

June 29, 2010

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The undersigned organizations strongly oppose Section 5 of H.R. 5503, the “Securing Protections for the Injured from Limitations on Liability Act,” which would amend the widely supported, bipartisan “Class Action Fairness Act” (CAFA) to exempt *parens patriae* actions (suits brought by a state on behalf of its citizens) from CAFA jurisdiction.

Supporters of this provision say it is necessary to allow states affected by the oil spill in the Gulf to seek effective legal remedies in their own courts. But the CAFA provision is totally *unnecessary* because state attorneys general can bring suits as “*parens patriae*” on behalf of their citizens without implicating CAFA jurisdiction. Thus, the only real effect of the legislation would be to create a loophole that would keep legitimate class actions out of federal court by encouraging enterprising litigation.

Parens patriae cases are typically brought by state attorneys general under state consumer protection statutes. Such suits, which can only be brought by attorneys general, fall outside the scope of CAFA because they are not class actions. CAFA expressly applies to “class actions,” which are defined as “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 one or more representatives as a class action.” Unlike class actions, *parens patriae* cases do not involve any certification process and are not filed by representative class members.

Some have claimed that the amendment is necessary because the U.S. Court of Appeals for the Fifth Circuit expanded CAFA jurisdiction to include *parens patriae* lawsuits in *In re Katrina Canal Litigation Breaches*, 524 F.3d 700 (5th Cir. 2008). But that case does *not* support the proposition that all suits initiated by attorneys general may be removed to federal court under CAFA. Rather, the court found that the lawsuit in that case was effectively a class action (and not an authentic *parens patriae* suit) because the state joined individual plaintiffs in the action. As a result, the state was not the only real party in interest, which meant that the suit was not an authentic *parens patriae* action in which the state was suing in its sovereign capacity. As other courts have found in refusing to follow the *Katrina* ruling, suits brought by state attorneys general are not subject to federal jurisdiction under CAFA when the state is suing in its capacity as a sovereign.

Further, Section 5 threatens to negate one of the core purposes of CAFA by creating a loophole that would encourage enterprising attorneys to avoid federal jurisdiction by finding attorneys general to join their class action lawsuits. Rather than promote justice, such a result would promote questionable collaborations between private attorneys and public officials, in which the attorneys seek the AG’s signature in order to avoid federal jurisdiction and the AGs

join essentially private lawsuits for political reasons. Meanwhile, it would do nothing to help the individuals and businesses affected by the Gulf spill.

For all of these reasons, we urge you to oppose the CAFA provision in the bill.

Sincerely,

60 Plus Association
Alliance of Automobile Manufacturers
American Council of Engineering Companies
American Council of Life Insurers
American Insurance Association
American Tort Reform Association
Associated Industries of Massachusetts
Business Roundtable
Civil Justice Association of California
Construction Industry Round Table
East Texans Against Lawsuit Abuse
Florida Justice Reform Institute
Illinois Civil Justice League
International Franchise Association
Lawyers for Civil Justice
Louisiana Association of Business & Industry
Maryland Chamber of Commerce
Michigan Chamber of Commerce
Mississippians for Economic Progress
Montana Chamber of Commerce
National Association of Manufacturers
National Association of Mutual Insurance Companies
National Lumber and Building Material Dealers Association (NLBMDA)
New Jersey Lawsuit Reform Alliance
New Yorkers for Lawsuit Reform
North Carolina Chamber
Ohio Alliance for Civil Justice
Ohio Chamber of Commerce
Pennsylvania Chamber of Business and Industry
PhRMA
South Carolina Civil Justice Coalition
The Financial Services Roundtable
The Latino Coalition
The Oklahoma State Chamber
U.S. Chamber Institute for Legal Reform
U.S. Chamber of Commerce
Virginia Chamber of Commerce
Washington Liability Reform Coalition