



Leadership Conference on Civil Rights



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**PROTECT WORKING MEN AND WOMEN AND CIVIL RIGHTS
VOTE AGAINST S. 5**

Feb. 15, 2005

Dear Representative,

On behalf of the undersigned civil rights and labor organizations, we write to urge you to vote against the Class Action Fairness Act (S. 5), which passed the Senate last week. While the bill was pending before the Senate, we pushed for an amendment offered by Senator Kennedy that would have exempted civil rights and wage and hour state law cases. Because the amendment was not adopted, we ask you to reject S. 5 in order to ensure that the Class Action Fairness Act does not adversely impact the workplace and civil rights of ordinary Americans by making it extremely difficult to enforce civil rights and labor rights.

During Congress' extensive examination into the merits of class action lawsuits, nowhere has a case been made that abuses exist in anti-discrimination and wage and hour class-action litigation. By allowing dozens of employees to bring one lawsuit together, the class-action device is frequently the only means for low wage workers who have been denied mere dollars a day to recover their lost wages. Moreover, class actions also are often the only means to effectively change a policy of discrimination. These suits level the playing field between individuals and those with more power and resources, and permit courts to decide cases more efficiently.

Wage and hour class actions are most often brought in state courts under the law of the state in which the claims arise. The reason is that state wage and hour laws typically provide more complete remedies for victims of wage and hour violations than the federal wage and hour statute. For instance, the federal Fair Labor Standards Act (FLSA) offers no protection for a worker who works 30 hours and is paid for 20, so long as the worker's total pay for the 30 hours worked exceeds the federal minimum wage. However, many

states have “payment of wage” laws that would require that the worker be fully paid for those additional 10 hours of work. Also, federal law provides no remedy for part-time workers who often work 10-16 hour days, yet earn no overtime because they work less than 40 hours per week. At least six states and territories, however, including California and Alaska, require payment of overtime after a prescribed number of hours are worked in a single day.

Likewise, state laws increasingly provide greater civil rights protection than federal law. For example, every state has passed a law prohibiting discrimination on the basis of disability. Some of these state statutes provide a broader definition of disability and a greater range of protection in comparison to the federal Americans with Disabilities Act including California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia. In addition, every state has enacted a law prohibiting age discrimination in employment, and some of these state laws - including those of California, Michigan, Ohio and the District of Columbia - contain provisions affording greater protection to older workers than comparable provisions of the federal Age Discrimination in Employment Act (ADEA).

In addition, many state laws provide protections to classifications not covered by federal law. For example, the following states provide protection for marital status: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maryland, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Virginia, Washington, and Wisconsin. Moreover, several states have expanded Title VII's ban on national origin discrimination to prohibit discrimination on the basis of ancestry, or place of birth, or citizenship status. These states include Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Kansas, Maine, Massachusetts, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, South Dakota, Vermont, West Virginia, Wisconsin, Wyoming, and the Virgin Islands.

Finally, 31 states have enacted legislation prohibiting genetic discrimination in the workplace - an important protection given the rapid increase in the ability to gather this type of information. The 31 states are Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin. In addition, Florida and Illinois have enacted more limited protections against genetic discrimination.

Under S. 5, citizens are denied the right to use their own state courts to bring class actions against corporations that violate these state wage and hour and state civil rights laws, even where that corporation has hundreds of employees in that state. Moving these state law cases into federal court will delay and likely deny justice for working men and women and victims of discrimination. The federal courts are already overburdened. Additionally, federal courts are less likely to certify classes or provide relief for violations of state law.

In light of the lack of any compelling need to sweep state wage and hour and civil rights claims into the scope of the bill, which is done in the current bill, we urge you to vote against S. 5. In the event that amendments are offered, we support any amendment that, like the Kennedy amendment and others offered in the Senate, preserves the right of individuals to bring class actions in an effective, efficient manner.

If you have any questions, or need further information, please call Nancy Zirkin, Deputy Director of the Leadership Conference on Civil Rights (202-263-2880); Sandy Brantley, Legislative Counsel, Alliance for Justice (202-822-6070); or Bill Samuel, Legislative Director, AFL-CIO (202-637-5320).

Sincerely,

AARP
AFL-CIO
Alliance for Justice
American-Arab Anti-Discrimination Committee
American Association of People with Disabilities
American Association of University Women
American Civil Liberties Union
American Federation for the Blind
American Federation of Government Employees
American Federation of School Administrators
American Federation of State, County & Municipal Employees
American Federation of Teachers
American Jewish Committee
Americans for Democratic Action
The Arc of the United States
Association of Flight Attendants
Bazelon Center for Mental Health Law
Center for Justice and Democracy
Coalition of Black Trade Unionists
Communications Workers of America
Consortium for Citizens with Disabilities Civil Rights Task Force
Department for Professional Employees, AFL-CIO
Disability Rights Education and Defense Fund
Epilepsy Foundation
Federally Employed Women
Federally Employed Women's Legal & Education Fund, Inc.
Food & Allied Service Trades Department, AFL-CIO
Human Rights Campaign
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
International Brotherhood of Electrical Workers
International Brotherhood of Teamsters

International Federation of Professional & Technical Engineers
International Union of Bricklayers and Allied Craftworkers
International Union of Painters and Allied Trades of the United States and Canada
International Union, United Automobile, Aerospace & Agricultural Workers of America
Jewish Labor Committee
Lawyers' Committee for Civil Rights Under Law
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Leadership Conference on Civil Rights
Legal Momentum
Mexican American Legal Defense and Educational Fund
NAACP
NAACP Legal Defense & Educational Fund, Inc.
National Alliance of Postal and Federal Employees
National Asian Pacific American Legal Consortium
National Association for Equal Opportunity in Higher Education
National Association of Protection and Advocacy Systems
National Association of Social Workers
National Employment Lawyers Association
National Fair Housing Alliance
National Organization for Women
National Partnership for Women and Families
National Women's Law Center
Paper, Allied-Industrial, Chemical and Energy Workers International Union
Paralyzed Veterans of America
People For the American Way
Pride At Work, AFL-CIO
Service Employees International Union
Transport Workers Union of America
Transportation Communications International Union
UAW
Unitarian Universalist Association of Congregations
UNITE!
United Cerebral Palsy
United Food and Commercial Workers International Union
United Steelworkers of America
Utility Worker Union of America
Women Employed