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June 22, 2010

The Honorable Representative John Conyers, Jr., Chairman
House Committee on the Judiciary
Ford House Office Building
United States House of Representatives
Washington, DC 20515

Dear Chairman Conyers and Members of the Committee:

On behalf of Public Citizen, we write to express our support for section 5 of the SPILL Act, H.R. 5503, which would amend provisions of the Class Action Fairness Act (CAFA) to ensure that the Act does not interfere with the ability of state and local governmental officials to pursue remedies for their citizens in state courts. Specifically, the Act would amend CAFA's definitions of "class action" and "mass action," which are found in 28 U.S.C. §§ 1332 and 1711, to clarify that they do not include actions by governmental officials seeking such remedies. The major effect of that change would be to prevent defendants from removing actions filed in state court by state officials to federal courts.

CAFA, we believe, was never intended to cover actions brought by responsible state officials, and its language does not comfortably encompass such actions. Moreover, there is no indication that actions by state and local governments give rise to anything similar to the supposed abuses of class action litigation in state court that led to the creation of CAFA's special jurisdictional and removal rules.

Nonetheless, the United States Court of Appeals for the Fifth Circuit has held in two cases that actions brought by the Attorney General of the State of Louisiana on behalf of the State, acting as *parens patriae* for injured citizens, were removable under CAFA. *See In re Katrina Canal Breaches Litigation*, 524 F.3d 700, 706 (5th Cir. 2008); *Louisiana ex rel. Caldwell v. Allstate Ins. Co.*, 536 F.3d 418 (5th Cir. 2008). Because those decisions come from the Court of Appeals whose territory encompasses Louisiana, Mississippi, and Texas, they are particularly likely to interfere with the efforts of officials of those states to take legal actions in their court systems to provide remedies to benefit their citizens who have been harmed by the catastrophic failure of BP's oil well in the Gulf of Mexico. More broadly, those decisions misconstrue both the language and the intent of CAFA, and the law should be clarified to return it to its original intent.

The SPILL Act would correct those erroneous decisions by providing that an action by governmental officials seeking relief on behalf of residents of a state is neither a "class action"

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nor a “mass action” and hence may proceed in the courts of the state where it is brought unless it is otherwise subject to federal jurisdiction.

For these reasons, we urge you and the other members of Congress to pass H.R. 5503.

Sincerely,



David Arkush
Director, Public Citizen’s Congress Watch



Allison M. Zieve
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