



## Consumer Federation of America

February 14, 2005

### **Oppose S. 5, the so-called Class Action Fairness Act Refuse to Deny Justice to Consumers**

Dear Representative,

We are writing to you as an organization dedicated to working on behalf of the rights and interests of consumers to express our opposition to S. 5, the "Class Action Fairness Act." We urge you to vote against S. 5 and to support strengthening amendments that better protect consumers. Class actions are an important and efficient legal tool for consumers to use in order to obtain redress from wrong doing. We are concerned that S. 5 will create barriers to a consumer's efforts to obtain redress. S. 5 is unfair to consumers and we urge you to vote against it.

The jurisdictional changes mandated by S. 5 are designed to impede class actions, not to make them fairer or more efficient. Congress should seek to hold negligent wrongdoers accountable for their actions. Yet this bill does just the opposite: it places obstacles to accountability by providing fewer incentives for companies to keep their products safe and their actions fair and by creating mechanisms to delay and ultimately deny justice to injured consumers.

S. 5 will create numerous barriers to participating in class actions by permitting defendants to remove most state class action suits to federal court, thus virtually wiping out state class actions. In addition, we are concerned that multi-state class actions involving state consumer laws will also be practically eliminated due to the fact that federal courts may deny class certification to these cases because multiple state laws apply. Therefore, the bill, in its current form, will make it more difficult for consumers to obtain effective and efficient judicial relief for injuries caused by defective products, fraud in the marketplace, or discrimination. This legislation will deny consumers access to adequate redress against corporate wrongdoers and will undermine the ability of state courts to hear cases primarily concerned with their own citizens.

Due to the likelihood that multi-state class actions will not be heard in federal courts, we supported the Bingaman - Feinstein Amendment to S. 5 when it was offered on the Senate floor, to ensure that multi-state class actions would actually be heard in federal courts. We support a similar amendment in the House, which would prohibit a federal judge from denying class certification on the ground that multiple state laws apply. The amendment would also assist judges by giving them the ability to apply the state laws with the strongest connection to the case.

S. 5 will also clog an already overburdened and understaffed federal judiciary and slow the pace of certifying class action cases. This considerable delay is yet another factor that will likely result in the denial of justice to injured consumers. In addition, this removal to federal court

takes away an important and traditional function of state courts and will slow ? and in some cases thwart ? the continual evolution of state law.

S. 5 creates an impenetrable roadblock for consumers who need the class action system to obtain much needed redress: it makes it more difficult for consumers to hold bad actors accountable for the harms they caused and to deter future misconduct. The Class Action Fairness Act will substantially reduce the effectiveness of one of the most important legal tools consumers now have.

We strongly urge you to protect the rights of consumers, oppose S. 5, and support pro-consumer amendments or substitutes.

Sincerely,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive style with a horizontal line extending to the right.

Rachel Weintraub  
Assistant General Counsel  
Consumer Federation of America