

# PUBLIC JUSTICE E-LERT

AMERICA'S PUBLIC INTEREST LAW FIRM

December 9, 2010

How's this for an unfair litmus test? No one can pursue a class action unless he or she can demonstrate an ability to cover the entire costs of the litigation. A recipe for "rich only" justice, right?

Not if we can help it.

Last week, Public Justice filed an *amicus* brief in [Angelfish Swim School, Inc. v. Roberts](#), challenging the State of Florida's proposed "financial resources test" for anyone who wants to file a class action. The state's interim Secretary of State claims the test is necessary to determine if participants are "adequate" representatives.



Apparently, a plaintiff who can't pay for a class action on his or her own is "inadequate" in the State of Florida's eyes. (Never mind that the Seventh Circuit once noted that only a "madman" would carry that load alone and "a madman is not a good representative of the class.")

As [our brief](#) argues, Florida's proposed policy amounts to discrimination against the non-wealthy, a gross and barefaced affront to our colorblind, status-blind civil justice system.

Class actions are often the only way low- and average-income people can vindicate their legal rights, given the resources required to litigate and, in some cases, with small damage awards at stake. They were never intended to be a legal privilege for only wealthy plaintiffs.

Consider this real-life example: In 1992, a group of low-income, mentally ill adults in Florida brought a class action against the state for terminating their home health care services without notice. Representing the plaintiffs, Legal Aid lawyers won a judgment for their clients. Had the state's financial resources test been in place at the time, the class participants would have failed it, their mistreatment would have been neither punished nor remedied, and justice would have been denied.

The bottom line -- and, this is a quote from our brief in *Angelfish* -- is that "adopting a class representative financial resource test would preclude cases that protect the public interest."

To read our brief in *Angelfish*, [click here](#).

We can thank Brian Warwick and Janet Varnell of [Varnell & Warwick, P.A.](#) and Public Justice's [Brayton-Thornton Attorney Melanie Hirsch](#) for their excellent brief. And you for your continued support of and faith in the work we do to keep the courthouse doors open for all.

Arthur Bryant  
Executive Director  
Public Justice and the  
Public Justice Foundation

email: [abryant@publicjustice.net](mailto:abryant@publicjustice.net)

voice: 202-797-8600

web: <http://www.publicjustice.net>

Public Justice | 1825 K Street, NW | Suite 200 | Washington | DC | 20006