



The Daily Whip

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THURSDAY, FEBRUARY 17, 2005

House Meets At...	Last Vote Predicted At...
10:00 a.m.: Legislative Business Five "One Minutes" Per Side	1:00 – 2:00 p.m.

FLOOR SCHEDULE AND BILL SUMMARY

S. 5 – Class Action Fairness Act of 2005 (Sen. Grassley – Judiciary) (90 minutes of general debate). This bill creates federal jurisdiction over class-action lawsuits when the total claim exceeds \$5 million or when any plaintiff lives in a state different from that of any other defendant. This bill claims to address problems in current law but it only imposes additional burdens on the already over-tasked federal courts and needlessly changes current uniform rules of federal civil procedure. This bill was not considered by the Judiciary Committee.

- **S. 5 would delay judicial relief** by transferring complex issues of state law to federal courts already clogged with a large number of criminal drug cases and immigration cases.
- **S. 5 burdens federal courts** by broadly defining "class actions" to include mass torts and state actions brought on behalf of the general public. Federal courts, which lack the resources to handle complex state law issues, would be forced to handle state class actions in addition to already large caseload and judicial vacancy rate.
- **S. 5 hampers judicial relief for injured consumers and other class action plaintiffs.** In cases where the federal court chooses not to certify the state class action, the bill prohibits the states from using class actions to resolve underlying state causes of action.
- **S. 5 eliminates current uniform rules of federal civil procedure** regarding diversity jurisdiction, removal, dismissal, remand, appellate review, and discovery for class action cases only. These new procedural rules would benefit defendants at the plaintiff's expense and would additionally burden the federal judiciary.

The Rule adopted yesterday makes in order one amendment to be offered by Rep. Conyers (Democratic Substitute) debatable for 40 minutes. The **Democratic Substitute** makes several changes to the underlying bill including:

- **Attorney General Carve-Out.** Clarifies that cases brought by state attorneys general are excluded from the provisions of the class action bill and are not forced into federal court;
- **Protecting Public Health and Safety.** Limits the court's ability to seal or make subject to a protective order records unless it is necessary to protect trade confidentiality and is consistent with the protection of public health and safety; OR the disclosure of the information is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information;
- **Civil Rights Carve-Out.** Carves out State civil rights claims in order to make sure that civil rights plaintiffs, especially those seeking immediate injunctive relief, can have their grievances addressed in a timely manner;
- **Wage and Hour Carve-Out.** Carves out State civil rights claims to allow wage and hour class action members to have their grievances addressed in a timely manner;
- **Prohibits Tax Expatriate Benefits.** Prohibits domestic corporations that reincorporate abroad in order to avoid U.S. taxes and legal liability from benefiting from the new class action rules. Such corporations will retain citizenship they had prior to their reincorporation;



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- **Excludes Non-Class Action Cases Involving Physical Injuries.** Removes the mass torts language included in the underlying bill;
- **Federal Court Certification.** Prohibits a federal judge from denying certification on the basis that more than one state law applies to the class action.

Democrats are urged to VOTE YES on the Democratic Substitute and to VOTE NO on Final Passage of S.5.

Postponed Suspension Votes (1 bill):

- 1) **H.Res. 91** – Honoring the life and legacy of former Lebanese Prime Minister Rafik Hariri
(*Rahall – International Relations*)

Daily Quote...

"The decision of House ethics committee Chairman Doc Hastings to fire professional staff members of the ethics committee is just the latest step in the wholesale purging of the ethics committee by House Republican leaders. . . . I assume the next move to be made by Speaker Dennis Hastert, Majority Leader DeLay and ethics committee Chairman Hastings will be to clear out the furniture from the Ethics Committee office and turn it into a storeroom."

- Democracy 21 President Fred Wertheimer, in *Roll Call* this morning