

September 15, 2015

The Honorable John Boehner
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Re: Groups Strongly Oppose Lawsuit Abuse Reduction Act

Dear Speaker Boehner and Leader Pelosi:

This month, the House of Representatives is expected to vote on H.R. 758, the “Lawsuit Abuse Reduction Act,” which would roll back federal legal procedural rules, burden an understaffed judiciary, prolong expensive litigation, and unfairly penalize consumers and employees as participants in civil lawsuits. The undersigned organizations strongly oppose the bill as harmful and unnecessary.

This bill would make major, substantive changes to Rule 11 of the Federal Rules of Civil Procedure, bypassing both the Judicial Conference of the United States and the U.S. Supreme Court in the process. Currently, Rule 11 sensibly provides judges with discretion to impose sanctions as a means to deter abuses in the signing of pleadings, motions, and other court papers. This bill would make sanctions mandatory rather than discretionary by the judge. Not only would this legislation constitute interference by Congress into the workings of the judicial branch, it would take us backwards to an earlier system that proved to be unworkable, unfair and unnecessary, and was thus abandoned more than 20 years ago.

In 1983, the federal rules were changed along the lines specified by H.R. 758. As Professor Lonny Hoffman of the University of Houston Law Center testified before the Subcommittee on the Constitution in 2011, “there is a remarkable degree of agreement among judges, lawyers, legal scholars and litigants across the political spectrum that the 1983 amendment of Rule 11 was one of the most ill-advised procedural experiments ever tried.” The rule produced “an avalanche of unwelcome satellite litigation” over the new obligations imposed, which in turn impeded cooperation and settlement. Litigation costs and delays increased. In addition, “civil rights and employment discrimination plaintiffs, in particular, were impacted the most severely,” with these cases being subject to sanction motions “more than 28% of the time, well out of proportion to the percentage of such cases filed.” Empirical evidence showed that the rule deterred the filing of meritorious cases as plaintiffs feared it would be inappropriately applied to them.

So in 1993, using the proper process set out in the Rules Enabling Act, with hearings and consideration by the Supreme Court and Congress, the 1983 rule was abandoned. The requirement for mandated sanctions was removed and replaced, once again, with a far more workable and fair discretionary standard. The new rule also provided a “safe harbor” provision, allowing a filing to be withdrawn in a timely manner before sanctions can be imposed. This Rule

works perfectly well. There is absolutely no reason for Congress to interfere with it, reverse the positive changes made to Rule 11 by the 1993 amendments, and impose a system that is a proven failure.

Ignoring the decade of problems that led to the 1993 amendments and returning to the flawed mandatory sanctions regime would doom the judiciary to repeat history. In times of an understaffed federal judiciary, Congress should be looking for ways to decrease, not increase, wasteful burdens on the courts, and also should avoid rules changes that have a discriminatory impact on civil rights, employment, environmental and consumer cases. We urge you to oppose H.R. 758.

Thank you for your consideration.

Sincerely,

Alliance for Justice
Center for Food Safety
Center for Justice & Democracy at New York Law School
Committee to Support the Antitrust Laws
Consumer Federation of America
Consumers Union
Defenders of Wildlife
Earthjustice
Environmental Working Group
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low income clients)
National Consumer Voice for Quality Long-Term Care
National Consumers League
National Employment Lawyers Association
National Women's Law Center
Natural Resources Defense Council
People For the American Way
Public Citizen