



Consumer Federation of America



U.S. Public Interest Research Group

**Oppose S. 274, the so-called “Class Action Fairness Act of 2003”**  
*Support Feingold Amendments*

April 2, 2003

Dear Senate Judiciary Committee Member,

As the Senate Judiciary Committee considers S. 274, Consumer Federation of America and the U.S. Public Interest Research Group write to express our opposition to the “Class Action Fairness Act of 2003.” The bill will make it more difficult for consumers to obtain effective and efficient judicial relief for injuries caused by defective products, fraud in the marketplace, and discrimination.

S. 274 will create numerous barriers to consumers participating in class actions by permitting defendants to remove most state class action suits to federal court. Under the bill, if a consumer class meets state law class certification requirements, but it fails to meet the class certification requirements set forth in federal law, then the federal courts would be required to deny class certification and dismiss (not remand) the case. A consumer could then either bring the claim in state court as an individual action or re-file an amended class certification in state court. However, most individual cases would be impractical to litigate, would not have the same deterrent effect, and – if filed in large numbers-- would have the potential to overwhelm state courts. In addition, re-filing again opens the door created by S. 274 for the defendant to remove the case to federal court. **We urge you to support the amendment offered by Senator Feingold to prevent consumers from being shut out of court or being shuttled back and forth, by ensuring that consumers could ultimately obtain redress in state court.**

The bill would also clog an already overburdened and understaffed federal judiciary and slow the pace of certifying class action cases. This considerable delay will likely result in the denial of justice to injured consumers. In a March 26, 2003 letter to Senator Hatch, The Judicial Conference of the United States stated that it opposed previous similar class action provisions. The Secretary of the Judicial Conference stated, “That opposition was based on concerns that the provisions would add substantially to the workload of the federal courts and are inconsistent with principles of Federalism. The March 2003 position makes clear that such opposition continues to apply to similar jurisdictional provisions.” In addition, the Conference of Chief Justices, representing state supreme courts, expressed their opposition to past “reform” efforts. In a March 28, 2002 letter to Senator Leahy, the President of the Conference of Chief Justices stated, “Absent hard evidence of the inability of state judicial systems to hear and decide fairly class actions brought in state courts, we do not believe that such a procedure is warranted.” This legislation’s removal to federal court takes away an important and traditional function of

state courts and will slow — and in some cases thwart — the continual interpretation of state law.

S. 274 will also deny consumers access to protections afforded by their state consumer protection statutes. While a federal court will apply state law, it will apply federal rules of procedure and standing. Thus, consumers will not be protected by the state procedures written and passed by their state legislatures and interpreted by their state courts that may enable consumers to pursue claims that would be unavailable under federal rules. **We urge support for the amendment offered by Senator Feingold, that would exempt from the scope of S. 274 any class action filed in state court based upon a state consumer protection statute, including “any State statute relating to consumer fraud, consumer loans, consumer credit sales, deceptive trade practices, unlawful trade practices, or unfair and deceptive trade practices.”**

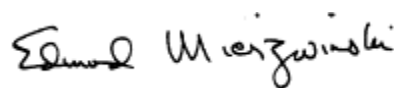
It is true that there is a need to curtail some abuses of the class action process. However, rather than simply eliminating these abuses, S. 274 would create barriers to a consumer's effort to obtain redress. Our organizations support changes to the class action system that would prevent unjust enrichment and act as a deterrent to future wrongdoing, including modification of notice requirements and simplification of certification procedures and standards; but the jurisdictional changes mandated by S. 274 are designed to impede class actions, not to make them fairer or more efficient.

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 oppose S. 274.

Sincerely,



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