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Weakening Class Actions is Discriminatory

In 1977, the Supreme Court recognized that “suits alleging racial or ethnic discrimination are often by their nature class suits, involving classwide wrongs.”¹ And certainly class actions have been used in a variety of cases alleging discrimination.

But in 2005, Congress placed nationwide restrictions on litigants who claim class-wide discrimination (CAFA).² This law, among other things, makes it easier for many state class actions to be removed to the much smaller federal court system.³

Civil rights groups and champions fought CAFA.

- The Lawyers’ Committee for Civil Rights testified against CAFA because, among other things, the law would cause federal courts to be overburdened with consumer class actions normally brought in the larger state court system, inevitably pushing out federal civil rights cases that should be heard in federal courts.⁴
- According to then ranking Democrat on the U.S. Senate Judiciary Committee, Senator Patrick Leahy (D-VT), CAFA “make[s] it harder for American citizens to protect themselves against violations of state civil rights, consumer, health, and environmental protection laws by forcing these cases out of their local state courts.”⁵

Evidence suggests that these grim predictions have already started to materialize. A recent Interim Report tracking case filings before and after the passage of CAFA shows that before CAFA, civil rights cases represented 13 percent of all class actions, and in just a year’s time after CAFA, civil rights cases dropped to 11 percent of class action filings.⁶

From: “The Racial Implications of Tort Reform” by Joanne Doroshov and Amy Widman, 25 WASH. U. J.L. & POL’Y 161 (2007), is part of a volume entitled, “ACCESS TO JUSTICE: THE SOCIAL RESPONSIBILITY OF LAWYER.” <http://law.wustl.edu/Journal/index.asp?ID=6718>. The full article is here: <http://law.wustl.edu/Journal/25/DoroshovWidman.pdf>

NOTES

¹ E. Tex. Motor Freight Sys., Inc. v. Rodriguez, 431 U.S. 395, 405 (1977).

² Class Action Fairness Act of 2005, Pub. L. 109-2, 119 Stat. 4 (2005).

³ Id.

⁴ Testimony of Thomas Henderson, Chief Counsel and Senior Deputy, Lawyers’ Committee for Civil Rights Testimony, Class Action Litigation, United States Senate Committee on the Judiciary, July 31, 2002.

⁵ Statement of Senator Patrick Leahy, Class action Fairness Act, S. 5, February 7, 2005. It is worth noting that “state laws increasingly provide greater civil rights protection than federal law,” according to an advocacy letter by leading consumer, labor and civil rights groups, available on-line at <http://www.civilrights.org/issues/enforcement/details.cfm?id=27926>

⁶ Thomas E. Willging, “The Impact of the Class Action Fairness Act of 2005,” Second Interim Report to the Judicial Conference Advisory Committee on Civil Rules, Federal Judicial Center, September, 2006 (available on-line at http://www.fjc.gov/library/fjc_catalog.nsf).