongly favor the exercise of Federal jurisdiction. It is the Sponsors' intention that this factor be interpreted liberally and that plaintiffs not be able to plead around it with creative legal theories. If a plaintiff brings a product liability suit alleging consumer fraud or unjust enrichment, and another suit was previously brought against some of the same defendants alleging negligence with regard to the same product, this factor would favor the exercise of Federal jurisdiction over the later-filed claim.

New subsection 1332(d)(4)(A) is the ''Local Controversy Exception.'' This subsection prohibits Federal courts from exercising diversity jurisdiction over a class action under the foregoing provisions if the plaintiffs clearly demonstrate that each and every one of the following criteria are satisfied in the case at issue. First, more than two-thirds of class members are citizens of the forum State. Second, there is at least one in-State defendant from whom significant relief is sought by members of the class and whose conduct forms a significant basis of plaintiffs' claims. Third, the principal injuries resulting from the alleged conduct, or related conduct, of each defendant were incurred in the State where the action was originally filed. And fourth, no other class action asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons has been filed during the preceding three years.

This provision is intended to respond to concerns that class actions with a truly local focus should not be moved to Federal court under this legislation because State courts have a strong interest in adjudicating such disputes. At the same time, this is a narrow exception that was carefully drafted to ensure that it does not become a jurisdictional loophole. Thus, in assessing whether each of these criteria is satisfied by a particular case, a Federal court should bear in mind that the purpose of each of these criteria is to identify a truly local controversy—a controversy that uniquely affects a particular locality to the exclusion of all others. For example, under the second criterion, there must be at least one real local defendant. By that, the Sponsors intend that the local defendant must be a primary focus of the plaintiffs' claims—not just a peripheral defendant. The local defendant must be a target from whom significant relief is sought by the class (as opposed to just a subset of the class membership), as well as being a defendant whose alleged conduct forms a significant basis for the claims asserted by the class. Similarly, the third criterion is that the principal injuries resulting from the actions of all the defendants must have occurred in the State where the suit was filed. By this criterion, the Sponsors mean that all or almost all of the damage caused by defendants' alleged conduct occurred in the State where the suit was brought. The purpose of this criterion is to ensure that this exception is used only where the impact of the misconduct alleged by the purported class is localized. For example, a class action in which local residents seek compensation for property damage resulting from a chemical leak at a manufacturing plant in that community would fit this criterion, provided that the property damage was limited to residents in the vicinity of the plant. However, if the defendants engaged in conduct that could be alleged to have injured consumers throughout the country or broadly throughout several States (such as an insurance or product case), the case would not qualify for this exception, even if it were brought only as a single-State class action.

The fourth and final criterion is that no other class action involving similar allegations has been filed against any of the defendants over the last three years on behalf of the same or other persons. Once again, the Sponsors wish to stress that the inquiry under this criterion should not be whether identical (or nearly identical) class actions have been filed. Rather, the inquiry is whether similar factual allegations have been made against the defendant in multiple class actions, regardless of whether the same causes of actions were asserted or whether the purported plaintiff classes were the same (or even overlapped in significant respects).

New subsections 1332(d)(5)(A) and (B) specify that S. 5 does not extend Federal diversity jurisdiction to class actions in which (a) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief, or (b) the number of members of all proposed plaintiff classes in the aggregate is fewer than 100 class members. The purpose of the ''State action'' cases provision is to prevent States, State officials, or other governmental entities from dodging legitimate claims by removing class actions to Federal court and then arguing that the Federal courts are constitutionally prohibited from granting the requested relief. However, Federal courts should proceed cautiously before declining Federal jurisdiction under the ''State action'' case exception, and do so only when it is clear that the primary defendants are indeed States, State officials, or other governmental entities against whom the ''court may be foreclosed from ordering relief.'' The Sponsors wish to stress that this provision should not become a subterfuge for avoiding Federal jurisdiction. In particular, plaintiffs should not be permitted to name State entities as defendants as a mechanism to avoid Federal jurisdiction over class actions that largely target non-governmental defendants. The Sponsors intend that ''primary defendants'' be interpreted

to reach those defendants who are the real "targets" of the lawsuit—i.e., the defendants that would be expected to incur most of the loss if liability is found. It is the Sponsors' intention with regard to each of these exceptions that the party opposing Federal jurisdiction shall have the burden of demonstrating the applicability of an exemption.

The Sponsors understand that in assessing the various criteria established in all of these new jurisdictional provisions, a Federal court may have to engage in some fact-finding, not unlike what is necessitated by the existing jurisdictional statutes. The Sponsors further understand that in some instances, limited discovery may be necessary to make these determinations. However, the Sponsors caution that these jurisdictional determinations should be made largely on the basis of readily available information. Allowing substantial, burdensome discovery on jurisdictional issues would be contrary to the intent of these provisions to encourage the exercise of Federal jurisdiction over class actions.

Under new subsection 1332(d)(9), the Act excludes from its jurisdictional provisions class actions that solely involve claims that relate to matters of corporate governance arising out of State law. The purpose of this provision is to avoid disturbing in any way the Federal vs. State court jurisdictional lines already drawn in the securities litigation class action context by the enactment of the Securities Litigation Uniform Standards Act of 1998. The Sponsors intend that this exemption be narrowly construed. By corporate governance litigation, the Sponsors mean only litigation based solely on (a) State statutory law regulating the organization and governance of business enterprises such as corporations, partnerships, limited partnerships, limited liability companies, limited liability partnerships, and business trusts; (b) State common law regarding the duties owed between and among owners and managers of business enterprises; and (c) the rights arising out of the terms of the securities issued by business enterprises.

New subsection 1332(d)(11) expands Federal jurisdiction over mass actions—suits that are brought on behalf of numerous named plaintiffs who claim that their suits present common questions of law or fact that should be tried together even though they do not seek class certification status. Mass action cases function very much like class actions and are subject to many of the same abuses. Under subsection 1332(d)(11), any civil action in which 100 or more named parties seek to try their claims for monetary relief together will be treated as a class action for jurisdictional purposes. The Sponsors wish to stress that a complaint in which 100 or more plaintiffs are named fits the criteria of seeking to try their claims together, because there would be no other apparent reason to include all of those claimants in a single action unless the intent was to secure a joint trial of the claims asserted in the action. The Sponsors also wish to stress that this provision is intended to mean a situation in which it is proposed or ordered that claims be tried jointly in any respect—that is, if only certain issues are to be tried jointly and the case otherwise meets the criteria set forth in this provision, the matter will be subject to Federal jurisdiction. However, it also should be noted that a mass action would not be eligible for Federal jurisdiction under this provision if any of several criteria are satisfied by the action, including (1) when all the claims asserted in the action arise out of an event or occurrence in the State where, the suit is filed and the injuries were incurred in that State and contiguous States (e.g., a toxic spill case) and (2) when the claims are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such an action.

The first exception would apply only to a truly local single event with no substantial interstate effects. The purpose of this exception is to allow cases involving environmental torts such as a chemical spill to remain in State court if both the event and the injuries were truly local, even though there are some out-of-State defendants. By contrast, this exception would not apply to a product liability or insurance case. The second exception also addresses a very narrow situation, specifically a law like the California Unfair Competition Law, which allows individuals to bring a suit on behalf of the general public.

Subsection 1332(d)(11)(B)(i) includes a statement indicating that jurisdiction exists only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under section 1332(a). It is the Sponsors' intent that although remands of individual claims not meeting the section 1332 jurisdictional amount requirement may take the action below the 100-plaintiff jurisdictional threshold or the $5 million jurisdictional amount requirement, those subsequent remands should not extinguish Federal diversity jurisdiction over the action as long as the mass action met the various jurisdictional requirements at the time of removal.

Under subsection 1332(d)(11)(C), a mass action removed to a Federal court under this provision may not be transferred to another Federal court under the MDL statute (28 U.S.C. §1407) unless a majority of the plaintiffs request such a transfer. The Sponsors wish to make clear that this restriction on MDL transfers applies only to mass actions as defined in subsection 1332(d)(11); the legislation does not more broadly restrict the authority of the Judicial Panel on Multidistrict Litigation to transfer class actions removed to Federal court under this legislation. Under subsection 1332(d)(11)(D), the statute of limitations for any claims that are part of a mass action will be tolled while the mass action is pending in Federal court.

The removal provisions in Section 5 of the legislation are self-explanatory and attempt to put an end to the type of gaming engaged in by plaintiffs' lawyers to keep cases in State court. They should thus be interpreted with this intent in mind. In addition, new subsection 1453(c) provides that an order remanding a class action to State court is reviewable by appeal at the discretion of the reviewing court. The Sponsors note that the current prohibition on remand order review was added to section 1447 after the Federal diversity jurisdictional statutes and the related removal statutes had been subject to appellate review for many years and were the subject of considerable appellate level interpretive law. The Sponsors believe it is important to create a similar body of clear and consistent guidance for district courts that will be interpreting this legislation and would particularly encourage appellate courts to review cases that raise jurisdictional issues likely to arise in future cases.

Thank you, Madam Speaker, for allowing me to provide an explanation of these jurisdictional provisions.

Madam Speaker, for purposes of engaging in a colloquy with the two gentlemen from Virginia (Mr. GOODLATTE) and (Mr. BOUCHER), I yield to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Madam Speaker, I thank the chairman very much for yielding.

Madam Speaker, the general principles behind S. 5 and many of the provisions in the legislation are similar to those in H.R. 1115, which the House passed in 2003, and S. 274, which was voted out of committee in the Senate in 2003 but did not ultimately pass.

To the extent these provisions are the same, the House Committee on the Judiciary's report on H.R. 1115 and the Senate Committee on the Judiciary's report on S. 274 reflect the intent and understanding of the committee and the sponsors as to the import of these provisions. However, there are several new provisions in S. 5 regarding Federal jurisdiction over class actions that were not included in prior versions of the legislation.

I would like to ask my colleague, the chairman of the Committee on the Judiciary, to provide an overview of the jurisdictional provisions in the legislation, and I would like to discuss the various exceptions included in the legislation and the intent of the sponsors with regard to these exceptions.

Mr. SENSENBRENNER. Madam Speaker, reclaiming my time, I appreciate the gentleman's question.

Section 4 of the bill gives Federal courts jurisdiction over class action lawsuits in which the matter in controversy exceeds the sum or value of $5 million, excluding interests and costs and at least one proposed class member and one defendant are citizens of different States or countries.

For purposes of the citizenship element of this analysis, S. 5 does not alter current law. Thus, a corporation will continue to be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. However, the bill provides that for purposes of this new section, and section 1453 of title 28, 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 organized. This provision is added to ensure that unincorporated associations receive the same treatment as corporations for purposes of diversity jurisdiction. New subsection 1332(d)(10) corrects this anomaly.

Mr. BOUCHER. Madam Speaker, will the gentleman yield?

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

Mr. BOUCHER. Madam Speaker, I thank the gentleman for yielding.

What about the amount-in-controversy component, the $5 million? Under current law, some Federal courts have determined the value for

requests for injunctive relief by considering the value to each individual plaintiff. Since that value is usually less than $75,000, these courts have kept such cases in State court. This is sometimes known as the plaintiff's viewpoint, defendant's viewpoint problem. Would the Chairman explain how the bill resolves this challenge?

Mr. SENSENBRENNER. Madam Speaker, reclaiming my time, under new subsection 1332(d)(6), the claims of the individual class members in any class action shall be aggregated to determine whether the amount in controversy exceeds the sum or value of $5 million. The sponsors intend this subsection to be interpreted broadly, and if a purported class action is removed under this provision, the plaintiff shall bear the burden of demonstrating that the $5 million threshold is not satisfied. By the same token, if a Federal court is uncertain about whether a case puts $5 million or more in controversy, the court should favor exercising jurisdiction over the case.

This principle applies to class actions seeking injunctive relief as well. The sponsors intend that a matter be subject to Federal jurisdiction under this provision if the value of the matter in litigation exceeds the $5 million, either from the viewpoint of the plaintiff or the viewpoint of the defendant, regardless of the type of relief sought, such as damages, injunctive relief or declaratory relief.

The sponsors are aware that some courts, especially in the class action context, have declined to exercise Federal jurisdiction over cases on the grounds that the amount in controversy in those cases exceeded the jurisdictional threshold only when assessed from the viewpoint of the defendant.

For example, a class action seeking injunctive relief that would require a defendant to restructure its business in some fundamental way might cost a defendant well in excess of $75,000 under current law, but might have substantially less value to each plaintiff or even to the class of plaintiffs as a whole. Because S. 5 explicitly allows aggregation for the purposes of determining the amount of controversy in class actions, that concern is no longer relevant.

To the extent plaintiffs seek to avoid this rule by framing their cases as individual actions for injunctive relief, most Federal courts have properly held that in an individual case the cost of injunctive relief is viewed from the defendant's perspective. This legislation extends that principle to class actions as well.

The same approach would apply in a case involving declaratory relief. In determining how much money a declaratory relief case puts in controversy, the Federal court should include in its assessment the value of all relief and benefits that would logically flow from the granting of the declaratory relief sought by the plaintiffs.

For example, a declaration that a defendant's conduct is unlawful or fraudulent will carry certain consequences, such as the need to cease and desist from that conduct that will often cost the defendant in excess of $5 million; or a declaration that a standardized product sold throughout the Nation is defective might well put a case over the $5 million threshold, even if the class complaint did not affirmatively seek a determination that each class member was injured by the product.

The bottom line is that new section 1332(d) is intended to substantially expand Federal court jurisdiction over class actions, not to create loopholes. This provision should be read broadly, with a strong preference that interstate class actions should be heard in a Federal court if properly removed by a defendant.

Mr. GOODLATTE. Madam Speaker, will the gentleman yield?

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

Mr. GOODLATTE. Madam Speaker, I would also like to discuss the home State exception in the legislation.

New subsections 1332(d)(3) and (d)(4)(B) address the jurisdictional principles that will apply to class actions filed against the defendant in its home State, dividing such cases into three categories.

First, for cases in which two-thirds or more of the members of the plaintiff class and the primary defendants are citizens of the State in which the suit was filed, section 1332(d)(4)(B) states that Federal jurisdiction will not be extended by S. 5. Such cases will remain in State courts.

Second, cases in which more than two-thirds of the members of the plaintiff class are not citizens of the State in which the action was filed will be subject to Federal jurisdiction. Federal courts should be able to hear such lawsuits because they have a predominantly interstate component. They affect people in many jurisdictions, and the laws of many States will be at issue.

Finally, there is a middle category of class actions in which more than one-third, but fewer than two-thirds, of the members of the plaintiff class and the primary defendants are all citizens of the State in which the action was filed. In such cases, the numbers alone may not always confirm that the litigation is more fairly characterized as predominantly interstate in character. New subsection 1332(d)(3), therefore, gives Federal courts discretion in the interests of justice to decline to exercise jurisdiction over such cases based on the consideration of five factors.

□ 1045

Madam Speaker, I would ask the chairman to explain these factors.

Mr. SENSENBRENNER. Reclaiming my time, Madam Speaker, I am pleased to answer the gentleman.

The first factor is whether the claims asserted are of significant national or interstate interest. Under this factor, if a case presents issues of national or interstate significance that argues in favor of the matter being handled in Federal Court, for example, if a class action alleges a nationally distributed pharmaceutical product caused side effects, those cases presumably should be heard in Federal court because of the nationwide ramifications of the dispute and the potential interface with Federal drug laws.

Under this factor, the Federal court should inquire whether the case does present issues of national or interstate significance of this sort. If such issues are identified, that point favors the exercise of the Federal jurisdiction.

The second factor is whether the claims asserted will be governed by laws other than those of the forum State. The sponsors believe that one of the significant problems posed by multistate class actions in State court is the tendency of some State courts to be less than respectful of the laws of other jurisdictions, applying the law of one State to an entire nationwide controversy and thereby ignoring the distinct and varying State laws that should apply to various claims included in the class, depending upon where they arose.

Under this factor, if the Federal court determines that multiple State laws will apply to aspects of the class action, the determination would favor having the matter handled in the Federal court system, which has a record of being more respectful of the laws of various States in the class action controversy. Conversely, if the court concludes that the laws of the State to which the action was filed will apply to the entire controversy, that factor will favor keeping the case in State court.

The third factor is whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction. The purpose of this inquiry is to determine whether the plaintiffs have proposed a natural class, a class that encompasses all the people and claims that one would expect to include in a class action, as opposed to proposing a class that appears to be gerrymandered solely to avoid Federal jurisdiction by leaving out certain potential class members or claims.

If the Federal court concludes that evasive pleading is involved, that factor would favor the exercise of Federal jurisdiction. On the other hand, if the class definition and claims appear to follow a natural pattern, that consideration would favor allowing the matter to be handled by a State court.

The fourth factor is whether there is a distinct nexus between, A, the forum where the action was brought, and, B, the class members, the alleged harm or the defendants. This factor is intended to take account of a major concern that led to this legislation, the filing of lawsuits in the out-of-the-way magnet State courts that have no real relationship to the controversy at hand.

Thus, if a majority of the proposed class action members and the defendants reside in the county where the suit is brought, the court might find a distinct nexus exists. The key to this factor is the notion of there being a distinct nexus. If the allegedly injured parties live in many other localities, the nexus is not distinct, and this factor would weigh heavily in favor of the exercise of Federal jurisdiction over the matter.

The fifth factor is whether the number of citizens in the forum State in the proposed plaintiff class is substantially larger than the number of citizens from any other State, and the citizens of the other members of the proposed class is dispersed among a substantial number of States.

This factor is intended to look at the geographic distribution of class members in an effort to determine the forum State's interest in handling the litigation. If all of the out-of-State class members are widely dispersed among many other States, that point would suggest that the interest of the forum State in litigating the controversy are preeminent.

The sponsors intend that such a conclusion would favor allowing the State court in which the action was originally filed to handle the litigation. However, if a court finds that the citizenship of the other class members is not widely dispersed, then a Federal forum would be more appropriate because several States other than the forum State would have a strong interest in the controversy.

The final factor is whether one or more class actions asserting the same or similar claims on behalf of the same or other persons have been filed in the last 3 years. The purpose of this factor is to determine whether a matter should be subject to Federal jurisdiction so that it can be coordinated with other overlapping or parallel class actions.

If the other class actions on the same subject have been or are likely to be filed elsewhere, the sponsors intend that this consideration would strongly favor the exercise of Federal jurisdiction. It is the sponsors' intention that this factor be broadly interpreted and that plaintiffs not be able to plead around it with creative legal theories.

If a plaintiff brings a product liability suit alleging consumer fraud or unjust enrichment, and another suit was previously brought against some of the same defendants alleging negligence with regard to the same product, this factor would favor the exercise of Federal jurisdiction over the later-filed claim.

Madam Speaker, I now yield to my colleague, the gentleman from Virginia (Mr. BOUCHER), to provide some examples that illustrate how these six factors would work in litigation.

Mr. BOUCHER. Madam Speaker, I thank the gentleman for yielding to me, and I will be pleased to provide two examples.

Suppose that a California State court class action were filed against a California pharmaceutical drug company on behalf of a proposed class of 60 percent California residents and 40 percent Nevada residents alleging harmful side effects attributed to a drug sold nationwide.

In such a case, it would make sense to leave the matter in Federal court. After all, the State laws that would apply in all of these cases would vary, depending on where the drug was prescribed and purchased. As a result, allowing a single Federal court to sort out such issues and handle the balance of the litigation would make sense both from added efficiency and a federalism standpoint.

Now, suppose, in a second example, a checking account fee disclosure class action were filed in a Nevada State court against a Nevada bank located in a border city, and the class consisted of 65 percent Nevada residents and 35 percent California residents who crossed the border in order to conduct transactions in the Nevada bank.

In this hypothetical, it might make sense to allow that matter to proceed in State court. It is likely that Nevada banking law would apply to all of these claims, even those of the California residents, since all of the transactions occurred in the State of Nevada. There is also less likelihood that multiple actions will be filed around the country on the same subject so as to give rise to a coordinating Federal multidistrict litigation proceeding.

Mr. GOODLATTE. Madam Speaker, if the chairman would continue to yield.

Mr. SENSENBRENNER. I yield to the other gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. I thank the chairman for yielding to me. I think those examples really reflect the intent of the legislation.

Madam Speaker, the legislation also includes a local controversy exception which is intended to ensure that truly local class actions can remain in State court under the legislation. Under this provision, Federal courts are instructed not to exercise jurisdiction over cases that meet all of the following four criteria:

First, more than two-thirds of the class members must be the citizens of the State where the suit is brought; second, there must be at least one in-State defendant from whom significant relief is sought by members of the class and whose conduct forms a significant basis of plaintiffs' claims; third, the principal injuries resulting from the alleged conduct or related conduct of each defendant must have occurred in the State where the action was originally filed; and, fourth, no other class action has been filed during the preceding 3 years asserting the same or similar factual allegations against any of the defendants.

Madam Speaker, I would ask that the chairman elaborate on these criteria.

Mr. SENSENBRENNER. Madam Speaker, reclaiming my time, yes, this provision is intended to respond to concerns that class actions with a truly local focus should not be moved to Federal court under this legislation because State courts have a strong interest in adjudicating such disputes. At the same time, this is a narrow exception that was carefully drafted to ensure that it does not become a jurisdictional loophole. Thus, each of the criteria is intended to identify a truly local class action.

First, there must be a primarily local class. Secondly, there must be at least one real local defendant. And by that the drafters meant that the local defendant must be a primary focus of the plaintiffs' claims, not just a retailer or other peripheral defendant. The defendant must be a target from whom significant relief is sought by the class, as opposed to just a subset of the class membership, as well as being a defendant whose alleged conduct forms a significant basis for the claims asserted by the class.

For example, in a consumer fraud case, alleging that an insurance company incorporated and based in another State misrepresented its policies, the local agent of the company named as a defendant presumably would not fit this criteria. He or she probably would have had contact with only some of the purported class members and, thus, would not be a person from whom significant relief would be sought by the plaintiff class viewed as a whole. And, from a relief standpoint, the real demand of the full class in terms of seeking significant relief would be on the insurance company itself.

Third, the principal injuries resulting from the actions of all the defendants must have occurred in the State where the suit was filed. This criterion means that all or almost all of the damage caused by the defendants' conduct occurred in the State where the suit was brought. If defendants engaged in conduct that allegedly injured consumers throughout the country, the case would not qualify for the local controversy exception, even if it was only brought as a single State class action.

And, fourth, no other class action involving similar allegations has been filed against any of the defendants over the last 3 years. In other words, if we are talking about a situation that results in multiple class actions, those are not the types of cases that this exception is intended to address. I would like to stress that the inquiry under this criterion should not be whether identical or nearly identical class actions have been filed. Rather, the inquiry is whether similar factual allegations have been made against the defendant in multiple class actions, regardless of whether the same causes of action were asserted or whether the proposed plaintiff classes in the prior case was the same.

Madam Speaker, I yield to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. I thank the chairman for yielding once again.

Madam Speaker, in this regard I think it is important to note that the exceptions in this legislation are just that, exceptions, and they should not be interpreted in ways that turn them into loopholes. For example, the legislation excludes actions against States. Obviously, this does not mean that plaintiffs can simply name a State in every consumer class action and stay out of Federal court. To the contrary, Federal courts should proceed cautiously before declining Federal jurisdiction under the subsection 1332(d)(5)(a) ''state action'' case exception, and do so only when it is clear that the primary defendants are indeed States, State officials, or other governmental entities against whom the court may be foreclosed from ordering relief.

The sponsors intend that primary defendants be intended to reach those defendants who are the real targets of the lawsuit, i.e. the defendants who would be expected to incur most of the loss if liability is found. Thus, the term ''primary defendant'' should include any person who has substantial exposure to significant portions of the proposed class in the action, particularly any defendant that is allegedly liable to the vast majority of the members of the proposed classes, as opposed to simply a few individual class members.

It is the sponsors' intention with regard to each of these exceptions that the party opposing Federal jurisdiction shall have the burden of demonstrating the applicability of an exemption. Thus, if a plaintiff seeks to have a class action remanded on the ground that the primary defendants and two-thirds or more of the class members are citizens of the home State, that plaintiff has the burden of demonstrating that these criteria are met.

Similarly, if a plaintiff seeks to have a purported class action remanded because a primary defendant is a State, that plaintiff should have the burden of demonstrating that the exception should apply.

Mr. BOUCHER. Madam Speaker, if the gentleman from Wisconsin will yield once again.

Mr. SENSENBRENNER. I yield to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Madam Speaker, I thank the gentleman for yielding.

The principles that have just been enumerated apply to another provision that I would like to discuss, the mass action provision. Under this provision, defendants will be able to remove mass actions to Federal court under the same circumstances in which they will be able to remove class actions.

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However, a Federal court would only exercise jurisdiction over these claims that meet the $75,000 minimum. In addition, a mass action cannot be removed to Federal court if it falls under one of the following four categories: number one, if all of the claims arise out of an event or occurrence that happened in the State where the action was filed and that resulted in injuries only in that State or in contiguous States;

number two, if it is the defendants who seek to have the claims joined for trial;

number three, if the claims are asserted on behalf of the general public pursuant to a State statute authorizing such an action;

and, number four, if the claims have been consolidated or coordinated for pretrial purposes only.

I would appreciate the gentleman from Wisconsin clarifying how the $75,000 amount in controversy minimum would apply to assessing whether Federal jurisdiction exists over a mass action, and, most importantly, explaining the intent of the sponsors with regard to the first and third exceptions.

Mr. SENSENBRENNER. Mr. Speaker, reclaiming my time, I will be happy to explain.

The mass action provision was included in the bill because mass actions are really class actions in disguise. They involve an element of people who want their claims adjudicated together, and they often result in the same abuses as class actions. In fact, sometimes the abuses are even worse because the lawyers seek to join claims that have little to do with each other and confuse a jury into awarding millions of dollars to individuals who have suffered no real injury.

Here is how the mass action provision and the current amount-in-controversy provision would work in tandem: suppose 200 people file a mass action in Mississippi against a New Jersey drug manufacturer and also name a local drug store. Three of them assert claims for a million dollars apiece, and the rest assert claims of $20,000.

The Federal Court would have jurisdiction over the mass action because there are more than 100 plaintiffs, there is minimal diversity, and the total amount of controversy exceeds $5 million, and a product liability case does not qualify for the local occurrence exception in the provision.

Then the question becomes, which claims would, in the mass action, the Federal judge keep in Federal Court, and which would be remanded? At this point the judge would have to look at each of the claims very carefully and determine whether or not they meet the $75,000 minimum.

In this regard, I would note that the plaintiffs often seek to minimize what they are seeking in the complaint so that they can stay in State court. For example, sometimes plaintiffs leave their claim for punitive damages off the original complaint to make it seem like their claims are smaller than they really are.

It is our expectation that a Federal judge would read a complaint very carefully and only remand claims that clearly do not meet the $75,000 threshold. If it is likely that a plaintiff is going to turn around in a month and add an additional claim for punitive damages, the Federal court should obviously assert jurisdiction over that individual's claims.

Finally, I would like to stress that this provision in no way is intended to abrogate 8 United States Code 3867 to narrow current jurisdictional rules. Thus, if a Federal court believed it to be appropriate, the court could apply supplemental jurisdiction in the mass action context as well.

With regard to the exceptions, it is our intent that they be interpreted strictly by a court so that they do not become loopholes for an important jurisdictional provision. Thus, the first exception would apply only in a situation where we are talking about a truly local single event with no substantial interstate effects.

The purpose of this exception is to allow cases involving environmental torts, such as a chemical spill, to remain in State court if both the event and the injuries were truly local, even though there are some out-of-state defendants.

By contrast, this exception would not apply to a product liability or insurance case. The sale of a product to different people does not qualify as an event, and the alleged injuries in such a case would be spread out over more than one State or contiguous States even if all of the plaintiffs in a particular case came from one single State.

The third exception addresses a very narrow situation, specifically a law like the California Unfair Competition Law, which allows individuals to bring a suit on behalf of the general public. Such a suit would not qualify as a mass action. However, the vast majority of cases brought under other States' consumer fraud laws which do not have a parallel provision could qualify as removable class actions.

I yield to the gentleman from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding.

Finally, Mr. Speaker, some critics have complained that the legislation removal provisions will result in delay. Can the gentleman explain why that is simply not the case?

Mr. SENSENBRENNER. Mr. Speaker, reclaiming my time, once again, critics of the legislation have it backwards. This legislation will streamline jurisdictional inquiries by putting an end to all of the gaming that takes place under the current system, and the so-called delay refers to procedural rules that already exist under the current system.

Under existing law, diversity of citizenship between the parties must exist, both at the time a complaint is filed and at the time a complaint is removed to Federal court. However, if the plaintiff files an amended complaint in State court that creates jurisdiction,

or if subsequent events create jurisdiction, the defendant can then remove the case to Federal court.

Current law is also clear that once a complaint is properly removed to Federal court, the Federal court's jurisdiction cannot be ousted by later events. Thus, for example, changes in the amount of controversy after the complaint has been removed would not subject a lawsuit to be remanded to State court.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman for his leadership in moving this legislation forward and in working with the Senate to accomplish that as well.

I hope this colloquy will provide guidance on the very important jurisdictional provisions in S. 5 and the sponsor's intent.

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

Mr. CONYERS. Mr. Speaker, I am pleased to yield 4 minutes to my good friend, the gentleman from Massachusetts (Mr. MARKEY) from the Committee on Energy and Commerce. He has worked with us on many of these issues.

Mr. MARKEY. Mr. Speaker, I thank the gentleman from Michigan for yielding, and I thank him for his leadership on this most critical of all consumer issues before Congress this year.

So you have all heard now the technical arguments made by the Bush administration proponents here on the House floor. So you have heard the Bush administration argument on why this is good.

Now, you want to hear what the bill is really about? Do you want to hear what the Bush administration is really interested in? Well, here it is, ladies and gentlemen. Citigroup's Smith Barney subdivision: ''Tobacco. Flash—Senate Just Passed Class Action Bill—Positive For Tobacco.'' Let me read it to you:

''The Senate just passed a bill, 72–26.'' This has gone out from Smith Barney to all their investors. ''This bill is designated to funnel class action suits with plaintiffs in different States out of State courts and into the Federal court system, which is typically much less sympathetic to such litigation.

''The practical effect of the change could be that many cases will never be heard given how overburdened Federal judges are, which might help limit the number of cases.''

Smith Barney advised its clients that this bill will be positive in general for the tobacco industry and that tobacco stocks have rallied on this favorable news given that this bill could have a positive impact on tobacco litigation.

That is what it is all about, ladies and gentlemen. You heard the technical defense of it for the last half hour. The impact is they are trying to protect the tobacco industry from being sued. So if you are out there, one of your family members has just found that they have a spot on their lung, they have smoked for the last 20 or 30 years, what this bill will do is it will make it more difficult for you and the other people in your States who also have found that they have spots on their lungs to get together to sue the tobacco companies.

If your children are beginning to smoke, they are 13, 14, 15, this bill is intended to make it more difficult for the people in the State of New Hampshire, or Kansas, or Oklahoma to bring a suit to stop it. That is what it is all about. Smith Barney gives the good news to the tobacco industry investors, not to smokers.

And so what they have done is this. It is brilliant in the Bush administration and that is what this side of the aisle is all about. The FDA, is it going to move in to regulate tobacco? No, they made sure they appoint people who will not do it. The EPA, are they going to move in to make sure that the oil industry does not pollute your groundwater so that the children in your neighborhood do not contract leukemia; that breast cancers do not rise? No. Are they going to have a Department of Labor which protects you against asbestos in the workplace? No.

You are not going to see those suits, ladies and gentlemen. So it comes to you and your families to go to court. And what this bill is intended to do is to not let you go to court. So it is perfect. If you are an asbestos company, your stocks are going up. If you are a tobacco company, your stocks are going up. If you are an oil company, a chemical company, your stocks are going up. Smith Barney gives you the good news, Mr. and Mrs. Investor of America.

But if you are afraid for the health of your family, if you know that the groundwater in New Hampshire has been poisoned by Amerada Hess and 22 other oil companies that are not in New Hampshire, you know what the Republicans say? You know what the Bush administration says? The case should not be held in New Hampshire. If Amerada Hess, the big oil company, is a defendant, the case should be outside of New Hampshire, not protecting the person whose family's health has been injured.

And so that is what it is all about. It is the final payback to the tobacco industry, to the asbestos industry, to the oil industry, to the chemical industry at the expense of ordinary families who need to be able to go to court to protect their loved ones when their health has been compromised. And these people are saying, your State is not smart enough, your jurors are not smart enough to understand how the MTBE ruined the groundwater in their State and poisoned thousands of people, that it has to go to a State where Amerada Hess or some large oil company feels comfortable, because they are not headquartered in New Hampshire, they do not have a large plant in New Hampshire. All they did was sell the material which poisoned your neighborhood.

That is what it is all about, ladies and gentlemen. You just watch across the board every single interest that harms the health and well-being of America skyrocket as soon as we take the vote on final passage of this bill today because President Bush is going to sign this bill with great joy because the oil, the chemical and polluting industries are going to be happy.

INDUSTRY NOTE: TOBACCO—SENATE JUST PASSED CLASS ACTION BILL—POSITIVE FOR TOBACCO

(By Bonnie Herzog)

SUMMARY

The Senate just passed a bill 72–26 which is designed to funnel class-action suits with plaintiffs in different states out of state courts and into the federal court system, which is typically much less sympathetic to such litigation.

The practical effect of the change could be that many cases will never be heard given how overburdened federal judges are, which might help limit the number of cases.

Although this news is positive in general for the tobacco industry, we do not necessarily believe that class actions pose a big threat to the industry. Furthermore, this type of legislation would have been a bigger help to the industry if it was passed 10 years ago.

The bill now moves to the House floor and the chances are high that it passes since the House Republican leadership said last week that it would pass the Senate's version of this legislation as long as there were no amendments.

OPINION

The Senate just passed a bill that is designed to funnel class-action lawsuits with plaintiffs in different states out of state courts and into the federal court system, which is historically much less sympathetic to such litigation.

The practical effect of the change could be that many cases will never be heard, which might also be positive for tobacco companies. Federal judges, facing overburdened dockets and ambiguities about applying state laws in a federal court, often refuse to grant standing to class-action plaintiffs.

Therefore, tobacco stocks have rallied on this favorable news given that this bill could have a positive impact on potential future tobacco litigation.

Now the bill should move to the House floor and apparently the House Republican leadership announced last week that the GOP majority in that chamber will pass the Senate's version of class-action litigation provided it arrives without amendments and from what we hear, this is in fact what has happened in the Senate. Obviously President Bush has been a big proponent of this type of legislation so we would assume that he would sign it as part of a broader fight that he hopes will lead to limits on awards in asbestos cases and to caps on pain-and-suffering awards in medical malpractice cases.

Although positive in general terms for the tobacco companies, clearly this type of legislation would have been much more useful if it were passed 10 years ago.

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Mr. SENSENBRENNER. Mr. Speaker, I always thought that Federal judges protected the rights of everybody.

Mr. Speaker, I yield 3 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Speaker, to understand the need for S. 5, we need to understand the game the class action lawyers play here and how they go about abusing the court systems. I call it Class Action Monopoly. Here is how it works. They start at Go. The first thing they do is come up with an idea for a lawsuit. And then they find a named plaintiff. It does not have to be someone who is actually injured in the process. All the lawyer really needs is an idea for a lawsuit and potential defendants who have deep pockets.

Next they find a person who is the named plaintiff. That named plaintiff is a citizen of the same State as one of the defendants and that puts them in the State court, which is where they want to be. Sometimes they have to promise to pay off that named plaintiff at this point, but that is all part of the game.

Next the lawyers level their allegations, both in court and in the media. Remember, they do not have to have proof for their allegations. They just need a forum in which to make the allegations. Now the real fun begins after you have made the allegations. They are in State court with the named plaintiffs and their allegations, and it is time to get out of rule 23 free.

Rule 23 is the rule that would apply in Federal courts that defines when a class action can be certified consistent with fundamental fairness and due process considerations. But in this game, there is no fairness. There is no due process. So they easily convince their magnet State to certify that they have a class and at the same time they file copycat lawsuits in State courts all over the country. These are the same class actions asserting the same claims on behalf of the same people. These copycat lawsuits clog the State courts.

□ 1115

At this point in the game, the lawyers start making the money. Let us see where the money goes.

In the Columbia House record case, the lawyers took home $5 million and the plaintiffs got a coupon for discounts on future purchases of records.

In the Blockbuster case, the lawyers walked away with $9.25 million, and the plaintiffs again got a coupon for $1 off their next video rental, coupons that the defendant probably would have issued anyway.

In the Bank of Boston case, the lawyers settled the case and took home $8.5 million. And the customers had money deducted from their mortgage accounts to pay off the lawyers. So in the end, a State court approved these cases, and all of the consumers in the lawsuit lost money.

People may be wondering what happens to them in this game. We already know that if one is a consumer, in the consumer class, they will be lucky if they get a dollar-off coupon. If the business one works for gets sued in one of the class actions, their employer is going to take a major hit and maybe even lay them off. It is that clear in some of these cases, the basic result is that the lawyers will get lots of money, but consumers will pay because health care and car insurance premiums will go through the roof. And when the game comes to an end, they are left with no money and the lawyers are at ''go'' and they get to start the process all over again.

It is fundamentally important that we resolve this problem and help America move forward. I urge support of S. 5.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California (Ms. LINDA T. SÁNCHEZ).

(Ms. LINDA T. SÁNCHEZ and was given permission to revise and extend her remarks.)

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I rise in opposition to S. 5.

The sponsors of this bill call it the Class Action Fairness Act, but nothing about this bill is fair, especially for the victims of corporate wrongdoing. This bill erects a nearly insurmountable barrier for everyday Americans, who have been hurt or wronged, to have their day in court. Thanks to the so-called Class Action Fairness Act, people who have had their civil rights trampled on will no longer be able to bring their claims to State court. It does not matter if the laws of their home State provide better civil rights protections or that it may be more convenient for the victims of discrimination to seek justice in a court where they live. With S. 5 they must go to Federal court.

The same burden is put on the backs of hourly wage workers who sue for back pay that they are owed. These folks are struggling to put food on their family's table, and they almost certainly cannot afford the high cost of multistate litigation. With S. 5 they, too, must bring their claims to a Federal court that may not even be in their State just so that they can get the back pay that they do.

I ask all the proponents of this bill, is that their idea of fairness?

Let us be real. S. 5 is not about reducing venue shopping. It is not about the mythical scourge of predatory plaintiffs' lawyers, and it is not about the fabricated economic drain of excessive jury awards. What this bill really is about is doing a favor for unscrupulous, negligent corporations by making it harder for their victims to sue them. It is protecting big businesses who are guilty of wrongdoing from liability.

I am a lawyer and I acknowledge that there are some members of my profession who file frivolous suits. But if the lawyers are the ones that they claim are ruining this legal system, why are the sponsors of this bill making it harder for the victims?

This bill makes about as much sense as locking the door of a hospital in order to lower health care costs. Kicking people out of the system does not solve the problem, and that is exactly what S. 5 does. It penalizes the victims of wrongdoing without doing anything to improve our legal system, and it shields bad actors from having to face the consequences of their action. Where is the personal responsibility? That is why I oppose this bill.

I urge all of my colleagues to vote ''no'' on the final passage and to vote ''yes'' on the Conyers substitute.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Florida (Mr. KELLER).

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

Mr. Speaker, the bottom line is that class action reform is badly needed. Currently, 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 the lawyers millions of dollars in fees and give the clients worthless coupons.

Let us take a look at Madison County, Illinois with this chart. Madison County, Illinois has been called the number one judicial hellhole in the United States. In 2002 we can see there were 77 class action filings, and in 2003 there were 106 class action lawsuits filed. 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 lawyer who drives these cases and not the individuals who are supposedly hurt. For example, in a suit against Blockbuster over late fees, the attorneys received for themselves $9.25 million, while their clients got a $1-off discount coupon. Similarly, in a lawsuit against the company who makes Cheerios, the lawyers received $2 million for themselves; predictably their clients received a coupon for a 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, they are hurting consumers who end up paying higher prices for goods and services.

This legislation provides much-needed reform in two key areas. First, it eliminates much of the forum shopping by requiring most of these nationwide class action suits to be filed in federal court. And, second, it cracks down on these coupon-based class action settlements by requiring fee awards to be based on the number of coupons actually redeemed or the number of hours actually billed.

Mr. Speaker, I urge my colleagues to vote ''yes'' on this class action reform legislation. It is about common sense, it is about justice, and it is about time.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, we hear all this hoopla about these coupon settlements, but we do not hear any suggestion as to what to do about them. There are a lot of situations where corporations are ripping people off for small amounts of money.

For example, if a person at a checkout counter calibrates the machine to just cheat one out of a few cents, what is one's recovery in that case? Just a few cents. And the only way one can stop that is with a class action. But they would suggest there is no point in bringing the class action; as long as they did not rip them off for too much, they ought to get away with it.

Furthermore, a lot of these coupon settlements are in Federal courts anyway, so there is not going to be much change. But some of these coupon cases are the only way that we can rein in corporate abuse.

But this bill just increases complications in a gratuitous way. It took a half an hour for the proponents to explain when it is a class action and when it is not a class action. In normal cases they file it in State court. Either they certify it or not, and then one goes forward. There is not much complication. But this invites mischief. Whether it is really a class action or not, remove it anyway, and let the Federal courts mess around with it and mess around with it and mess around with it. They may never get their day in court. And if they do not certify it, what happens to one's case? They may not be able to get back to State court. So the fact that they did not certify a class action will deny one the right to even have their day in court.

This complicates venue. They do not know where the case is going to be heard. It could be that an injury happens in one State, they have corporations in that State involved, they have State plaintiffs, and here one has to go chasing around, trying to figure out where they are going to be.

The Attorneys General across the States, 47 Attorneys General in States and territories, have come out against the bill because it puts the Attorneys General in the same crack. They do not know where the case is going to be heard. If they bring a State action in State court, they may get removed. Some of the States have better wage laws, civil rights laws, sometimes consumer protections, and if the Attorneys General want to come in to protect their own citizens in their own States, they ought to have that right and not get jerked around to Federal court.

Finally, Mr. Speaker, some Federal courts are more clogged up than State courts. Some in the same area, the State courts are more clogged up than the Federal courts. Why do we have to always go into Federal court on these cases rather than have some kind of choice? Every time we have a criminal case, it will take preference over the civil cases. And in some cases where we have some terrorist cases or a backlog of Federal cases, one may never get to hear their case in Federal court.

If we want consumers to get timely justice, we need to defeat this bill, and I hope that is what we do.

Mr. CONYERS. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Speaker, I rise in opposition to S. 5, the Class Action Fairness Act. Despite its name, this bill is anything but fair to the class action device that has provided redress to large numbers of American citizens who have been harmed by the same defendant or a group of defendants.

Class action procedures have made it possible for injured Americans to aggregate small claims that might not otherwise warrant the expense of individual litigation. This bill before us will effectively undermine the utility, practicality, and choice the class action mechanism has offered to injured persons with legitimate claims against powerful entities.

There appear to be improvements in this bill from the bill we considered last Congress; yet there could and should be more improvements. But the trend thus far this session is to dispense with regular order, deny committee consideration, and to leave Members with 1 to 2 minutes to hurriedly voice our concerns. I can guarantee my colleagues, having practiced law for over 20 years, that the core provisions of this bill will invite prolonged satellite litigation into ill-defined or undefined terms in this bill, clogging the Federal courts and denying prompt justice to worthy claimants.

For example, where ''significant relief'' is sought against a home State defendant, the court has no jurisdiction. What is significant and what is not significant? Also, and worse in my judgment, no longer will a coherent description of the class be sufficient before the trial on the merit proceeds. Under the bill the judge must first know with certainty the absolute number of the plaintiff class, because whether he may or must decline to hear the case depends on whether a ''magic'' number of plaintiffs are citizens of the State where the lawsuit was filed. There are other examples too complicated to address here in the time that we have available.

But let me just say that juxtaposed against the smattering of cases paraded by the supporters of this bill as justification for this upheaval in our justice system are countless class action lawsuits by principled attorneys and courageous plaintiffs that have exposed deliberate wrongdoing, obtained justice for American citizens, and vindicated the values of fair play and equal justice that define our society.

America is distinguished from other countries because of its legal system both criminal and civil. Is it perfect? No. But the majority wages countless legislative assaults on the entire system rather than confined, deliberative, surgical repairs. Under this bill, one bad judge, we condemn all of the judges in the system. One excessive jury award, let us overhaul the entire jury system. One irresponsible lawyer, let us punish all lawyers. And here let us take these actions without any committee hearings, markup, or debate. What could be more irresponsible to our constituents?

Whatever happened to the notion that we were making our court systems convenient to people? In some of our States, the Federal courts are far removed from the places where individual litigants live. And what is it with the notion all of a sudden that my States rights friends believe that the Federal courts and the Federal Government can solve every problem in our society? That is just simply absurd, inconsistent with any kind of consistent philosophy about federalism.

I think we should defeat this flawed bill, and I thank the gentleman for yielding me this time.

□ 1130

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Speaker, I thank the gentleman for yielding me time, even though I am in opposition to his position and favor this bill. This is not a radical bill, nor is it regressive. In fact, it is a reasonable compromise designed to address what is an abuse of the judicial system. That is why The Washington Post endorses this bill. It is why the Democratic Senators from New York, California, and Illinois all voted for the bill. In fact, Democratic Senators representing 19 States voted for this bill in the other body. Why did they do this? Because they believe on balance that consumers are going to be better represented in Federal courts.

And this notion that somehow State courts are going to be more inclined to represent consumer interests rather than Federal courts on issues like tobacco and civil rights and so on, I do not think history proves that to be the case.

I am particularly sensitive to these charges that this bill is going to inhibit civil rights actions. Clearly if we look at history, it is the Federal courts that have been far more insistent upon enforcement of civil rights than State courts. Even recently in the Home Depot case, a gender-discrimination case, it was settled with a $65 million settlement, filed in Federal court. The Coca-Cola racial-discrimination settlement, which guaranteed each class member recovery of at least $38,000, was achieved in Federal court.

Contrast that to the Bank of Boston case, where the depositors in Boston were not even aware they were members of a plaintiff class, where a lawyer filed suit down in Alabama supposedly representing their interest, and they found out when they had their bank account reduced by $90; $90 was taken out of the mortgage escrow account from these depositors to pay the lawyers when they were not even aware they were a member of the plaintiff's suit, and the lawyer walks off with $8.25 million. That is judicial abuse, and that is what this bill corrects.

This is a reasonable bill. The fact is that in so many State and local courts, they do not have the resources to go through the mountains of evidence that have to be presented in class action suits. In Federal courts they are far more likely to have those resources. They have court clerks and they can hire magistrates that can go through all of the evidence.

There has been far too much abuse where judges have certified these settlements at the tort lawyer's request and then, the defendant has to settle for large sums of money. That is not the way it is supposed to work.

On balance, I think the judicial system will be far more fair, responsible, and reasonable under this compromise bill; so I would urge my colleagues, particularly on the Democratic side, to support this bill.

Mr. CONYERS. Mr. Speaker, I yield myself 1 minute. I would like to respond to my good friend, the gentleman from Virginia (Mr. MORAN).

First of all, I think the NAACP and the civil rights groups will be eager to find out that his wisdom is superior to their experience in the civil rights movement. What the gentleman was suggesting may have been correct a number of years ago, but I would point out to the gentleman that the Federal courts more recently have not been as desirable a forum for civil rights activities.

The Bank of Boston case, that was 10 years ago and an anomaly. There are not other examples of class actions where class members lost money. No other court has made the same mistake. I would urge that neither the gentleman nor any of us rewrite class action rules because of one mistake.

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

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

Mr. INSLEE. Mr. Speaker, I heard an earlier speaker refer to class actions as a game. Try telling that to the 9-year-old son of Janet Huggins, a 39-year-old healthy Tennessee mother who took Vioxx and died in September 2004. Tell her family that the effort to protect her family is a game. This is not a game. This is flesh and blood, the ability to protect your family when something happens to you that you did not have anything to do with.

This bill is the Vioxx Protection Bill. It is the Wal-Mart Protection Bill. It is the Tyco Protection Bill. It is the Enron Protection Bill. Anyone in the State of Washington who saw what Enron did to us, stealing $1 billion, should not be voting for this bill, because this bill in many ways is the Just Say No Bill to People Who Are Injured By Rapacious Wrongdoers.

In three ways it says ''just say no'' to consumers who were hurt by Enron, because in the Federal courts, if you happen to be in a plaintiff's group of multiple States and the laws are a little different in the States, do you know what the Federal courts do? They throw out the class action.

Do you want to know why the Chamber of Commerce is spending $1 billion to lobby on what seems to be a procedural issue? Because they throw out class actions where there is any difference in States, meaning you will not be able to have a class action anywhere, anywhere, Federal or State.

Why is this so important? I liken this to right now you have two arms to protect Americans, the State judicial system and the Federal judicial system. This reduces by half the resources that are available to Americans to get redress when Enron steals from them or when Vioxx kills them.

On 9/11, did we respond to September 11 by taking out city police officers and only having the FBI? On 9/11, did we respond by not having local fire departments and only having the Coast Guard or Army fire department? No. We recognized that in our system of federalism, Americans deserve the full protection, not just half the protection.

This cuts the available judicial resources in half. Why is that important? The second reason it just says no to injured Americans is the Federal courts cannot handle these class actions. They do not have enough courts and judges. You go down and ask how long you will wait today to get into a Federal court. Then add about 4 or 5 years after this bill if this bill were to come into effect. You just say no because it takes the keys away from the courthouse.

The third reason it just says no to good American citizens is it takes from the State attorneys general their ability to protect people. That is why the States attorneys general, Republican and Democrat alike, are adamantly opposed to this bill, because this bill takes cops off the beat; attorneys generals whose job it is to protect us from what Roosevelt called the ''malefactors of great wealth'' are off the beat.

Mr. Speaker, we should reject this bill.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 5 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE), a member of the Committee on the Judiciary and a ranking subcommittee member.

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

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman for the time that he has spent on this legislation. I think we have seen this come across our desks for a number of sessions, and we have tried to work in a bipartisan manner in order to find a way to respond to some of the larger class actions that are now proceeding before us in the courts.

Mr. Speaker, let me start out by trying to address some of the large dilemmas that have seemingly been the underpinnings of this overhaul of a system that is not broken.

I know some two or three sessions ago we were in the midst of conversations about the asbestos lawsuits. Frankly, I believe that with a reasonable dialogue and exchange, we were nearing some sort of resolution that would have allowed that heinous series of events over the years, the asbestos poisoning for many, many workers, to be brought to a conclusion.

For some reason, those favoring class action reform want to paint with a broad brush the victims, those who have been victimized by asbestos poisoning. Even today as we are looking to reconstruct some of the older buildings in my community, we are finding an asbestos problem. But because of the notice that was given through these class action lawsuits, we now have companies who are protecting workers who are going in trying to clean out asbestos. We would not have had that had we had not had this asbestos crisis.

It is the same thing with tobacco. Although there has been some humor about ''don't you know when to stop smoking,'' we know that for years and years, years and years, there was no labeling of cigarettes to suggest that they in fact caused cancer. So the tobacco lawsuits are not in fact frivolous. They may be high in return, but they are not frivolous.

This class action lawsuit legislation, I believe, is excessive and overreaching. What it simply wants to do is burden Federal courts without giving them any resources. There is nothing in this legislation that increases the funding of our Federal courts.

Take the southern district, for example. We are so overburdened with criminal cases, immigration cases, smuggling cases, drug cases, there is absolutely no room to orderly now prosecute or allow to proceed class action lawsuits from people who have been damaged enormously.

This legislation wants to federalize mass torts, that is thousands and thousands of people, when they realize that the compromise, for example, that was offered in the Senate, the Feinstein compromise, does not do anything, because what it says is you can go into State court if you can find one of the defendants of a large corporation in your State. If you happen to be a small State or maybe some State that is not the headquarters of corporate entities, like on the east coast, for example, you will find no defendant, so you will be languishing year after year after year trying to get into Federal court.

What it also does is minimizes the opportunity of those who can secure their local lawyer to get them into a State court and burdens them with the responsibility of finding some high-priced counsel that they cannot afford to try to understand Federal procedure law to get into the Federal court. It closes the door to the least empowered: the poor, the working class and the middle class.

What we find as well is that this legislation is much broader than is needed. Why close the door to those who are injured by the failings of products? Why close the doors to those who are injured by the mass and unfortunate activities of a company like Enron in my congressional district, penalizing thousands of workers all over America unfairly and giving them no relief, giving no relief to the pensioners who lost all of their dollars?

Mr. Speaker, what we have here is a response to no crisis, a response to no problem. Frankly, I believe that if we reasonably look at this legislation, we will find that all it does is it zippers the courthouse door.

To my good friend who mentioned that civil rights can take place wherever is necessary, let me just share with you that civil rights is not a popular cause; and, therefore, to then add it to get in line now with thousands of other cases, you can be assured that there will be a crisis.

Mr. Speaker, let me simply say I rise to support the substitute that has the civil rights carve-out, the wage-and-hour carve-out. It excludes non-action cases involving physical injuries, an attorney general carve-out, the anti-secrecy language; and in particular it does not allow companies to go offshore to avoid class action lawsuits.

Mr. Speaker, let me simply say this is a bill on the floor with no problem. But I can tell you, America, you are going to have a big problem once this bill is passed, and I am saddened by the fact that time after time we come to this floor and we close out the working people, we close out the middle-class, and we close out those who need relief.

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

Mr. Speaker, we have listened carefully to the discussion here, and it is very clear that one thing is for sure: this is not a simple procedural fix to class actions in our courts.

□ 1145

Another thing, it is clear that all of the totally unsatisfactory provisions have not been removed.

First, the bill, as the gentlewoman from Texas has said, harms working Americans and victims of discrimination who are in no position to bring individual actions of wage-and-hour cases or civil rights discrimination claims. Moving the cases to Federal court will result in many never being ever heard at all.

Many State laws provide better protection than Federal statutes. For example, 20 States provide protection for marital status and Federal law does not. Twenty-one States extend Federal definitions of national origin discrimination by including ancestry, place of birth, and citizenship status; and 31 States prohibit genetic discrimination in the workplace, not provided under Federal law.

Secondly, this bill closes the door on victims of large-scale personal injury cases resulting from accidents, environmental disasters, or dangerous drugs that are widely sold. Although these cases are filed in State courts under State law, the bill will treat them as class actions and throw them willy-nilly into the Federal court.

While harming victims of personal injury, this provision greatly helps the companies, like Merck, the company that manufactured the deadly drug Vioxx. Since the discovery of the dangers of Vioxx, hundreds of cases from all over the country have been filed against Merck, and we can anticipate likely thousands more. However, under this proposal before us today, those who suffered harm from the drug will be denied their day in court and their ability to seek justice.

Finally, this bill makes it difficult for consumers to pursue claims against defendants who violated consumer protection laws. The bill will force many of these cases filed in State courts into the Federal system. But some Federal courts will not certify class actions involving the laws of multiple States because they deem the case too complex and unmanageable. Result: harmed consumers will never have their cases adjudicated in the courts.

It also makes it impossible for States to pursue actions against defendants who have caused harm to the State's citizens. State attorneys general often pursue these claims under State consumer protection statutes, antitrust laws, often with the attorney general acting as the class representative for the consumers of the State.

Under this bill, would we want these cases to be thrown into Federal court and severely impede the State's ability to enforce its own laws for its own citizens? That is what will happen. That is what will take place.

So I am very pleased to put in the RECORD the letter from the States attorneys general opposing this legislation, those attorneys general from California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont, and West Virginia.

I would also like to add the letter from the environmental organizations which have made their case as to why this would be a very harmful measure. The signatories of this letter include the United States Public Interest Research Group, PIRG; the Wilderness Society; the Sierra Club; the National Environment Trust; Greenpeace; Friends of the Earth; and the National Audubon Society, and many others.

Finally, Mr. Speaker, I include in this debate from the Leadership Conference and the AFL–CIO, and the Alliance For Justice, all writing on one letter, and they plead with us in the House of Representatives to protect working men and women and civil rights litigants by opposing the measure that is before us.

*Washington, DC, February 15, 2005.*

DEAR REPRESENTATIVE: On behalf of the undersigned civil rights and labor organizations, we write to urge you to vote against the Class Action Fairness Act (S. 5), which passed the Senate last week. While the bill was pending before the Senate, we pushed for an amendment offered by Senator Kennedy that would have exempted civil rights and wage and hour *state law* cases. Because the amendment was not adopted, we ask you to reject S. 5 in order to ensure that the Class Action Fairness Act 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 into 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 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, 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, which is done in the current bill, we urge you to vote against S. 5. In the event that amendments are offered, we support any amendment that, like the Kennedy amendment and others offered in the Senate, preserves the right of individuals to bring class actions in an effective, efficient manner.

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 Electrlcal 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; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; 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; and Women Employed.

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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 US.

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.

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
*Washington, DC, February 7, 2005.*

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

DEAR SENATE MAJORITY LEADER FRIST AND SENATE MINORITY LEADER REID: We, the undersigned State Attorneys General, write to express our concern regarding one limited aspect of pending Senate Bill 5, the ''Class Action Fairness Act,'' or any similar legislation. We take no position on the Act as a general matter and, indeed, there are differing views among us on the policy judgments reflected in the Act. We join together, however, in a bipartisan request for support of Senator Mark Pryor's potential amendment to S. 5, or any similar legislation, clarifying that the Act does not apply to, and would have no effect on, actions brought by any State Attorney General on behalf of his or her respective state or its citizens.

As Attorneys General, we frequently investigate and bring actions against defendants who have caused harm to our citizens. These cases are usually brought pursuant to the Attorney General's parens patriae authority under our respective 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. It is our concern that certain provisions of S. 5 might be misinterpreted to hamper the ability of the Attorneys General to bring such actions, thereby impeding one means of protecting our citizens from unlawful activity and its resulting harm.

The Attorneys General have been very successful in litigation initiated to protect the rights of our consumers. For example, in the pharmaceutical industry, the States have recently brought enforcement actions on behalf of consumers against large, often foreign-owned, drug companies for overcharges and market manipulations that illegally raised the costs of certain prescription drugs. Such cases have resulted in recoveries of approximately 235 million dollars, the majority of which is earmarked for consumer restitution. In several instances, the States' recoveries provided one hundred percent reimbursement directly to individual consumers of the overcharges they suffered as a result of the illegal activities of the defendants. This often meant several hundred dollars going back into the pockets of those consumers who can least afford to be victimized by illegal trade practices, senior citizens living on fixed incomes and the working poor who cannot afford insurance.

We encourage you to support the aforementioned amendment exempting all actions brought by State Attorneys General from the provisions of S. 5, or any similar legislation. It is important to all of our constituents, but especially to the poor, elderly and disabled, that the provisions of the Act not be misconstrued and that we maintain the enforcement authority needed to protect them from illegal practices. We respectfully submit that the overall purposes of the legislation would not be impaired by such an amendment that merely clarifies the existing authority of our respective States.

Thank you for your consideration of this very important matter. Please contact any of us if you have questions or comments.

Sincerely,

Mike Beebee, Attorney General, Arkansas.

Gregg Renkes, Attorney General, Alaska.

Mark Shurtleff, Attorney General, Utah.

Fiti Sunia, Attorney General, American Samoa.

Terry Goddard, Attorney General, Arizona.

John Suthers, Attorney General, Colorado.

Jane Brady, Attorney General, Delaware.

Charlie Crist, Attorney General, Florida.

Mark Bennett, Attorney General, Hawaii.

Stephen Carter, Attorney General, Indiana.

Bill Lockyer, Attorney General, California.

Richard Blumenthal, Attorney General, Connecticut.

Robert Spagnoletti, Attorney General, District of Columbia.

Thurbert Baker, Attorney General, Georgia.

Lawrence Wasden, Attorney General, Idaho.

Tom Miller, Attorney General, Iowa.

Greg Stumbo, Attorney General, Kentucky.

Steven Rowe, Attorney General, Maine.

Tom Reilly, Attorney General, Massachusetts.

Mike Hatch, Attorney General, Minnesota.

Jay Nixon, Attorney General, Missouri.

Jon Bruning, Attorney General, Nebraska.

Kelly Ayotte, Attorney General, New Hampshire.

Charles Foti, Attorney General, Louisiana.

Joseph Curran, Attorney General, Maryland.

Mike Cox, Attorney General, Michigan.

Jim Hood, Attorney General, Mississippi.

Mike McGrath, Attorney General, Montana.

Brian Sandoval, Attorney General, Nevada.

Peter Harvey, Attorney General, New Jersey.

Eliot Spitzer, Attorney General, New York.

Wayne Stenehjem, Attorney General, North Dakota.

Jim Petro, Attorney General, Ohio.

Hardy Myers, Attorney General, Oregon.

Roberto Sanchez Ramos, Attorney General, Puerto Rico.

Henry McMaster, Attorney General, South Carolina.

Roy Cooper, Attorney General, North Carolina.

Pamela Brown, Attorney General, N. Mariana Islands.

W.A. Drew Edmondson, Attorney General, Oklahoma.

Tom Corbett, Attorney General, Pennsylvania.

Patrick Lynch, Attorney General, Rhode Island.

Lawrence Long, Attorney General, South Dakota.

Paul Summers, Attorney General, Tennesse.

Darrell McGraw, Attorney General, West Virginia.

Patrick Crank, Attorney General, Wyoming.

Rob McKenna, Attorney General, Washington.

Peg Lautenschlager, Attorney General, Wisconsin.

Mr. Speaker, I urge my colleagues to seriously consider the excellent presentations made on our side of the aisle and vote against the measure that is before us today.

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

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

Mr. Speaker, notwithstanding what we have heard from opponents of this legislation, its passage would not extinguish the legal right of any injured party, whether it be a class action, a mass action, or an individual lawsuit from proceeding in a court of competent jurisdiction in the United States. What the bill does do is it puts some sense into the class action system so that the members of the plaintiff's class will be fairly and adequately compensated rather than seeing all of their gains go to attorneys and them just getting coupon settlements from the people who have allegedly done them wrong.

I was particularly perturbed listening to the gentleman from Massachusetts (Mr. MARKEY), who said that the kids who start smoking at 13 and 14 years old are going to be denied their day in court, and that the tobacco companies are going to end up cashing in on a big bonanza.

Well, I had my staff, while this was going on, look at what has happened to Altria, the parent company of Philip Morris. Since the other body passed this bill, Altria stock has gone down by at least $1.50, or 2 percent. And today, the Reuters story that came out less than an hour ago says that the Dow has been dragged down by Altria.

Now, if this was the bonanza to investors in Altria, the stock would not be going down. It is not. That is a fallacious argument. Reject the substitute and pass the bill.

Mr. HASTERT. Mr. Speaker, I'm pleased join my colleagues here today who support taking a historic first step to breaking one of the main shackles holding back our economy and America's workforce—lawsuit abuse.

For the last decade, the Republican Congress has worked to end out of control lawsuits. Today is the day we will pass commonsense legislation and put an end to Class Action Lawsuit abuse.

I particularly want to praise the efforts of House Judiciary Chairman JIM SENSENBRENNER for his relentless work. Without his

stewardship, I don't think th achievement would have become a reality.

I come from Illinois—the Land of Lincoln—where downstate Madison County has the dubious distinction as a personal injury lawyer's paradise. No, there are not palm trees or sandy beaches there. Instead, Madison County, Illinois, is home to very warm courtrooms where frivolous lawsuits are filed virtually everyday.

Why's Madison County? The answer: ''venue shopping.''

Cagey trial lawyers have figured out there's a pretty good likelihood their case—no matter what its merit—will literally get its day in court because of favorable judges.

To use a sports analogy, thanks to willing judges, personal injury lawyers get to play on their ''home court'' each and every time they file a frivolous lawsuit there.

For instance, a legendary class action case from Madison County illustrates what's wrong with the current legal system.

In 2000, Cable TV customers who filed suit over their cable operator's late fee policy won their case, but received nothing . . . not a dime, not a nickel, not a Lincoln penny. Instead, their $5.6 million settlement went directly into the pockets of their attorneys. How is that justice? How does that help victims?

The American people deserve better. Our working families demand better.

Today's action takes a step in the right direction to end the so-called Tort Tax.

The Tort Tax makes consumers pay more for the goods and services they use.

The Tort Tax adds to the cost of everything we buy because businesses and manufacturers have to cover themselves and their employees—just in case they get sued by a greedy personal injury lawyer.

At last estimate, this outrageous Tort Tax cost the nation's economy $246 billion a year, and by 2006, it will cost the average American nearly $1,000 more each year on their purchases because of defensive business practices.

In closing, as a matter of principle, damage awards should go to the victim, not the lawyers. Lawsuits should not be ''strike it rich'' schemes for lawyers.

There has to be some limit to what lawyers can take from their clients. Otherwise, cagey attorneys end up with the lion's share of the settlement and the victims end up with little more than scraps.

Mr. UDALL of Colorado. Mr. Speaker, the House has considered similar legislation in 1999, 2002, and 2003. On each of those occasions, I voted ''no''—not because I was unalterably opposed to Congress acting on this subject, but because in my judgment the defects of those bills outweighed their potential benefits.

When it was announced that this bill would be considered, I hoped that the pattern would be broken and that this time I would be able to support the legislation. And if the Conyers substitute had been adopted, that would have been the case.

Adoption of the substitute would have greatly improved the legislation. It would have reaffirmed the authority and ability of each State's Attorney General to carry out his or her duties under State law. It would have made sure that the bill would not prejudice people with complaints about violations of their civil rights. It would have properly focused the legislation on class actions unrelated to personal injuries. It would have added important protections for the public's right to know about the proceedings in our courts. And it would have made other changes that would have improved the bill.

Unfortunately, the substitute was not adopted—and I have come to the reluctant conclusion that I must vote against the bill.

That conclusion is reluctant because in several ways this bill is better—or, more accurately, less bad—than its predecessors.

Unlike earlier versions, S. 5 would not have a retroactive effect, so it would not affect pending cases. It also does not include a provision for immediate interlocutory appeals of denials of class action certification, or for a stay of all discovery while the appeal was pending. And in several other ways, it differs for the better from previous versions.

However, while the bill is less bad, in my opinion it still is not good enough. I remain unconvinced that the problem the bill purports to address is so great as to require such a sweeping remedy, and I am still concerned that in too many cases the side-effects of this treatment will be more severe than the disease.

Mr. Speaker, one of the most important rights we have as Americans is the ability to seek redress from the courts when we believe our rights have been abridged or we have been improperly treated. And, when a complaint arises under a State law, it is both appropriate and desirable that it be heard in State court because those are the most convenient and with the best understanding of State laws and local conditions.

Of course, it is appropriate to provide for removing some State cases to Federal courts. But I think that should be more the exception than the rule, and I think this bill tends to reverse that. I think it excessively tilts the balance between the States and the Federal government so as to throw too many cases into already-overburdened Federal courts—with the predictable result that too many will be dismissed without adequate consideration of their merits.

So, while I respect those who have urged the House to pass this bill, I cannot vote for it.

Mr. BLUMENAUER. Mr. Speaker, I agree with this bill's intent to prevent the legal system from being ''gamed'' by attorneys who lump thousands of speculative claims into a single class action lawsuit and then seek out a sympathetic State court. Any abusive or frivolous class action is a drain on the system and forces innocent defendants to settle cases rather than play judicial roulette with the risk of a huge unjustified settlement.

Unfortunately, instead of narrowly focusing on such abuses, Senate bill 5 completely reconfigures the judicial system, resulting in diminished corporate accountability and fundamental legal rights of individuals. While this bill makes some improvements to limit frivolous lawsuits, it does so at a price that will make it harder for average Americans to successfully pursue real claims against interests that violate their States' consumer health, civil rights, and environmental protection laws. This is an unnecessary tradeoff. I voted for a Democratic substitute motion which would have minimized some of these abuses. Sadly, it was defeated and, as a result, I voted against final passage.

I will continue to be open to changes that make our judicial system work better, but not at the expense of the people I represent. It is essential that we hold accountable the forces that have so much impact on the lives of every American.

Mr. WEXLER. Mr. Speaker, I rise today in strong opposition to the so-called ''Class Action Fairness Act.'' I have strong objections to not only to the text of the bill itself but also to the very process by which it was strong-armed by the Republican leadership past the Judiciary Committee. This process did not allow any opportunity for committee members to raise our objections or to work constructively to fix the major problems in this legislation. This circumvention of regular order is being sold to us with a myriad of excuses, one of them is that the bill is a simple procedural fix for a judicial crisis with nothing controversial in it.

Nothing could be further from the truth. This bill is a federal mandate to undermine and all but kill the ability to raise class actions cases in State courts. Under this so-called ''procedural bill,'' almost every class action lawsuit would be removed from State jurisdiction and forced onto an already overburdened Federal judiciary. Moving these cases to Federal court will make litigation more costly, more time-consuming and less likely that victims can get their rightful day in court at all. This bill is so preposterously far-reaching it would prevent State courts from considering class action cases that only involve State laws. We have already added so many State cases to Federal jurisdiction that if this bill passes victims will be added to the substantial backlog of Federal cases and will likely find it difficult to ever have their cases heard.

It should be obvious to even the most casual observer that the intent of this bill is to prevent class action lawsuits from ever being heard. Members should make no mistake about it—if we pass this misguided legislation, we will have effectively shut the door on civil rights, on workers rights and on anyone injured through corporate negligence.

Mr. Speaker, I urge my colleagues to join me in opposing one of the most destructive and far reaching civil justice measures ever considered by this body.

Mr. SHAYS. Mr. Speaker, I rise in support of S. 5, the Class Action Fairness Act.

This legislation will work to balance class actions. Currently, plaintiffs' lawyers take advantage of the system by bringing large, national lawsuits in specific jurisdictions with relaxed certification criteria.

Attorneys are increasingly filing interstate class actions in State courts, mostly in what are known as ''magnet'' jurisdictions. Courts in these jurisdictions are attractive to lawyers because they routinely approve settlements in which attorneys receive large fees and the class members receive virtually nothing, and they also decide the claims of other state's citizens under the court's state law.

This results in more and more class actions being losing propositions for everyone involved—except for the lawyers who brought them.

The Class Action Fairness Act works to improve our legal system by allowing larger interstate class action cases to be heard in Federal courts, closing the magnet jurisdiction loophole.

This bill will also make it easier for local businesses to avoid harassment. Currently,

plaintiffs' lawyers can name a local business in a nationwide liability suit to stay out of Federal court. This legislation will put an end to this unfair practice.

Finally, S. 5 protects consumers with a consumer class action bill of rights. The bill of rights includes several provisions designed to ensure class members—not their attorneys—are the primary beneficiaries of the class action process, and are not simply awarded a coupon at the end of a trial.

Allowing judges to limit attorney's fees when the value of the settlement received by the class member is small in comparison and banning settlements that award some class members more simply because they live closer to the court will make class action suits more fair and help compensate the people who were wronged, not the attorney's handling their case.

I strongly support S. 5 and encourage my colleagues to do so as well.

Mr. DELAHUNT. Once again, Mr. Speaker, we have before us a bill that would sweep aside generations of State laws that protect consumers. Citizens will be denied their basic right to use their own State courts to file class action lawsuits against companies—even if there are clear violations of State labor laws or State civil rights laws. This bill comes after a lobbying campaign costing business interests tens of millions of dollars. Well, that was money well spent. With this sweeping legislation, corporations will have free reign to avoid responsibility for the wrongs they commit.

It is just shameful that the victims of corporate misconduct do not have the same level of influence here in the halls of Congress. Let's not forget the people who died as a result of defective tires manufactured by Firestone. What about countless individuals who died as a result of the tobacco industry's failure to disclose the risks of cigarettes?

Well, if it is any indication of this bill's intent—tobacco is already celebrating this week. Stocks are up and the industry is glowing. Let me quote their take on this bill, ''The practical effect of the change could be that many cases will never be heard given how overburdened Federal judges are.''

Plainly that is the goal of the bill. The goal is to ensure that legitimate plaintiffs are denied any recovery at all. And that whatever recovery they do receive is delayed as long as possible. I have spent decades in courtrooms and I can tell my colleagues—from my own experience—that justice delayed is justice denied. The doors to the courthouse will be locked shut. And this Republican leadership is handing the key to corporate America.

With complete disregard for precedent-setting individual and class action litigation, the Republican leadership is determined to destroy America's civil justice system, eliminating protections for the poor and powerless. This bill is a disgrace to the historic victories in courts across the country—to expand consumer rights, protect our environment, and strengthen workers' rights.

And there has been complete disregard for the legislative process in the House. While we have had hearings and markups on class action legislation in the past, this bill is quite complex and very different than previous versions. The fact that the other Chamber has already approved this matter in no way justifies a ''rush to judgment'' in the House, when so many important rights are at stake.

Class actions have addressed the looting of company after company by corporate insiders, whose brazen misconduct and self-dealing defrauded creditors and investors of billions of dollars, and stripped employees and retirees of their livelihood and life savings.

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

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

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

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

Today's bill completes this picture. It takes aim at the civil justice system that exists to correct the wrongs that the government cannot or will not address. I urge my colleagues to oppose this blatant effort to muzzle the courts. This bill is but the latest in a series of assaults by those on the other side attacking the ability of individuals to seek relief from the courts. And it is also but the latest in a series of assaults on States' rights to provide legal remedies for harm suffered by their citizens.

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

Mr. BACA. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

Mr. Speaker, I rise in strong opposition of S. 5, the so-called ''Class Action Fairness Act.''

This bill will send the majority of class action suits from State to Federal courts, making it more difficult for people who have been unfairly hurt to collect compensation for their injuries.

Federal courts are already overwhelmed by a large number of drug and immigration cases, and they don't have the time or the resources to deal with complex issues of State law.

This bill has it all wrong. Instead of punishing individuals who pursue frivolous lawsuits, this bill will punish innocent people who have been wrongfully hurt.

This bill is a payoff to large companies and special interests. It takes rights away from consumers in order to protect drug manufacturers, insurance companies, HMOs and negligent doctors. There is no accountability on their part.

It is not ''frivolous'' for an innocent person who has been harmed through no fault of their own to seek compensation for their injuries.

When a child is disabled or maimed by a preventable error, it is not frivolous to seek damages from the company responsible for the injury.

This is a bill that's going to significantly harm small consumers who want to hold large companies accountable for defrauding them.

I urge my colleagues to vote ''no'' on S. 5.

Mr. MEEHAN. Mr. Speaker, I rise in opposition to S. 5, the so-called Class Action Fairness Act.

Few of us would stand here and argue that there is too much accountability in corporate America today. In recent years, millions of our constituents have been swindled out of their retirement savings by corporate crooks at Enron, WorldCom, and other companies. For years, many unscrupulous mutual fund managers were skimming off the top of their clients' investment funds. Drug companies put new products on the market like Vioxx that they knew to be unsafe.

This bill is a windfall for companies that have profited while causing harm to others. And no industry is in a better position to benefit than the tobacco industry. It's little wonder that tobacco stocks rallied at the news that the Senate had passed this bill.

I'd like to read from a Wall Street analyst's view of how this bill would impact the tobacco industry. ''Flash—Senate Just Passed Class Action Bill—Positive for Tobacco,'' the analyst writes.

''The Senate just passed a bill 72–26 which is designed to funnel class-action suits with plaintiffs in different States out of State courts and into the Federal court system, which is typically much less sympathetic to such litigation. The practical effect of the change could be that many cases will never be heard given how overburdened Federal judges are, which might help limit the number of cases.''

I only wish that the proponents of this bill would use such candid language to describe its true intent—to make sure that legitimate cases are never heard, and to shield corporations from accountability for their actions.

The class action system is a major reason why we have safer consumer products, more honest advertising, cleaner air and drinking water, and better workplace protections than many other countries.

All of us are empowered by the right to band together and seek justice. Class actions are one of the most effective and powerful ways we have to hold people accountable for their actions.

I oppose this attempt to shut the courthouse door to people who have been wronged.

Mr. STARK. Mr. Speaker, I rise today to oppose this misguided legislation to limit the ability of average Americans to seek redress for injury and harm caused by corporate malfeasance.

Don't be fooled by the title of this bill. Congress is not standing up for the average American under this bill. It's not fixing inequities in our judicial system. It's making those inequities worse by giving the upper hand to big corporations.

I won't vote for this Republican-sponsored hoax. It unfairly threatens the very people we are all elected to protect. When the so-called party of local control makes it a top priority to move class action cases from State to Federal court, there's an ulterior motive.

Don't believe the myth my Republican colleagues want to sell you. Class action suits aren't frivolous. They allow average Americans financially unable to launch a judicial battle on their own the means to seek redress for injury or death of a loved one. They empower consumers to challenge wrongdoings by wealthy corporations who would otherwise ignore their appeal.

I don't think that the American public would be satisfied knowing that if this bill passes, the accountability of companies like Eron would be held less accountable. And the makers of

Vioxx and other dangerous drugs would be held less accountable.

It is truthful, law-abiding citizens who will lose if this bill becomes law, Apparently, in America today, we have government for, by, and of corporate interests and not the people.

I ask my colleagues to stand up for real people and vote against this shameful bill.

The SPEAKER pro tempore (Mr. BOOZMAN). All time for general debate has expired.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore. The Clerk will designate the amendment in the nature of a substitute.

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

Amendment in the nature of a substitute offered by Mr. CONYERS:

Strike all after the enacting clause and insert the following:

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

(a) SHORT TITLE.—This Act may be cited as the ''Class Action Fairness Act of 2005''.

(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.—Congress finds the following:

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

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

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

(B) adversely affected interstate commerce; and

(C) undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where—

(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

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

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

(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—

(A) keeping cases of national importance out of Federal court;

(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.

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

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

(2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

(3) 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. Definitions**

''In this chapter:

''(1) CLASS.—The term 'class' means all of the class members in a class action.

''(2) CLASS ACTION.—The term 'class action' means any civil action filed in a district court of the United States under 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 under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action. The term 'class action' does not include any civil action brought by, or on behalf of, any State attorney general or the chief prosecuting or civil attorney of any county or city within a State.

''(3) 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.

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

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

''(6) PROPOSED SETTLEMENT.—The term 'proposed settlement' means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

''(7) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possessions of the United States.

''(8) STATE ATTORNEY GENERAL.—The term 'State attorney general' means the chief legal officer of a State.

**''§ 1712. Coupon settlements**

''(a) CONTINGENT FEES IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

''(b) OTHER ATTORNEY'S FEE AWARDS IN COUPON SETTLEMENTS.—

''(1) IN GENERAL.—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney's fee to be paid to class counsel, any attorney's fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

''(2) COURT APPROVAL.—Any attorney's fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney's fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees.

''(c) ATTORNEY'S FEE AWARDS CALCULATED ON A MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

''(1) that portion of the attorney's fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

''(2) that portion of the attorney's fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

''(d) SETTLEMENT VALUATION EXPERTISE.—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

''(e) JUDICIAL SCRUTINY OF COUPON SETTLEMENTS.—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys' fees under this section.

**''§ 1713. 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 substantially outweigh the monetary loss.

**''§ 1714. 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.

**"§ 1715. Notifications to appropriate Federal and State officials**

''(a) DEFINITIONS.—

''(1) APPROPRIATE FEDERAL OFFICIAL.—In this section, the term 'appropriate Federal official' means—

''(A) the Attorney General of the United States; or

''(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

''(2) APPROPRIATE STATE OFFICIAL.—In this section, the term 'appropriate State official' means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

''(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

''(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

''(2) notice of any scheduled judicial hearing in the class action;

''(3) any proposed or final notification to class members of—

''(A)(i) the members' rights to request exclusion from the class action; or

''(ii) if no right to request exclusion exists, a statement that no such right exists; and

''(B) a proposed settlement of a class action;

''(4) any proposed or final class action settlement;

''(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

''(6) any final judgment or notice of dismissal;

''(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or

''(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

''(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

''(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

''(1) FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

''(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

''(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

''(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

''(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class member demonstrates that the notice required under subsection (b) has not been provided.

''(2) LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

''(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.

**"§ 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.''.

(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 FOR INTERSTATE CLASS ACTIONS.**

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

(1) by redesignating subsection (d) as subsection (e), and amending the subsection to read as follows:

''(e) As used in this section—

''(1) the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possessions of the United States; and

''(2) the term 'State attorney general' means the chief legal officer of a State.''; 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'—

''(i) means any civil action filed under 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 1 or more representative persons as a class action; and

''(ii) does not include—

''(I) any civil action brought by, or on behalf of, any State attorney general or the chief prosecuting or civil attorney of any county or city within a State;

''(II) any class action brought under a State or local law prohibiting discrimination on the basis of race, color religion, sex, national origin, age, disability, or other classification specified in that law; or

''(III) any class action or collective action brought to obtain relief under a State or local law for failure to pay the minimum wage, overtime pay, or wages for all time worked, failure to provide rest or meal breaks, or unlawful use of child labor;

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

''(D) the term 'class members' means the persons (named or unnamed) 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 $5,000,000, 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) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

''(A) whether the claims asserted involve matters of national or interstate interest;

''(B) whether the claims asserted will be governed by laws of the State in which the

action was originally filed or by the laws of other States;

''(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

''(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

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

''(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

''(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

''(A)(i) over a class action in which—

''(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

''(II) at least 1 defendant is a defendant—

''(aa) from whom significant relief is sought by members of the plaintiff class;

''(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

''(cc) who is a citizen of the State in which the action was originally filed; and

''(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

''(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

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

''(5) Paragraphs (2) through (4) shall not apply to any class action in which—

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

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

''(6) 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 $5,000,000, exclusive of interest and costs.

''(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

''(8) 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.

''(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

''(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

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

''(C) 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 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

''(10) For purposes of this subsection and section 1453, 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.

''(11)(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.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting ''subsection (a) or (d) of'' before ''section 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' shall have the meanings given such terms under section 1332(d)(1).

''(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(b) shall not apply), 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 by any defendant without the consent of all defendants.

''(c) REVIEW OF REMAND ORDERS.—

''(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

''(2) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

''(3) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

''(A) all parties to the proceeding agree to such extension, for any period of time; or

''(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

''(4) DENIAL OF APPEAL.—If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

''(d) EXCEPTION.—This section shall not apply to any class action that solely involves—

''(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

''(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 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).''.

(b) 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.''.

(c) CHOICE OF STATE LAW IN INTERSTATE CLASS.—Notwithstanding any other choice of law rule, in any class action over which the United States district courts have jurisdiction and that asserts claims arising under State law concerning products or services marketed, sold, or provided in more than 1 State on behalf of a proposed class which includes citizens of more than 1 such State, as to each such claim and any defense to such claim, the district court shall not deny class certification, in whole or in part, on the ground that the law of more than 1 State will be applied.

**SEC. 6. REPORT ON CLASS ACTION SETTLEMENTS.**

(a) IN GENERAL.—Not later than 12 months after the date of 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 the House of Representatives a report on class action settlements.

(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 that 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 attorneys' fees.

**SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE RECOMMENDATIONS.**

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

**SEC. 8. RULEMAKING AUTHORITY OF SUPREME COURT AND JUDICIAL CONFERENCE.**

Nothing in this Act shall restrict in any way the authority of the Judicial Conference and the Supreme Court to propose and prescribe general rules of practice and procedure under chapter 131 of title 28, United States Code.

**SEC. 9. EFFECTIVE DATE.**

The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.

Mr. SENSENBRENNER. Mr. Speaker, pursuant to the rule, I claim the time in opposition.

The SPEAKER pro tempore. Pursuant to House Resolution 96, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 20 minutes.

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

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

Mr. Speaker, I would like to briefly describe why this substitute is the superior piece of legislation before us today. The substitute is much better for the following reasons: civil rights carve-out. The substitute would carve out State civil rights claims in order to make sure that civil rights plaintiffs, especially those seeking immediate injunctive relief, can have their grievances addressed in a timely manner.

Believe me, this is an issue of great moment to those of us who are still prosecuting for a fair day in our Nation and have civil rights laws to back us up, but we now are pleading to keep the proper forums. For example, every State in the Union has passed a law prohibiting discrimination on the basis of disability. The language does not affect the Federal jurisdiction over Federal claims.

The second consideration for this is the wage-and-hour carve-out. Wage-and-hour class actions are often brought in State courts because State wage-and-hour remedies are often, I am sorry to say, more complete than the Federal wage-and-hour statute; and we have examples of that.

The third reason: we exclude non-class action cases involving physical injuries. The measure before us applies not only to class actions, but also to mass torts. The Democratic substitute removes the mass tort language. And then, of course, the attorney general carve-out which clarifies cases brought by State attorneys general are excluded from the provisions of the class action bill and would not be forced into Federal court.

These are the major reasons why we encourage a supportive vote for the substitute to the measure that is being debated today.

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

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

Mr. Speaker, I rise in opposition to the Democratic substitute amendment and urge my colleagues to reject it. The new math behind the substitute amendment rests on the following arithmetic: if you add a number of amendments rejected by large bipartisan majorities in the other body last week and combine them with the amendment ideas overwhelmingly rejected on the House floor by a bipartisan vote last year, the sum will somehow equal a credible solution. Funny math.

Mr. Speaker, this formula simply does not add up. The American consumers and businesses will be left with change in their pockets if the amendment passes. The Democratic substitute is less than the sum of its parts and represents a quotient that renders Senate Bill 5's core reform elements meaningless.

The individual elements of this proposal deserve some comment and explanation. First, I note with some amusement that the substitute totally recycles the findings of S. 5. The pages of findings discuss abusive class action windfall settlements for trial attorneys, forum shopping, and the need for more of these large interstate class action cases to be in Federal court.

While the minority substitute reargues the compelling case for reform of the class action system, it is followed by text that will only perpetuate the crisis the findings identify. Their admitting you have a problem is the first step to recovery, and we appreciate that admission; but the minority sponsors clearly are not ready for step two.

One element of the substitute amendment is the State attorney general provision allowing any class action to be brought by or on behalf of the State attorney general to be in State court. This provision is unnecessary because when State attorneys general sue on behalf of their citizens, those actions are almost always ''parens patriae'' actions, and not class actions; and the former will be in no way affected by this bill.

Also, the provision could produce troubling associations between attorneys general and plaintiffs' lawyers. For these reasons, the Pryor amendment in the other body that this provision copies verbatim failed to garner even 40 votes on the Senate floor last week.

A second element of the substitute is the ''choice of law'' provision. This provision would not only eviscerate the bill, but also would overturn 70 years of established Supreme Court precedent and would export to Federal courts a primary expedient of class action abuse we seek to remedy: the reckless application by local courts of the law of one State to the entire Nation in large interstate cases.

□ 1200

This provision is reprinted from a Senate amendment by Senator FEINSTEIN and Senator BINGAMAN. It was also soundly defeated.

The third element of the substitute is the so-called labor and civility rights carveout. This provision seeks to keep all class actions involving alleged civil rights and labor law violations in State court, despite the fact that the most generous racial discrimination and employment class action settlements in recent years have been in the Federal courts. The language was also offered in the other body and rejected.

Other major elements of the substitute include one our colleagues might remember as the Jackson-Lee House floor amendment to the bill in the last Congress. That amendment makes companies that incorporate abroad for tax purposes a citizen of a State and punishes them by keeping them out of Federal court. This is at least an admission that going into certain State courts as a defendant is indeed punishment, and that amendment was defeated in this House by the last Congress by a vote of 183 to 238. There is also a loophole creating a provision on mass actions and a completely unnecessary public disclosure provision, both based on Senate amendments in the other body that were offered and withdrawn.

What the minority has chosen as a substitute package certainly belies any grumblings about the lack of regular order this year. Since there is not a single original idea among the provisions that has not already been debated and defeated either in this House or the other body, it is hard to give credence to such complaints. This is a package of oldies but not goodies; oldies that have been rejected and should not be resurrected.

Finally, Mr. Speaker, a vote on this substitute is clearly just a vote to further deny or delay meaningful class action reform, and a vote on the substitute could not in any way be construed as reform of any kind but, rather, support for the trial-lawyer-dominated status quo.

I urge my colleagues to reject this recycled package of recycled amendments. The time for reform of a class action system which is out of control is now.

I urge my colleague to vote ''no'' on the substitute, and ''yes'' on S. 5.

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

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I rise in support of the substitute. One of the problems with the substitute is you have to debate all of the different

issues all at once. If we had the opportunity to introduce individual amendments, we could have discussed them one at a time and had a much more coherent discussion.

As it has been said, the underlying bill does not extinguish the right to get to court but it does gratuitously complicate the litigation. It does not fix coupons, it just moves them from State court to Federal courts. It adds procedural hurdles, and this substitute removes many of those hurdles.

The main thing it does is it carves out many of the different cases that belong in State court or at least ought to have the opportunity in the State court. It also fixes the yo-yo effect where you start off in State court, get removed to Federal court, Federal court does not certify the class, and then what happens? I guess you come back to State court or, I do not know, you might not be able to get back to State court. You may end up in a procedural trap where you have lost your case just in the time it takes to get over there and try to get back.

This amendment fixes that quagmire. It also carves out, as has been said, the State civil rights cases where some States have civil rights laws that are stronger and cover different people, different classes than the Federal laws. Wage and hour laws, some States have better laws than the Federal court. Mass torts where you have not class actions per se, but a lot of different litigants all in the same State. It fixes the problem with Attorneys General in bringing a case in State court on behalf of not only members of their State, but if the injury has occurred to a lot of other people, the Attorney General might want to bring that case.

I have a letter, Mr. Speaker, signed on this specific issue by 47 Attorneys General.

It also denies benefits under the bill for tax traitors, those who move their corporate headquarters off shore to avoid corporate taxes; and it also provides a limitation on sealed settlements that the gentleman from New York (Mr. NADLER) has been very active in making sure that cases that are settled cannot be sealed beyond public view, unless if such a sealing would violate public health or other important considerations.

This is a well-reasoned substitute. It eliminates many but not all of the problems in the underlying bill, and I would hope that the House would adopt the substitute.

NATIONAL ASSOCIATION
OF ATTORNEYS GENERAL,
*Washington, DC, February 7, 2005.*

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

DEAR SENATE MAJORITY LEADER FRIST AND SENATE MINORITY LEADER REID: We, the undersigned State Attorneys General, write to express our concern regarding one limited aspect of pending Senate Bill 5, the ''Class Action Fairness Act,'' or any similar legislation. We take no position on the Act as a general matter and, indeed, there are differing views among us on the policy judgments reflected in the Act. We join together, however, in a bipartisan request for support of Senator Mark Pryor's potential amendment to S. 5, or any similar legislation, clarifying that the Act does not apply to, and would have no effect on, actions brought by any State Attorney General on behalf of his or her respective state or its citizens.

As Attorneys General, we frequently investigate and bring actions against defendants who have caused harm to our citizens. These cases are usually brought pursuant to the Attorney General's parens patriae authority under our respective 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. It is our concern that certain provisions of S. 5 might be misinterpreted to hamper the ability of the Attorneys General to bring such actions, thereby impeding one means of protecting our citizens from unlawful activity and its resulting harm.

The Attorneys General have been very successful in litigation initiated to protect the rights of our consumers. For example, in the pharmaceutical industry, the States have recently brought enforcement actions on behalf of consumers against large, often foreign-owned, drug companies for overcharges and market manipulations that illegally raised the costs of certain prescription drugs. Such cases have resulted in recoveries of approximately 235 million dollars, the majority of which is earmarked for consumer restitution. In several instances, the States' recoveries provided one hundred percent reimbursement directly to individual consumers of the overcharges they suffered as a result of the illegal activities of the defendants. This often meant several hundred dollars going back into the pockets of those consumers who can least afford to be victimized by illegal trade practices, senior citizens living on fixed incomes and the working poor who cannot afford insurance.

We encourage you to support the aforementioned amendment exempting all actions brought by State Attorneys General from the provisions of S. 5, or any similar legislation. It is important to all of our constituents, but especially to the poor, elderly and disabled, that the provisions of the Act not be misconstrued and that we maintain the enforcement authority needed to protect them from illegal practices. We respectfully submit that the overall purposes of the legislation would not be impaired by such an amendment that merely clarifies the existing authority of our respective States.

Thank you for your consideration of this very important matter. Please contact any of us if you have questions or comments.

Sincerely,

Mike Beebee, Attorney General, Arkansas.
Gregg Renkes, Attorney General, Alaska.
Mark Shurtleff, Attorney General, Utah.
Fiti Sunia, Attorney General, American Samoa.
Terry Goddard, Attorney General, Arizona.
John Suthers, Attorney General, Colorado.
Jane Brady, Attorney General, Delaware.
Charlie Crist, Attorney General, Florida.
Mark Bennett, Attorney General, Hawaii.
Stephen Carter, Attorney General, Indiana.
Bill Lockyer, Attorney General, California.
Richard Blumenthal, Attorney General, Connecticut.
Robert Spagnoletti, Attorney General, District of Columbia.
Thurbert Baker, Attorney General, Georgia.
Lawrence Wasden, Attorney General, Idaho.
Tom Miller, Attorney General, Iowa.
Greg Stumbo, Attorney General, Kentucky.
Steven Rowe, Attorney General, Maine.
Tom Reilly, Attorney General, Massachusetts.
Mike Hatch, Attorney General, Minnesota.
Jay Nixon, Attorney General, Missouri.
Jon Bruning, Attorney General, Nebraska.
Kelly Ayotte, Attorney General, New Hampshire.
Charles Foti, Attorney General, Louisiana.
Joseph Curran, Attorney General, Maryland.
Mike Cox, Attorney General, Michigan.
Jim Hood, Attorney General, Mississippi.
Mike McGrath, Attorney General, Montana.
Brian Sandoval, Attorney General, Nevada.
Peter Harvey, Attorney General, New Jersey.
Eliot Spitzer, Attorney General, New York.
Wayne Stenehjem, Attorney General, North Dakota.
Jim Petro, Attorney General, Ohio.
Hardy Myers, Attorney General, Oregon.
Roberto Sanchez Ramos, Attorney General, Puerto Rico.
Henry McMaster, Attorney General, South Carolina.
Roy Cooper, Attorney General, North Carolina.
Pamela Brown, Attorney General, N. Mariana Islands.
W.A. Drew Edmondson, Attorney General, Oklahoma.
Tom Corbett, Attorney General, Pennsylvania.
Patrick Lynch, Attorney General, Rhode Island.
Lawrence Long, Attorney General, South Dakota.
Paul Summers, Attorney General, Tennessee.
Darrell McGraw, Attorney General, West Virginia.
Patrick Crank, Attorney General, Wyoming.
Rob McKenna, Attorney General, Washington.
Peg Lautenschlager, Attorney General, Wisconsin.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from Missouri (Mr. BLUNT), the distinguished majority Whip.

Mr. BLUNT. Mr. Speaker, the vote in this House we will take within the hour will leave only one more step, the President's signature, in this first major attack on lawsuit abuse.

I oppose the substitute and support the bill. I want to express my appreciation to the gentleman from Wisconsin (Mr. SENSENBRENNER) and his committee and all the Members, in fact, who have been willing to take on this tough fight, but particularly to the chairman for working hard to find a way to get this bill on the floor and to the President this early in this Congress.

Frivolous lawsuits are clogging America's judicial system, endangering America's small businesses, jeopardizing jobs, and driving up prices for consumers. The bill we are debating today will reduce these junk lawsuits through tougher sanctions and increased commonsense protections.

The past few years have witnessed an explosion of interstate class actions being filed in State courts, particularly

in certain magnet jurisdictions. These magnet courts are filled with class action abuses. They routinely approve settlements in which the lawyers receive large fees and the class members receive virtually nothing.

The Class Action Fairness Act is a commonsense bipartisan plan that addresses this serious problem by allowing larger interstate class action cases, cases that truly do involve multiple States, to be filed in Federal court. In addition to unclogging certain overused courts, this bill ends the harassment of local businesses through forum shopping. Lawyers who now manipulate this system often do anything to stay out of Federal court. They sometimes name a local pharmacy or a local convenience store in a nationwide product liability suit simply because they believe that court, and that court often has created a reputation as the place to go to get unjust settlements.

Sometimes they wait and amend their complaint and add millions of dollars of claims after the deadline for removal to Federal court. This bill stops this unfair practice as well.

This bill also establishes a much-needed class action rights bill. Several provisions are specifically designed to ensure that class members, not their attorneys, are the primary beneficiaries of the class action process.

Six years ago on this floor we really began the process of attacking this system. The stories go on and on and on, to the point that by the time we passed legislation like this in the last Congress for the third Congress straight, Members were eager to just simply get a couple of minutes to talk about one of the classes where the people in the class get a dollar-off coupon, the people in the class get the smallest possible box of Cheerios, the people in the class get a 31-cent check, or the people in the class even wind up having to pay the lawyers of the class additional money because there really was no money for the people in the class that was being determined.

This bill requires that judges carefully review settlements and limits attorneys fees when the value of the settlement received by the class members is minor in comparison or when there is a net loss settlement where the class members actually end up losing money.

This bill bans settlements that award some class members a large recovery simply because they live closer to the court that the lawyers shopped for to get that case in that judge's court.

It allows Federal courts to maximize the benefit of class action settlements by requiring that unclaimed settlement funds be donated to charitable organizations.

The Class Action Fairness Act is good for small business and good for consumers. I urge a ''no'' vote on the substitute. I urge my colleagues to support this important legislation.

Mr. Speaker, I thank the chairman and his committee for their hard work on this effort.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), the minority leader of our caucus.

Ms. PELOSI. Mr. Speaker, I rise in strong opposition to this legislation.

Today Republicans are bringing to the floor as their first major legislative action a payback to big business at the expense of consumers. The Republican agenda is to ensure that some Americans do not get their day in court.

Make no mistake that this class action bill before us today is an extreme bill. It is not a compromise bill as some have claimed. It is an extreme bill that is an injustice to consumers and a windfall for irresponsible corporations. Consumers will be hit hard by this bill, Mr. Speaker. It lumps together individual personal injury cases such as those involving Vioxx, which are not class action under current procedures, and forces them into the Federal courts. Doing so will greatly increase the likelihood that such cases will never be heard.

When Americans are injured or even killed by Vioxx or Celebrex or discriminated against by WalMart, they may never get their day in court. Those cases that do go forward will take significantly longer because the Federal courts are overburdened and unequipped for this caseload. That is why the bill is opposed by Federal judges, including The Judicial Conference of the United States. Special interests have even admitted that the real intent of this bill is to clog the Federal courts and, therefore, stop the cases.

To irresponsible corporations, however, the class action bill is a belated Valentine. It is exactly what they have asked for. Powerful corporations will largely be immune from the accountability that currently comes from meritorious State class action cases. For example, this bill would help shield large corporations from any accountability for Enron-style shareholder fraud, for activities that violate employee rights under State law, and for telemarketing fraud targeted at the elderly.

It should come as no surprise, however, that Republicans are seeking yet another way to protect irresponsible corporations.

The Washington Post reported that last year's Republican medical malpractice bill contained special liability protections that would have precluded consumers from suing to recover punitive damages arising for the types of injuries caused by Vioxx and Celebrex. Protecting big drug companies is always at the top of the Republican agenda. We saw that in the prescription drug bill under Medicare. This is yet again another example of Republicans being the handmaidens of the pharmaceutical industry.

This bill also runs counter to the principles of federalism that my colleagues on the other side of the aisle claim to support. It throws thousands of State cases into Federal courts that are not equipped to adjudicate State laws. For instance, lawsuits involving the enforcement of the State hourly wage laws, which often have greater protections than Federal wage laws, would be forced into Federal courts. In fact, 46 State Attorneys General on a bipartisan basis have requested an exemption so that they can continue to protect their citizens under the State consumer protection laws in State courts. The Republicans have rejected that request while Democrats have incorporated it into our substitute.

Democrats in our substitute support sensible approaches that weed out frivolous lawsuits but not meritorious claims. Our Democratic substitute says that certain kinds of cases must always have their day in court. Physical injury cases, civil rights cases, wage and hour cases, State Attorneys General cases, and others must be heard if we are to remain a Nation that strives for justice for all.

President Harry Truman said it so well. ''The Democratic party stands for the people. The Republican party stands, and has always stood, for special interest.''

I urge my colleagues to stand up to the special interests, to support the Democratic substitute, to listen, to listen to the recommendation of the Federal judges and the Judicial Conference of the United States and oppose this extreme legislation.

□ 1215

Mr. SENSENBRENNER. Mr. Speaker, I yield 2½ minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman of the Committee on the Judiciary for yielding me time.

Mr. Speaker, all Americans should thank the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Wisconsin (Chairman SENSENBRENNER) for their leadership on this most important issue.

The Class Action Fairness Act is a bipartisan, sensible bill that clarifies the rights of consumers and restores confidence in America's judicial system. It reforms the class action system and addresses the abuses that harm so many Americans.

We have all heard of the lawsuits in which plaintiffs walk away with pennies, sometimes literally, while the attorneys walk away with millions of dollars in fees. This problem will be addressed by providing greater scrutiny over settlements that involve coupons or very small cash amounts.

This legislation also ensures that deserving plaintiffs are able to make full use of the class action system. It allows easier removal of class action cases to Federal courts. This is important because class actions tend to affect numerous Americans and often involve millions of dollars. Federal court is the right place for such large lawsuits.

Moving more class actions to Federal courts also prevents one of the worst

problems in class actions today, forum shopping.

Mr. Speaker, while many concessions were made on both sides, this is still a very worthwhile bill that contains many good reforms, and I fully support it and look forward to its enactment into law and also encourage my colleagues to support it as well.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from New York (Mr. NADLER), a distinguished member of the Committee on the Judiciary.

Mr. NADLER. Mr. Speaker, I thank the gentleman for yielding me the time.

I rise in strong opposition to this egregious legislation and in support of the Conyers/Nadler/Jackson-Lee substitute amendment.

This substitute amendment amends this bill in several ways to ensure that consumers, workers and victims in personal injury cases are not precluded from having a fair opportunity to present their cases in court. I know the distinguished minority leader and others have mentioned some of these instances.

My good friend Eliot Spitzer, the distinguished attorney general of New York State, has joined 46 State attorneys general in expressing their concern that this legislation could limit their power to investigate and bring actions in their State courts against defendants who have caused harm to their citizen. Our amendment clarifies that cases brought by States attorneys general will not be subject to the provision of this bill and would not be forced into Federal court.

The substitute also includes a provision which I have advocated for many years, which actually was supported by the distinguished chairman and passed the Committee on the Judiciary a couple of times, to limit the ability of corporations settling lawsuits to demand that records that may indicate threats to public health and safety be sealed, unless it is necessary to protect trade confidentiality.

The substitute provides that when such a gag order is requested, and it is normally requested by both the plaintiff and the defendant because in the settlement the defendant insists on this as a condition of the settlement, the court then rubber stamps it. This substitute provides that if such a gag order is requested, the court must make a finding as to whether the defendant's interest in confidentiality outweighs the public interest in knowing of the threat to its health or safety.

If the court finds that the privacy interest outweighs the public interest, the court will issue the gag order. If the court finds the public interest in health and safety outweighs the privacy interest claimed in the specific case, the court must prohibit the sealing of the information.

Too often, critical information is sealed from the public and people are harmed as a result. How many people were killed or injured because the court sealed records relating to exploding Firestone tires, for one example. This provision will allow the public to learn of threats to this health and safety so as to take proper action to protect the public, while protecting legitimate confidential information.

The Conyers/Nadler/Jackson-Lee substitute amendment also deals with a major catch-22 created by the bill for victims of large and complex multistate court torts. On the one hand, the bill provides State courts cannot hear such cases; but when these cases are removed to Federal court, plaintiffs will find that the Federal courts routinely refuse to hear them. Federal courts are very reluctant to certify a multistate consumer class action suit, and six circuit courts and 26 district courts have expressly refused to consider certifying cases where several State laws apply.

Our substitute protects victims from facing this catch-22 and having the courtroom door completely closed to them by providing that if these cases are removed to Federal court by this bill, the Federal courts cannot refuse to certify a class action simply because more than one State law applies.

I urge my colleagues not to allow this bill to completely deny victims their day in court, either in State court or in Federal court. That would render this bill completely hypocritical. I urge my colleagues to vote ''yes'' on the Conyers/Nadler/Jackson-Lee substitute and ''no'' on the main bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield 5 minutes to the gentleman from Virginia (Mr. GOODLATTE), the author of the bill.

Mr. GOODLATTE. Mr. Speaker, I thank the chairman for yielding me time and for his leadership in bringing this legislation to the floor and for working with the Senate to achieve the compromise that we need.

The gentlewoman from California (Ms. PELOSI), the minority leader, called this an extreme Republican measure. Apparently, she has not spoken to her own fellow San Franciscan and senior Senator from her State, DIANNE FEINSTEIN, who negotiated the compromise that has brought this legislation to the floor of the House, or to Senator CHUCK SCHUMER, also a member of the Committee on the Judiciary on the Democratic side in the Senate, or 16 other Democratic Senators who voted for this legislation.

She also apparently has not spoken to members of her own Democratic Caucus, many of whom have voted for this legislation in each of the last three Congresses that have passed the House of Representatives and many more of whom will vote for the legislation today.

A number of the folks who have spoken on the other side of the aisle criticizing the legislation have cited total inaccuracies about what the legislation will do.

The gentleman from Massachusetts (Mr. MARKEY) would not yield to me, but he said that the Amerada Hess case in New Hampshire, with gasoline leaking into groundwater, would not be heard in the State court; but if you live in New Hampshire and you have gasoline leaking in your groundwater and virtually all of the plaintiffs are New Hampshire residents, the case, under this bill, would be heard in the State courts.

Some have mentioned the Vioxx case against Merck would be affected by this, and they have argued that Senate 5 should be rejected because it will hurt consumers bringing Vioxx cases against Merck. The truth, however, is that this legislation will have absolutely no effect on Vioxx suits. Here is why: the majority of personal injury cases brought against Merck are individual cases that would not be affected by the bill in any manner whatsoever. These include more than 400 personal injury cases that are part of a coordinated proceeding in New Jersey State court. None of these cases will be affected by the bill because they are neither class actions nor mass actions.

Now, what kind of cases would be affected by this legislation? Well, let me show my colleagues how a select number of class action trial lawyers play the class action wheel of fortune.

How about the Kay Bee Toys case where the lawyers got $1 million in attorneys fees and the consumers got 30 percent off selected products of an advertised sale at Kay Bee Toys for one week.

Or the Poland Spring Water case where the lawyers got $1.35 million in the wheel of fortune and the consumers got coupons to buy more of the water that the lawyers were alleging was defective.

How about the Ameritech case. The price goes up, $16 million for those lawyers; the consumers, $5 phone cards.

How about the Premier Cruise line case. The lawyers got nearly $900,000. The consumers got $30 to $40 off of their next thousand dollar cruise, with a coupon to buy more of the product the lawyers were alleging was defective.

Or the computer monitor litigation, $6 million in attorneys fees in a case alleging that the size of the computer screen was slightly off, and therefore, they were entitled to something. What did the consumers get? A $13 rebate to purchase their next purchase.

How about the register.com case, $642,500 to the lawyers. The consumers, $5-off coupons.

My favorite case, the case against Chase Manhattan Bank, the lawyers got $4 million in attorneys fees, but the plaintiffs that allegedly the opponents of this bill are protecting, they got 33 cents. Here is one of the actual checks. The catch was that at the time, to accept this 33-cent magnanimous check, they had to use a 34-cent postage stamp to send in the acceptance to get their 33-cent fee.

How about the case that President Bush cited last week when he highlighted problems with this of the woman who had a defective television set against Thompson Electronics, found she had been made a member of a class action seeking redress of her grievances and many others against Thompson Electronics. What did the lawyers get? $22 million in attorneys fees. What did she get? A coupon for $25 to $50 off her next purchase of exactly what she did not want, another Thompson Electronics television set.

Now, the gentlewoman from California, the minority leader, also cited the Washington Post. Let me tell my colleagues, the Washington Post has repeatedly endorsed this legislation, along with over a hundred other major newspapers, the Washington Post, the Wall Street Journal, the Financial Times, Christian Science Monitor, on and on the list goes. And here is what the Washington Post said, and that is why we need to pass this legislation today. 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.

I urge my colleagues to pass the bill.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 4 minutes to the gentleman from New York (Mr. WEINER), a distinguished member of the Committee on the Judiciary.

Mr. WEINER. Mr. Speaker, I thank the gentleman from Michigan for the time.

Sometimes during these debates I like to step in to take a perspective of someone on the committee who is not a lawyer; but I have to tell my colleagues, the previous speaker, the gentleman from Virginia, went to great lengths to talk about the lawyers fees. There is nothing in this bill that limits lawyers fees, and there is not anything in the bill actually that argues for his point, which is apparently that there should be a minimum amount that wrongdoers pay to each individual aggrieved person, which is a novel argument, I have not heard it made by my colleague before, saying that the plaintiffs are receiving too little now.

Let me explain very briefly why it is that we have situations like that. Those of us who are individuals of modest means, if we have been aggrieved by a major company, if they have done something that has harmed our health or our community or our family, we as individuals frankly do not have the ability to take on a major company to stop them from doing the wrongful things, to make sure they understand that there is a cost of doing it. So we join together as a community and we bring these actions as a group. We cannot, frankly, pay the lawyer up front so they are paid on contingencies, and that is the way these actions get taken.

One thing the gentleman from Virginia did not say even once through that whole wheel of rhetoric was that any of those that were held accountable by juries of their peers were not guilty of those things. In those cases, those parties, each and every one of them, on the wheel of rhetoric actually was found by a judge or a jury to have done substantial bad things to the community. The system actually worked in those cases.

We can quibble about the person, the individual that wound up getting a payment. There were so many of them, millions of people who had been harmed by those companies, that when they were done divvying up what seemed like a very large judgment, tens of millions of dollars, there was only left a 35, 40-cent coupon and the like.

I stand perfectly ready to vote in favor of an amendment by the gentleman from Virginia to have minimum payments to people who have been harmed. If the gentleman thinks it is not enough that they get 35 cents, I am with him. Some of those companies did outrageous things to our community, and they should be held accountable. If my colleague thinks a 35-cent check is not enough, I am with him. Let us make minimum amounts that they pay for the injuries, that they have to get, because the harm is so great.

I want to remind my colleagues and the citizens watching this why the system is structured this way. Imagine for a moment if someone who is making a shoddy automobile, who was not paying attention to whether sharp objects got into a cereal box, did not have to be concerned about lawsuits anymore. Do my colleagues think they would really say let us hire that extra safety precaution, that extra employee to keep an eye out for consumers? No. They would be less inclined to do that.

The system works as it is intended. Are there abuses? I am sorry to say that there are some, and I wish we would address some of them in this legislation which, of course, we do not; but frankly to stand before the wheel of rhetoric, which really is a wheel of bad doers who got caught by the justice system, which we are trying to dismantle here today, and say this is evidence that the system does not work is entirely the opposite of the truth, unless my colleagues believe that a jury of people's peers cannot make these informed decisions, that we are the only people brilliant enough to make these decisions. I love these small government types who believe we have better judgment on these things than 12 men and women in a community, then we have to believe that the system in those cases worked.

I would say to my colleagues on both sides of the aisle that the Conyers/Nadler/Jackson-Lee substitute only puts lipstick on a fraud. It still leaves a very, very flawed bill; but at least we go from being completely destructive to only being moderately destructive, and we protect ourselves from some of the worst abuses.

□ 1230

Mr. Speaker, I urge a ''yes'' vote on the substitute, a ''no'' vote on the base bill, and I urge us to stop this drumbeat on the other side of blaming average Americans for being victimized by big corporations.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman from Wisconsin for yielding me this time, and I thank the gentleman from New York (Mr. WEINER) for raising the points on those cases on the class action wheel of fortune because he makes a good point. In not one of those cases was there any wrongdoing found on the part of any of those defendants because all of those were settlements. They were extortionate settlements because they are in the jurisdiction of a court where they know they are facing a hanging judge and a hanging jury.

The gentleman also raised another good point, and we should not leave plaintiffs in the situation where they get a 33-cent check or a coupon for a box of Cheerios, like in another case, and that is what this bill does. It requires extra-special scrutiny for coupon settlement cases so the courts will no longer let the manufacturers' attorneys and the defendants' attorneys come in with a settlement that simply gets out of the case, that gives the plaintiffs' attorney a huge sum of money and everyone else walks away and the plaintiffs get left holding the bag.

Mr. Speaker, the gentleman ought to talk to his colleague, the senior Senator from New York, the predecessor of his seat, who supported this legislation.

In addition, when the gentleman talks about abuse of plaintiffs in these cases, take into consideration the nationwide class action lawsuit filed in Alabama against the Bank of Boston, headquartered in Massachusetts, over mortgage escrow accounts. The class members won the case but actually lost money. Amazing.

Under the settlement agreement, the 700,000 class members received small payments of just a couple of dollars or no money at all. About a year later, they found out that anywhere from $90 to $140 had been deducted from their escrow accounts. For what? To pay their lawyers' legal fees, of what? $8.5 million. And when some of those class members, some of those beleaguered plaintiffs, that I am glad the gentleman from New York is standing up for, sued their class action lawyers for malpractice, the lawyers countersued them for $25 million saying that their former clients were trying to harass them.

This is an extortionate practice. A small cartel of class action lawyers around the country are abusing the system and we need to change it.

Mr. CONYERS. Mr. Speaker, I yield 30 seconds to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I thank the gentleman very much for yielding me this additional time, and I am surprised that such an able lawyer would be unwilling to engage in a debate on his time, but I will take 30 seconds simply to rebut what the gentleman said.

In every one of those cases on the wheel of rhetoric that the gentleman put up, those that were found guilty, those who were found to be responsible, those who were found to be culpable of doing harmful things to our community admitted it, paid a fine, paid a penalty, that was approved by a judge, and that is the fact; that the gentleman took cases of people who admitted with their actions there was wrongdoing involved.

And if they had not been caught by this system, I ask the gentleman, what system would they be caught by?

Mr. CONYERS. Mr. Speaker, I am pleased to yield the balance of my time to the gentlewoman from Texas (Ms. JACKSON-LEE), a cosponsor of the substitute amendment.

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

Ms. JACKSON-LEE of Texas. Mr. Speaker, that pig may have lipstick, but I can tell my colleagues that it is still pretty unattractive.

It is interesting that my good friend from Virginia keeps talking about coupons and this 30 cents. What he is not telling those of us who understand what class action settlements really mean is that in the settlement comes the punishment for not doing or the incentive to not violate the law again. In the settlement comes an injunction that argues or stops the culprit, the violator, from doing harm again. There is an action. Class actions do not always generate into dollars to petitioners. If you have been done harm, you want that harm to stop immediately so someone else cannot be harmed.

And the class action lawsuit and the so-called millions of dollars to attorneys for attorneys fees does not take into account the preparation for that case, the depositions, the travel. So it looks as if there is a great bounty or a gift being given to lawyers who are working to ensure that the punitive entity, the entity that has caused thousands of employees to lose pensions from corporations, the entity such as MCI and others who have thrown away their corporate responsibility to their employees and caused them to lose all their money, who violated corporate laws and had the violation of trust and made sure that they did the self-dealing, these class actions were to say ''and do that no more,'' and ''we will not allow you to do that anymore.''

For example, the particular amendment that is included in the Conyers-Nadler-Jackson-Lee substitute, which I rise enthusiastically to support, the tax traitor corporation which leaves America and incorporates somewhere else and depletes all of its savings accounts, or all of its accounts, so therefore if there is an action, if you are harmed, if you are hurt and you sue here in the United States, you look up in the court and you find out there is empty pockets. Why? Because they have overcome the laws of this land. They have absconded and you have no way of seeking relief. The substitute includes the relief that is necessary to ensure that citizens and consumers are protected.

There is a civil rights carveout, so that you have a right to address your grievances without the expenses of a Federal Court. There is a wage and hour carveout, so that you can file against a company in your local jurisdiction as a class action when you have been violated on the minimum wage. Physical injuries, so that when your child is injured in a park because of a defective product you have the right to go into your State courts and seek relief.

Now, I want to share with those who feel that we are now opening the doors of opportunity with the Federal courts. Let me share this with you. This is why this is a bogus litigation or legislation that will not work. Arizona has 159 State judges, only 13 Federal courts. Tell me the difference in being able to go into a court that has 159 judges versus those who have 13.

What about the State of South Carolina, with 48 State judges and merely 10 federal judges; or Rhode Island with 22 State judges and three Federal judges; New York with 593 State judges and a mere 52 Federal courts; Louisiana, 211 State judges and 22 Federal courts?

Frankly, there is a farce going on here. At the end of the 108th Congress there were 35 judicial vacancies in the Federal courts. There is no opportunity to go into the Federal courts. They are overburdened and overworked. Justice Rehnquist said something very important. He said, ''I have criticized 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 need additional judgeships.''

This is a farce, I am saddened to say, even with the compromise. We all want to see the judicial system work. I know my good friend from Virginia has good intentions, but this responds to a noncrisis with no resources, no added courts to the Federal bench, and the backlog of cases all over America simply slams the door to injured parties across this land.

The substitute is fair. It allows you to go into the State courts that have a bounty of judges, allows you to be heard, and it allows those corporate offenders or those products that have offended and harmed and maybe killed, those defective automobiles, to be in the courthouse and to have their concerns heard.

Mr. Speaker, I rise in opposition to this bill, S. 5, the Class Action Fairness Act. Unfortunately for the millions of aggrieved plaintiffs in America with legitimate claims, this body has brought yet another piece of legislation to the floor that threatens to close the doors of the court.

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 ''tax traitor corporations'' accountable for their terrorist acts. With respect to S. 5, the right to seek removal to Federal courts will be precluded for tax traitor corporations.

The ''tax traitor 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 tax traitor corporations 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.

Mr. Speaker, S. 5 applies not only to class actions but to all tort cases. It is highly inefficient to overwhelm the Federal courts with the massive number of State claims that will come their way. Not only are the Federal courts less sympathetic to this kind of litigation, the practical effect will be that many cases will never be heard.

The barriers to gaining Federal jurisdiction to have a case heard is much higher than in State courts by virtue of their creation. As a result, the Federal courts will be quick to

refuse class certification in complex litigation matters. State courts are better suited to adjudicate complex class actions.

I oppose this legislation and urge my colleagues to join me.

Mr. Speaker, I ask my colleagues to vote for the substitute and defeat the underlying bill.

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

Mr. Speaker, the amendment in the nature of a substitute completely guts this bill. Every crippling amendment that was rejected either in this House or the other body in this Congress or the previous Congress is incorporated in this amendment. They do not have any new ideas over there. They just repackage and try to regurgitate the old ideas that have been found lacking.

The issue in this bill is very clear, and that is that we have to restore some sanity to the civil justice system by dealing with the abuses that a small group of lawyers have turned the class action system into.

When the framers of the Constitution wrote that inspired document, they gave Congress the power to regulate interstate Congress. What has happened as a result of the abuse of the class action system is that judges in small out-of-the-way counties, like Madison County, Illinois and Jefferson County, Texas end up being the ultimate arbiters of interstate commerce.

This bill puts some balance back into the system. The amendment perpetuates the existing system. Vote ''no'' on the amendments, vote ''no'' on the motion to recommit, and pass the bill.

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

The SPEAKER pro tempore (Mr. COLE of Oklahoma). Pursuant to House Resolution 96, the previous question is ordered on the bill and on the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. CONYERS).

The question is on the amendment in the nature of a substitute offered by the gentleman from Michigan (Mr. CONYERS).

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

Mr. CONYERS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 178, nays 247, not voting 9, as follows:

[Roll No. 36]

YEAS—178

| | | |
|---|---|---|
| Abercrombie | Baldwin | Berry |
| Ackerman | Barrow | Bishop (GA) |
| Allen | Bean | Bishop (NY) |
| Andrews | Becerra | Blumenauer |
| Baca | Berkley | Boswell |
| Baird | Berman | Brady (PA) |
| Brown (OH) | Jackson-Lee (TX) | Pastor |
| Brown, Corrine | Jefferson | Payne |
| Butterfield | Johnson, E. B. | Pelosi |
| Capps | Jones (OH) | Pomeroy |
| Capuano | Kanjorski | Price (NC) |
| Cardin | Kaptur | Rahall |
| Cardoza | Kennedy (RI) | Reyes |
| Carnahan | Kildee | Ross |
| Carson | Kilpatrick (MI) | Rothman |
| Chandler | Kind | Roybal-Allard |
| Clay | Kucinich | Ruppersberger |
| Cleaver | Langevin | Rush |
| Clyburn | Lantos | Ryan (OH) |
| Conyers | Larsen (WA) | Sabo |
| Costa | Larson (CT) | Salazar |
| Costello | Lee | Sánchez, Linda T. |
| Crowley | Levin | Sanchez, Loretta |
| Cummings | Lewis (GA) | Sanders |
| Davis (AL) | Lipinski | Schakowsky |
| Davis (CA) | Lofgren, Zoe | Schiff |
| Davis (FL) | Lowey | Schwartz (PA) |
| DeFazio | Lynch | Scott (VA) |
| DeGette | Maloney | Serrano |
| Delahunt | Markey | Sherman |
| DeLauro | McCarthy | Skelton |
| Dicks | McCollum (MN) | Slaughter |
| Dingell | McDermott | Smith (WA) |
| Doggett | McGovern | Snyder |
| Doyle | McIntyre | Solis |
| Edwards | McKinney | Spratt |
| Emanuel | McNulty | Stark |
| Engel | Meehan | Strickland |
| Etheridge | Meek (FL) | Tauscher |
| Evans | Meeks (NY) | Thompson (CA) |
| Fattah | Melancon | Thompson (MS) |
| Filner | Menendez | Tierney |
| Frank (MA) | Michaud | Towns |
| Gonzalez | Millender-McDonald | Udall (CO) |
| Green, Al | Miller (NC) | Udall (NM) |
| Green, Gene | Miller, George | Van Hollen |
| Grijalva | Mollohan | Velázquez |
| Gutierrez | Moore (KS) | Visclosky |
| Harman | Moore (WI) | Wasserman Schultz |
| Hastings (FL) | Nadler | Waters |
| Herseth | Napolitano | Watson |
| Higgins | Neal (MA) | Watt |
| Hinchey | Oberstar | Waxman |
| Hinojosa | Obey | Weiner |
| Holt | Olver | Wexler |
| Honda | Ortiz | Woolsey |
| Hooley | Owens | Wu |
| Hoyer | Pallone | Wynn |
| Inslee | Pascrell | |
| Israel | | |
| Jackson (IL) | | |

NAYS—247

| | | |
|---|---|---|
| Aderholt | Chocola | Garrett (NJ) |
| Akin | Coble | Gerlach |
| Alexander | Cole (OK) | Gibbons |
| Bachus | Conaway | Gilchrest |
| Baker | Cooper | Gillmor |
| Barrett (SC) | Cox | Gingrey |
| Bartlett (MD) | Cramer | Gohmert |
| Barton (TX) | Crenshaw | Goode |
| Bass | Cubin | Goodlatte |
| Beauprez | Cuellar | Gordon |
| Biggert | Culberson | Granger |
| Bilirakis | Cunningham | Graves |
| Bishop (UT) | Davis (KY) | Green (WI) |
| Blackburn | Davis (TN) | Gutknecht |
| Blunt | Davis, Jo Ann | Hall |
| Boehlert | Davis, Tom | Harris |
| Boehner | Deal (GA) | Hart |
| Bonilla | DeLay | Hastert |
| Bonner | Dent | Hastings (WA) |
| Bono | Diaz-Balart, L. | Hayes |
| Boozman | Diaz-Balart, M. | Hayworth |
| Boren | Doolittle | Hefley |
| Boucher | Drake | Hensarling |
| Boustany | Dreier | Herger |
| Boyd | Duncan | Hobson |
| Bradley (NH) | Ehlers | Hoekstra |
| Brady (TX) | Emerson | Holden |
| Brown (SC) | English (PA) | Hostettler |
| Brown-Waite, Ginny | Everett | Hulshof |
| Burgess | Feeney | Hunter |
| Burton (IN) | Ferguson | Hyde |
| Buyer | Fitzpatrick (PA) | Inglis (SC) |
| Calvert | Flake | Issa |
| Camp | Foley | Istook |
| Cannon | Forbes | Jenkins |
| Cantor | Ford | Jindal |
| Capito | Fortenberry | Johnson (CT) |
| Carter | Fossella | Johnson (IL) |
| Case | Foxx | Johnson, Sam |
| Castle | Franks (AZ) | Jones (NC) |
| Chabot | Frelinghuysen | Keller |
| | Gallegly | Kelly |
| Kennedy (MN) | Myrick | Schwarz (MI) |
| King (IA) | Neugebauer | Scott (GA) |
| King (NY) | Ney | Sensenbrenner |
| Kingston | Northup | Sessions |
| Kirk | Norwood | Shadegg |
| Kline | Nunes | Shaw |
| Knollenberg | Nussle | Shays |
| Kolbe | Osborne | Sherwood |
| Kuhl (NY) | Otter | Shimkus |
| LaHood | Oxley | Shuster |
| Latham | Paul | Simmons |
| LaTourette | Pearce | Simpson |
| Leach | Pence | Smith (NJ) |
| Lewis (CA) | Peterson (MN) | Smith (TX) |
| Lewis (KY) | Peterson (PA) | Sodrel |
| Linder | Petri | Souder |
| LoBiondo | Pickering | Stearns |
| Lucas | Pitts | Sweeney |
| Lungren, Daniel E. | Platts | Tancredo |
| Mack | Poe | Tanner |
| Manzullo | Pombo | Taylor (MS) |
| Marchant | Porter | Taylor (NC) |
| Marshall | Portman | Terry |
| Matheson | Price (GA) | Thornberry |
| McCaul (TX) | Pryce (OH) | Tiahrt |
| McCotter | Putnam | Tiberi |
| McCrery | Radanovich | Turner |
| McHenry | Ramstad | Upton |
| McHugh | Regula | Walden (OR) |
| McKeon | Rehberg | Walsh |
| McMorris | Renzi | Wamp |
| Mica | Reynolds | Weldon (FL) |
| Miller (FL) | Rogers (AL) | Weldon (PA) |
| Miller (MI) | Rogers (KY) | Weller |
| Miller, Gary | Rogers (MI) | Westmoreland |
| Moran (KS) | Rohrabacher | Whitfield |
| Moran (VA) | Ros-Lehtinen | Wicker |
| Murphy | Royce | Wilson (NM) |
| Murtha | Ryan (WI) | Wilson (SC) |
| Musgrave | Ryun (KS) | Wolf |
| | Saxton | Young (AK) |

NOT VOTING—9

| | | |
|---|---|---|
| Davis (IL) | Rangel | Sullivan |
| Eshoo | Reichert | Thomas |
| Farr | Stupak | Young (FL) |

□ 1308

Messrs. CULBERSON, SIMMONS, BASS, GOODE, GARY G. MILLER of California, HOBSON, FORD, CUELLAR, and Mrs. CUBIN changed their vote from ''yea'' to ''nay.''

Messrs. GEORGE MILLER of California, SMITH of Washington, and MOLLOHAN changed their vote from ''nay'' to ''yea.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. COLE of Oklahoma). The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, and was read the third time.

MOTION TO COMMIT OFFERED BY MR. BROWN OF OHIO

Mr. BROWN of Ohio. Mr. Speaker, I offer a motion to commit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. BROWN of Ohio. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to commit.

The Clerk read as follows:

Mr. Brown of Ohio moves to commit the bill S. 5 to the Committee on the Judiciary with instructions that the Committee report the same back to the House forthwith with the following amendments:

In section 1711(2) of title 28, United States Code, as added by section 3(a) of the bill, add after the period the following: ''The term 'class action' does not include any action arising by reason of the use of the drug Vioxx.''.

In section 1332(d)(1)(B) of title 28, United States Code, as amended by section 4(a)(2) of the bill, insert before the semicolon the following '', except that the term 'class action' does not include any action arising by reason of the use of the drug Vioxx''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes in support of his motion.

Mr. BROWN of Ohio. Mr. Speaker, Janet Huggins died last September. She was 39 years old. She had a 9-year-old son.

She had no personal or family history of heart problems, but she suffered a fatal heart attack just a month after she began taking a new medicine for her early-onset arthritis.

That medicine she took was Merck's anti-inflammatory drug, Vioxx. Cardiologist, Dr. Eric Topol, and other researchers at the Cleveland Clinic sounded the alarm in August of 2001.

Their article in the Journal of the American Medical Association pointed to increased occurrence of heart problems in patients taking Vioxx and similar Cox-II anti-inflammatory drugs. Dr. Topol even called Merck's CEO and research director to talk about his concerns. His calls went unanswered. His warnings went unheeded.

Instead, Merck continued to sell Vioxx, continued to spend $100 million a year on direct-to-consumer advertising, encouraging more and more Americans to buy Vioxx. That is what Ms. Huggins did. She was buried the same day that Merck finally took Vioxx off the market.

Her husband Monty has filed suit against Merck. His suit will be captured, along with thousands of other Vioxx suits, under the mass actions provisions of S. 5. This bill is designed to make it more difficult for Monty Huggins and others to pursue their claims that companies like Merck will never be held accountable.

S. 5 will make it more expensive for him and much harder for him to travel for court proceedings. It may even dead-end Monty Huggins' claim entirely.

Federal Courts have repeatedly refused to certify multistate class actions because they found them too complex to choose one State law over the other. So Monty Huggins may arrive in Federal Court only to find that is the end of the line.

The bitter irony here is that Vioxx claims are not really class actions at all.

Here is a good example of the sort of things settled by class action lawsuits. This iPod portable music player is all the rage. There are some people out there who thought the batteries on these things run out too quickly. They have filed a class action lawsuit against the manufacturer. If they win, everybody in the class probably gets a few bucks and the whole thing is done.

That is what class action lawsuits are about. They do not generally involve personal injuries. They do not generally involve huge losses. There is a world of difference, Mr. Speaker, between a faulty battery in this, and the death of a 39-year-old wife and mother.

Perhaps the worst aspect of this bill is that it treats these suits the same. We should strip out the whole class action, the mass action provision, but that is not realistic in this political environment.

My motion to commit prevents harm so obvious it cannot be ignored by specifically exempting Vioxx lawsuits.

Dr. Topol at the Cleveland Clinic, who I mentioned earlier wrote, ''Neither of the two major forces in this 5-and-a-half year affair, neither Merck nor the FDA, fulfilled its responsibilities to the public.''

This motion to commit offers an opportunity for someone at last to act responsibly.

If we adopt this motion to commit, Monty Huggins will have a fighting chance for justice. If we do not, the U.S. House of Representatives will join the list of those who betrayed the public's trust.

Mr. Speaker, I yield the reminder of my time to my friend, the gentleman from Arkansas (Mr. ROSS).

Mr. ROSS. Mr. Speaker, the Class Action Fairness Act could not be more inappropriately named, and this motion to commit shows why.

Since 1999, Merck has spent over $100 million a year to advertise Vioxx. More than 80 million people took Vioxx, and the drug generated sales of $2.5 billion for Merck.

Merck should take responsibility for the harm their products may cause. Thousands, literally thousands of American families believe they lost a loved one or suffered personal harm because Vioxx was unsafe.

These families believe Merck knew of the danger Vioxx was causing, but allowed the drug to remain on the market anyway. Maybe they are right. Maybe they are not. But the point is that the so-called Class Action Fairness Act does not give them a fair chance to make their case before a jury of their peers.

The Class Action Fairness Act makes it very difficult for those who feel they were harmed by drugs like Vioxx from getting the justice they deserve. We should adopt this motion to commit and pass a Class Action Fairness Act worthy of the name.

Mr. GOODLATTE. Mr. Speaker, I rise in opposition to the motion to commit.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. GOODLATTE) is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Speaker, first let me thank Chairman SENSENBRENNER for his leadership in bringing us to this historic point. He and I have been working on this for over 6 years. It has passed the House of Representatives three times before.

Due to his good work, it has now passed the Senate and we have the opportunity to send it to the President. He is waiting to sign it and we shouldn't waste any more time.

□ 1315

Now the truth about class action fairness and Vioxx. Critics have been arguing in the press that S. 5 should be rejected because it will hurt consumers bringing Vioxx cases against Merck. The truth is, however, that this legislation will have absolutely no effect on Vioxx suits, and here is why. The majority of personal injury cases brought against Merck are individual cases that would not be affected by the bill in any manner whatsoever. These include more than 400 personal injury cases that are part of a coordinated proceeding in New Jersey State Court. None of these cases will be affected by the bill because they are neither class actions nor mass actions.

Merck has been named in more than 75 statewide and nationwide class actions involving Vioxx, but only a small percentage are personal injury class actions. To the extent these cases do involve personal injury, most were already brought in or removed to Federal Court because each potential class member's claims exceeds $75,000. Thus, these cases are removable to Federal Court under the old rules.

There are a few cases which plaintiffs have joined together in mass action-type cases against Merck. However, not a single Vioxx case has been brought against Merck in State court by more than 100 plaintiffs, one of the requirements for removal to Federal Court under the class action legislation. Thus, there is no reason to believe that the mass action provision would affect any Vioxx-related cases whatsoever.

Most of the class actions have been brought against Merck. Since the legislation is not retroactive, it would absolutely have no effect on the 75 class actions already filed against Merck in the wake of the Vioxx withdrawal.

Mr. BROWN of Ohio. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. COLE of Oklahoma). Does the gentleman from Virginia yield to the gentleman from Ohio for a parliamentary inquiry?

Mr. GOODLATTE. Mr. Speaker, I do not yield.

The SPEAKER pro tempore. The gentleman from Virginia (Mr. GOODLATTE) may continue.

Mr. GOODLATTE. Mr. Speaker, given the large number of suits already filed and the fact that every former Vioxx taker in America is already a proposed class member in numerous class actions, it is unlikely there will be many more class actions after the legislation is enacted.

It is bad legislation to have something pass that covers all class actions in the country for all time and name one specific product or one specific company in the legislation. It is irrelevant anyway.

Now, let me tell you the kinds of cases that are affected by this legislation. Take a look at the ''Class Action Wheel of Fortune'' on this chart. It will tell you what we are doing here today.

You have got the case against Ameritech. Ameritech, the attorneys for the plaintiffs got $16 million in attorneys fees. What did the plaintiffs they represent get? Five-dollar phone cards.

The Premier Cruise Line case, the lawyers got almost $1 million; the consumers got a $30- to $40-off coupon for their next cruise.

The computer monitor litigation case, the lawyers, $6 million in fees; the consumers, a $13 rebate against your next future purchase of the alleged defective product.

Register.com, $650,000 for the lawyers; $5 for the consumers.

KB Toys, $1 million for the lawyers; 30 percent off your selected product in a unadvertised 1-week sale at KB Toys.

Poland Spring Water, $1.35 million for the lawyers; a coupon for more of the allegedly defective water for the consumers.

My favorite case, however, is this one, the Chase Manhattan Bank case, where the lawyers got $4 million in attorneys fees; the plaintiffs, a check, we have got one right here, for 33 cents. But there was a catch, because if you wanted to accept the 33 cents, you had to use a 34-cent postage stamp to send in your acceptance notice. How is that for a bargain for you?

And how about the $22 million case that President Bush cited last week against Thompson Electronics? The lawyers got $22 million in attorneys fees; the plaintiffs, one of whom was there, got a $25- to $50-off coupon to buy more of what? The very television set that she was complaining was defective in the first place.

It is a racket, it is extortionate. The people of the country know it. When they are asked the question, who benefits from our class action industry today, 47 percent say it is the plaintiffs' lawyers; 20 percent say it is the lawyers for the companies; 67 percent of our public recognizes it is the lawyers who benefit from this system.

It is time we change it. This bill does just that. It protects American consumers and makes sure that they get justice by examining these ridiculous coupon settlements.

Mr. Speaker, I urge my colleagues to support this legislation, defeat the motion to commit, and send the bill to the President, and starting very soon, we will have justice for American consumers.

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

PARLIAMENTARY INQUIRY

Mr. BROWN of Ohio. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. BROWN of Ohio. Mr. Speaker, under provisions of this bill, is it not the case that all future Vioxx cases are prohibited?

The SPEAKER pro tempore. The gentleman has not stated a proper parliamentary inquiry.

Without objection, the previous question is ordered on the motion to commit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to commit.

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

RECORDED VOTE

Mr. BROWN of Ohio. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on the motion to commit will be followed by 5-minute votes on the passage of S. 5, if ordered, and the motion to suspend the rules on H. Res. 91.

The vote was taken by electronic device, and there were—ayes 175, noes 249, not voting 10, as follows:

[Roll No. 37]

AYES—175

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Chandler
Clay
Cleaver
Clyburn
Conyers
Costa
Costello
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Etheridge
Evans
Fattah
Filner
Frank (MA)
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Rahall
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Stark
Strickland
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—249

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boucher
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Calvert
Camp
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chocola
Coble
Cole (OK)
Conaway
Cooper
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Cunningham
Davis (AL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
Engel
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Portman
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Spratt
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—10

Buyer
Cox
Eshoo
Farr
Inglis (SC)
Jones (OH)
Rangel
Reichert
Shadegg
Stupak

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. COLE of Oklahoma) (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1341

So the motion to commit was rejected.

The result of the vote was announced as above recorded.

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

The SPEAKER pro tempore (Mr. MCHUGH). The question is on the passage of the Senate 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 279, nays 149, not voting 6, as follows:

[Roll No. 38]

YEAS—279

Aderholt
Akin
Alexander
Bachus
Baird
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Berry
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boucher
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Cooper
Costa
Costello
Cox
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Cunningham
Davis (AL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harman
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Higgins
Hinojosa
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Meeks (NY)
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moore (KS)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Portman
Price (GA)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NAYS—149

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Barrow
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Clay
Cleaver
Clyburn
Conyers
Crowley
Cummings
Davis (CA)
Davis (FL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doolittle
Doyle
Engel
Etheridge
Evans
Fattah
Filner
Frank (MA)
Green, Al
Green, Gene
Grijalva
Gutierrez
Hastings (FL)
Herseth
Hinchey
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kucinich
Langevin
Lantos
Lee
Levin
Lewis (GA)
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Menendez
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (WI)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Price (NC)
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Solis
Spratt
Stark
Strickland
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wynn

NOT VOTING—6

Baker
Eshoo
Farr
Rangel
Reichert
Stupak

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1349

So the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## HONORING THE LIFE AND LEGACY OF FORMER LEBANESE PRIME MINISTER RAFIK HARIRI

The SPEAKER pro tempore (Mr. MCHUGH). The unfinished business is the question of suspending the rules and agreeing to the resolution, H. Res. 91, as amended.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. ISSA) that the House suspend the rules and agree to the resolution, H. Res. 91, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 409, nays 0, not voting 24, as follows:

[Roll No. 39]

YEAS—409

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Cleaver
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cox
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Etheridge
Evans
Everett
Fattah
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo