

November 7, 2017

The Honorable Charles E. Grassley, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein, Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On November 8, 2017, the Committee is holding a hearing to examine “lawsuit abuse.” The focus is apparently on whether the legal rights of individuals and small businesses should be taken away. The undersigned organizations urge the Committee, in the strongest possible terms, to reject such a course of action.

Today, those who have been injured, defrauded, cheated, discriminated against or otherwise harmed, struggle to even get into civil court. Many individuals and businesses with legitimate claims have been entirely blocked from bringing cases, disrupting the health, safety and economic security of American families. Their legal rights have been severely weakened by hundreds if not thousands of so-called “tort reform” laws that have become law around the country in the last 40 years, a series of Supreme Court decisions that have stripped everyday people of their 7th Amendment rights (including allowing wrongdoers to unilaterally block class actions against them), and other action and inaction by Congress.

Just last month, Congress took the extraordinary step of undoing the Consumer Financial Protection Bureau’s rule that would have allowed defrauded and cheated individuals to file class actions against financial institutions that violate the law, like Wells Fargo and Equifax. The Centers for Medicare & Medicaid Services is preparing to repeal a rule that prevents dangerous nursing homes from forcing abused or neglected patients into private, secretive arbitration. The Department of Education is preparing to undo a rule that currently prevents for-profit schools from forcing defrauded students into arbitration. Forced arbitration clauses are blocking the legal rights of victims of discrimination, including sexual harassment and abuse victims.

Yet while the rights of everyday Americans continue to be limited, major corporations enjoy unfettered access to the courts. In fact, as the *Wall Street Journal* recently found, cases filed by corporate plaintiffs, such as debt collectors and banks foreclosing on homeowners, are increasing in number and now represent about half of all civil cases. (Joe Palazzolo, “We Won’t See You in Court: The Era of Tort Lawsuits Is Waning,” *Wall Street Journal*, July 24, 2017.)

It would be one thing if America’s rank and file small businesses were pushing for legal changes. But this is not remotely the case. Indeed, there are great disparities between what small business owners actually believe and what businesses lobbyists tell lawmakers they believe. For example,

internal, unbiased small business surveys consistently show that restricting lawsuits, or the “cost” of lawsuits, is an issue of less importance to small businesses than almost any issue they could possibly face, or on which they want lawmakers to focus. According to the National Federation of Independent Business’ most recent survey, “Cost and Frequency of Lawsuits/Threatened Lawsuits” ranked 68 out of 75 possible issues of concern to small businesses. It was listed among the problems of least concern to small business members. Yet it is also true that small businesses rely heavily on litigation, including class actions, to vindicate their own rights. Lawmakers who pursue an anti-litigation agenda are dishonoring and disregarding the expressed views of small business owners.

For the last 40 years, corporations and their insurers have been relentlessly attacking the civil justice system with one goal in mind - to limit their liability exposure by stripping Americans and small businesses of their legal rights. Even without new laws, corporations now regularly immunize themselves from wrongdoing with forced arbitration clauses and class action bans. If there is any “lawsuit abuse” in the system, it is laws and practices that prevent consumers and small businesses with legitimate claims from vindicating their rights in court.

Thank you for considering our views. For questions or comments, please contact Joanne Doroshow, Executive Director of the Center for Justice & Democracy, joanned@centerjd.org.

Very sincerely,

AFSCME

A New Way of Life Re-Entry Project

Alliance for Justice

American Association for Justice

Asbestos Disease Awareness Organization

Center for Biological Diversity

Center for Justice & Democracy

Center for Responsible Lending

Church State Council

Committee to Support the Antitrust Laws

Communication Workers of America

Consumer Action

Consumer Federation of America

Consumers for Auto Reliability and Safety

D.C. Consumer Rights Coalition

Daily Kos

Demand Progress

Earthjustice

Family Farm Defenders

Florida Consumer Action Network

Food & Water Watch

Home Owners for Better Building

Homeowners Against Deficient Dwellings

Impact Fund

Interfaith Alliance of Colorado
International Union, United Automobile, Aerospace and Agricultural Implement Workers of
America (UAW)
Mobilization for Justice
NAACP
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumers League
National Employment Law Project
National Employment Lawyers Association
National Family Farm Coalition
National Latino Farmers & Ranchers Trade Association
Northwest Atlantic Marine Alliance
Pesticide Action Network North America
Progressive Congress Action Fund
Public Citizen
Public Justice Center
Public Law Center
RootsAction.org
SEIU 775
South Carolina Appleseed Legal Justice Center
Texas Watch
U.S. PIRG
Washington Community Action Network
Woodstock Institute
Workplace Fairness