

November 12, 2013

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

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

Re: Groups Strongly Oppose Civil Justice Bills

Dear Speaker Boehner and Majority Leader Pelosi:

Two bills are scheduled for House Floor consideration the week of November 11, 2013. One, H.R. 2655, the “Lawsuit Abuse Reduction Act (LARA),” 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 second, H.R. 982, the “Furthering Asbestos Claim Transparency Act” (FACT Act), would delay and, in some cases, deny justice to people suffering from debilitating asbestos-related diseases, including mesothelioma and other cancers. The undersigned organizations strongly oppose these bills as harmful and unnecessary.

H.R. 2655, the “Lawsuit Abuse Reduction Act (LARA).

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 20 years ago.

In 1983, the federal rules were changed along the lines specified by H.R. 2655. 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 the rule 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.

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. 2655.

H.R. 982, the “Furthering Asbestos Claim Transparency Act” (FACT Act).

In 1994, Congress passed special legislation applicable only to the asbestos industry that allowed asbestos companies to set up trusts to compensate asbestos victims and, at the same time, reorganize under the bankruptcy laws to enable the companies to continue operating. This protection has allowed most companies that have sought bankruptcy protection due to asbestos liabilities to recover and remain economically healthy. But the trusts are woefully underfunded. The Rand Corporation found that the median payout is only 25% of the compensation that is due to the claimants, with some trusts paying as low as 1.1 %.

The FACT Act has two primary provisions: 1) it requires asbestos trusts to disclose on a public web site private, confidential information about every asbestos claimant and their families, including their names, addresses, where they work, how much they make, some medical information, how much they received in compensation and the last four digits of their social security numbers; and 2) it allows any defendant in any asbestos lawsuit the right to demand any information about any asbestos victim from any asbestos trust at any time for any reason. The information need not be relevant to, or admissible in, any lawsuit, allowing defendants to skirt normal discovery rules.

In a strongly-worded June 19, 2013, editorial opposing the bill, the *New York Times* editorial board, called the bill “misguided,” saying the bill was “rammed through the House Judiciary Committee” supposedly “to root out fraud and abuse” despite the lack of any “persuasive evidence” of this. What the bill would do, said the *Times*, is “make it harder for plaintiffs injured by asbestos to get fair compensation.” In addition,

The Republican bill, known as the Furthering Asbestos Claim Transparency Act (FACT) of 2013, would allow asbestos companies to demand information from the trusts for virtually any reason, forcing the trusts to devote limited resources to responding to fishing expeditions that will slow the process of paying claims.

The bill would also increase the burden on claimants to supply information. But it puts virtually no burdens on asbestos companies, like disclosing the settlements they have reached with plaintiffs or requiring them to reveal where their products were used and when, so that workers know which companies or trusts might be liable for their injuries.

In a March 20, 2013 letter to the House Judiciary Committee, Campbell & Levine, which represents a number of trusts, estimated that preparing the information required by the bill would amount to an aggregate of 20,000 hours per year in additional work for the trusts – information the trusts do not need to do their jobs. In supplemental information submitted to the House Judiciary Committee, Caplan & Drysdale’s Elihu Inselbuch, a commercial litigator specializing in asbestos, said the bill would allow defendants to delay cases to such an extent that victims could die waiting:

The bill would slow down or stop the process by which the trusts review and pay claims, such that many victims would die before receiving compensation, since victims of mesothelioma typically only live for 4 to 18 months after their diagnosis. The bill’s new burdens will require the trusts to spend time and resources complying with these requirements, causing trust recoveries to decrease and be delayed.

Moreover, by creating a national registry containing the names of asbestos victims and their families, including financial and even some medical information, asbestos victims will become easy targets for identity thieves, financial predators, and discriminatory insurance practices. This is a terrible and completely unnecessary imposition to place on people who will probably die because the asbestos industry covered up the dangers of asbestos for over 50 years. At the same time, as noted by the *Times*, the legislation does not ask the companies to do one thing to help the victims, or to disclose any information that could help a claimant with his or her case. The asbestos industry is not interested in transparency. This legislation is nothing but another attempt by the industry to avoid responsibility for the grave harms they have caused.

We urge you to oppose H.R. 982, the “Furthering Asbestos Claim Transparency Act” (FACT Act).

Thank you for your consideration.

Very sincerely,

Alliance for Justice
Center for Justice & Democracy
Earthjustice
Essential Information
National Consumers League
Public Citizen