



Top 5 Reasons to Oppose H.R. 985, the Fairness in Class Action Litigation Act

1. It's Extreme.

Far more draconian than last year's version with many more restrictions on the rights of individuals to hold corporations accountable, this bill is being rushed through the House of Representatives. The bill was pushed through the House Judiciary Committee less than a week after introduction without a hearing and without any input from judges or litigants. That's why the ABA, 120 civil rights organizations, 37 disability rights organizations, and over 80 consumer, environmental, and workers' rights organizations oppose the bill.

2. It Eliminates Class Actions.

The bill eliminates most class actions by requiring that that class members have the same type and scope of injury as the named representative. In an employment discrimination case, it means that all the class members have the same amount of lost wages. In a case involving mortgage fraud, all the homeowners will have suffered the same amount of damages for the same duration, a completely impossible standard since the terms of each homeowner's mortgage will differ. And in a case where businesses are seeking damages for losses associated with data breaches, each business must suffer the same type of data breach and suffer the same losses. Not only does the bill eliminate class actions, but most plaintiffs will have no remedy whatsoever. A vast majority of these cases cannot be brought individually as the cost of the case is more expensive than the recovery.

3. It Violates Contractual Rights.

The bill interferes with an attorney's ability to represent his or her clients. The restrictions are ludicrous, ranging from prohibiting an attorney from representing a family member or law firm employee in a class action to requiring that no lawyer may represent a client in a class action, if that lawyer previously represented the client in another matter. Congress has better things to do than internationally interfere with contracts between private parties.

4. It Imposes One-Sided Requirements on Plaintiffs.

Many of the bill's onerous provisions only apply to plaintiffs and their attorneys. The restrictions on representation are just the beginning. The discovery stay, the third party funding disclosure provision, the requirement to prove causation and liability before discovery in a multi-district litigation proceeding, and the prohibition against joining plaintiffs together in the same case all impose one-sided requirements on injured people while no such burdens are imposed on

corporate defendants. Further, the fee restrictions in the bill apply only to attorneys representing plaintiffs while corporate defense counsel can keep running up the tab, using an arsenal of legal tools to drive up the costs of the litigation to force plaintiffs into dropping their claims or accepting low-ball settlement offers.

5. It Eliminates Existing Rights.

The bill applies to pending class actions and consolidated tort claims. Passage of the bill would eliminate existing remedies for plaintiffs without justification.