

**DON'T LOCK THE COURTHOUSE DOORS TO CONSUMERS:  
PASS THE BINGAMAN CONSUMER AMENDMENT TO S. 5**

February 7, 2005

Dear Senator:

We, the undersigned groups, urge you to vote for the Bingaman Consumer Amendment when the so-called "Class Action Fairness Act" (S. 5) reaches the Senate floor. We fear that if S. 5 passes without this amendment, millions of consumers who are harmed by violations of state consumer protection laws will have no avenue to recover their losses and hold corporations accountable. The Bingaman amendment has a simple goal: to ensure that the legislation accomplishes its purported goal of having "national in scope" class actions heard in federal court.

Proponents of the bill have said that "the Class Action Fairness Act would simply allow federal courts to more easily hear large, national class action lawsuits affecting consumers all over the country."<sup>1</sup> Unfortunately, the practical result of S. 5 in its current form is that these cases will not be heard. Instead, they will be denied certification because multiple state laws apply, *the very reason they were sent to federal court.*

If S. 5 passes in its current form, we are extremely concerned that it will effectively eliminate multi-state class actions involving state consumer laws because the overwhelming trend in federal courts is to deny certification in these cases. In fact, no federal circuit court has certified a multi-state consumer class action, while six circuit courts and twenty-six district courts have expressly denied such certification.<sup>2</sup>

---

<sup>1</sup> Letter-to-the-editor from Stanton D. Anderson, executive vice president and chief legal officer, U.S. Chamber of Commerce, *Philadelphia Inquirer*, February 27, 2004.

<sup>2</sup> Third, Fifth, Sixth, Seventh, Ninth and Eleventh Circuits, the Districts of Connecticut, District of Columbia, Kansas, Massachusetts, Minnesota, New Hampshire, and New Jersey, the Eastern Districts of Louisiana, North Carolina, Pennsylvania, and Texas, the Northern Districts of Florida, Georgia, Illinois, Mississippi, Ohio, and Oklahoma, the Southern Districts of Alaska, Florida, Illinois, New York, and Texas, the Western Districts of Michigan, Montana, and Washington, and the Middle District of Alabama.

Even the proponents of the bill admit that these cases do not get certified in federal courts. The Chamber of Commerce, the leading proponent of the legislation, recently argued to the Second Circuit Court of Appeals that “it is nearly a truism that nationwide class actions in which the claims are subject to varying state laws cannot be certified because they are unmanageable.”<sup>3</sup>

That is why the Bingaman Consumer Amendment is so critical. The amendment is quite modest. It merely provides a federal judge with an additional tool to manage multi-state class actions based on consumer laws. Under the amendment, the judge would have the option of bypassing complex state procedural choice-of-law rules, and instead apply one state’s law that has a sufficient connection to the case to meet constitutional requirements. If the judge rejects this option, he or she may not deny class certification on the single ground that multiple state laws apply.

The Bingaman Consumer Amendment will ensure that S. 5 accomplishes its intended goal, to move nationwide class actions into one federal forum. Without this amendment, harmed consumers will be forced to bring single-state class actions in federal court, recreating the “copycat lawsuit” problem that proponents of S. 5 have criticized. Moreover, consumers who live in medium to small states will never get relief, because there simply won’t be enough injured consumers in their states to justify litigating a costly and complex class action lawsuit.

If S. 5 passes without the Bingaman amendment, multi-state class actions based on state consumer laws will not be adjudicated, and millions of injured plaintiffs will never get their day in court. If you do not want to lock the courthouse doors to justice, then we strongly urge you to vote for the Bingaman Consumer Amendment.

If you have any questions or need more information about the Bingaman Consumer Amendment, please contact Sandy Brantley, Legislative Counsel, Alliance for Justice, 202.822.6070, or Rachel Weintraub, Asst. General Counsel, Consumer Federation of America, 202.387.6121.

---

<sup>3</sup> Brief of the Chamber of Commerce of the United States as *amicus curiae* in support of appellants, *In Re Simon II Litigation*, No. 03-7140-L, U.S. Court of Appeals for the Second Circuit, p. 16, June 3, 2003.

Sincerely,

A. Philip Randolph Institute (Delaware Chapter)	Missouri PIRG
Alaska PIRG	Montana PIRG
Alliance for Justice	National Association of Consumer Advocates
American Association of People with Disabilities	New Hampshire Citizen's Alliance
Arizona Citizen Action	New Hampshire PIRG
Arizona Leadership Institute	New Jersey Citizen Action
California PIRG	New Jersey PIRG
Campaign for Tobacco-Free Kids	New Mexico PACE
Center for Justice and Democracy	New Mexico PIRG
Citizen Action of Illinois	New Yorkers Against Gun Violence
Citizen Action of New York	North Carolina PIRG
Citizens for Consumer Justice (PA)	North Dakota Progressive Coalition
Colorado PIRG	Ocean State Action
Colorado Progressive Coalition	Ohio PIRG
Connecticut Citizen Action Group	Oregon State PIRG
Connecticut PIRG	Pennsylvania Citizens for Consumer Justice
Consumer Federation of America	Pennsylvania PIRG
Consumers Union	PIRG in Michigan
Florida Consumer Action Network	Public Citizen
Florida PIRG	Rhode Island PIRG
Georgia PIRG	Tennessee Citizen Action
Georgia Rural and Urban Summit Group	Texas PIRG
Gunfire Reduction Initiative of Delaware	USAction
Illinois Council Against Handgun Violence	U.S. Public Interest Research Group
Illinois PIRG	Vermont PIRG
Indiana PIRG	Violence Policy Center
Iowa Citizen Action	Washington Citizen Action
Iowa PIRG	Washington PIRG
Maine People's Alliance	West Virginia Citizen Action Group
Maryland PIRG	Wisconsin Citizen Action
Massachusetts PIRG	Wisconsin PIRG
Michigan Citizen Action	