

Civil Justice Through the Courts
c/o Center for Justice & Democracy at New York Law School
New York Law School
185 West Broadway
New York, NY 10013

November 12, 2013

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

Dear Speaker Boehner and Minority Leader Pelosi:

Re: Opposition to H.R. 2655, the "Lawsuit Abuse Reduction Act of 2013."

We are members of a law school clinic, Civil Justice Through the Courts, at New York Law School. This is a public policy clinic, the mission of which is to raise awareness about attacks on access to the civil justice system.

After studying this issue, we write today to express our opposition to H.R. 2655, the "Lawsuit Abuse Reduction Act of 2013." We believe that this legislation would negatively impact the administration of civil justice. It would have a negative impact on both the judiciary and the nation's consumers.

Rule 11 of the Federal Rules of Civil Procedure currently provides discretion to federal judges as to whether to impose sanctions against attorneys. Rather than mandate sanctions, the Rule permits federal judges to use their skilled judgment to decide whether to sanction and deter inappropriate or unprofessional behavior. A previous version of Rule 11, in effect from 1983 until it was repealed in 1993 as unworkable, mandated that judges impose sanctions for Rule 11 violations, similar to H.R. 2655. This led to a tremendous amount of costly litigation, which sometimes overshadowed the original lawsuit. Instead of focusing their time and best efforts into procuring the best possible outcome for their clients, attorneys were forced to divert scarce time and resources on sanction claims.

H.R. 2655 is extremely troubling. History shows that the threat of mandatory sanctions forces attorneys to decline representation for fear of monetary loss. The threat of mandatory sanctions also limits the types of arguments that attorneys may consider bringing on behalf of their clients. With the mandate of sanctions in place, attorneys would face the threat of punishment over more creative arguments that, while not frivolous, still might not be accepted by a court. Yet the fear is that this could lead to sanctions.

Under the old 1983 version of Rule 11, the rule had a disproportionately adverse effect on civil rights and employment discrimination plaintiffs. Empirical data shows that sanctions were sought

and imposed against these plaintiffs more than any other litigants in civil court. These are the very kinds of plaintiffs that Congress should be looking to protect. Yet they would be the most harmed by H.R. 2655.

The proposed legislation would also negatively impact the efficiency and resources of the judiciary. While this bill aims to expedite proceedings and reduce costs, it would result in additional litigation, consuming more of the courts' resources.

In addition, Rule 11's 21-day grace period afforded attorneys to withdraw mistaken pleadings and complaints is an essential tool for litigators nationwide. By removing the 21-day grace period, attorneys would have no room to withdraw pleadings and complaints, even if after some discovery the lawyer uncovers material facts that change the viability of the claim. Without this 21-day grace period, coupled with the requirement that the court take action to punish the attorneys, the court would be forced to take action that it previously would not have.

Lastly, the framers of our Constitution would frown upon this bill. Our open court system allows for the citizens of this nation to sleep well knowing that, with the help of America's well-trained attorneys, they can bring their grievances to their local courts. With the threat of mandatory sanctions looming, the filing of legitimate cases will be chilled. Rather than effectuating courtroom efficiency, these changes to Rule 11 would assuredly take away the citizen's fundamental right to access the courtroom.

Thank you for your time and consideration of our views on this matter. If you have any questions, feel free to contact Jessica Braunstein, Jessica.Braunstein@law.nyls.edu, or Bryan Assael, Bryan.Assael@law.nyls.edu.

Sincerely,

Law Student Clinic Members
Civil Justice Through the Courts
New York Law School