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January 6, 2016

The Honorable Paul Ryan  
House of Representatives  
Washington, D.C. 20515

The Honorable Nancy Pelosi  
House of Representatives  
Washington, D.C. 20515

Dear Speaker Ryan and Minority Leader Pelosi:

On behalf of the American Bar Association and its over 400,000 members, I write to offer our views as the House considers class action reform. I understand that you intend to bring up H.R. 1927, the "Fairness in Class Action Litigation Act of 2015," as early as this week. The ABA has long recognized that we must continue to improve our judicial system; however, we oppose legislation such as H.R. 1927, because it would unnecessarily circumvent the Rules Enabling Act, make it more difficult for large numbers of injured parties to efficiently seek redress in court, and could place added burdens on an already overloaded court system.

This legislation would circumvent the time-proven process for amending the Federal Rules of Civil Procedure established by Congress in the Rules Enabling Act. Rule 23 of the Federal Rules of Civil Procedure governs determinations whether class certification is appropriate. This rule was adopted in 1966 and has been amended several times utilizing the procedure established by Congress. The Judicial Conference, the policymaking body for the courts, is currently considering changes to Rule 23, and we recommend allowing this process to continue. In addition, the Supreme Court is poised to rule on cases where there are questions surrounding class certification. For example, the Court recently heard arguments in *Tyson Foods v. Bouaphakeo* where it will determine whether a class can be certified when it contains some members who have not been injured. We respectfully urge you to allow these processes for examining and reshaping procedural and evidentiary rules to work as Congress intended.

Currently, to proceed with a class action case, plaintiffs must meet rigorous threshold standards. A 2008 study by the Federal Judicial Center found that only 25 percent of diversity actions filed as class actions resulted in class certification motions, nine percent settled, and none went to trial. These data show that current screening practices are working. However, if the proponents of this legislation are concerned about frivolous class action cases and believe that screening can be even more effective through rule changes, those changes should be proposed and considered utilizing the current process set forth by Congress in the Rules Enabling Act.

In addition to circumventing the traditional judicial rulemaking process, the legislation would severely limit the ability of victims who have suffered a legitimate harm to seek justice collectively in a class action lawsuit. The legislation mandates that no Federal court shall certify any proposed class seeking monetary relief for personal injury or economic loss unless the party affirmatively demonstrates that each proposed class member suffered the same type and scope of injury as the named class representative(s). This requirement leaves a severe burden for people who have suffered personal injury or economic loss at the hands of large institutions with vast resources, effectively barring them from forming class actions. For example, in a class action against the Veterans Administration, several veterans sued for a variety of

grievances centered on delayed claims. The requirement in this legislation that plaintiffs suffer the same type of injuries might have barred these litigants from forming a class because each plaintiff suffered harms that were not the same.

We were pleased that a manager's amendment offered in Committee removed the requirement that the alleged harm to the plaintiff involved bodily injury or property damage. This improved the bill, but the remaining requirement leaves too high a burden. Class actions have been an efficient means of resolving disputes. Many of the legitimate complaints about lawsuit abuses through class-action litigation have been addressed through the evolution of class-action standards by the courts themselves; others are currently being considered by the Judicial Conference as part of the Rules Enabling Act process. Making it harder for victims to utilize class actions could add to the burden of our court system by forcing aggrieved parties to file suit in smaller groups, or individually.

We appreciate the opportunity to provide our input and urge you to keep these concerns in mind as you continue to debate class-action reform legislation. If the ABA can provide you or your staff with any additional information regarding the ABA's views, or if we can be of further assistance, please contact me or ABA Governmental Affairs Legislative Counsel, David Eppstein (202-662-1766 or [david.eppstein@americanbar.org](mailto:david.eppstein@americanbar.org)).

Sincerely,

A handwritten signature in black ink that reads "Thomas M. Susman". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Thomas M. Susman