

2017 Convention
**Champions
for Justice**

23. Federal Law Update

The Honorable A. Donald McEachin
314 Cannon House Office Building
Washington, DC 20515
Tel: 202-225-6365
Email: <https://mceachin.house.gov/contact/email>
Website: <https://mceachin.house.gov/>

To: The Virginia Trial Lawyers Association

Re: Rep. A. Donald McEachin Presentation to VTLA attendees- 3/31/2017

Date: 3/11/2017

MEMORANDUM

In the 115th Congress, Congress will address a number of bills that will impact civil justice. We will review the proposed legislations and the issues most relevant to our practice.

Recurring Bills Affecting Civil Justice

- Innocent Party Protection Act (HR 725, Passed House 3/9/17; Introduced by Rep. Ken Buck R-CO)
 - This bill amends 28 USC to prevent so-called “fraudulent joinder.” In practice, it would make it more difficult to join state-based tortfeasors.
- REINS Act (HR 26, Passed House 1/5/17; Introduced by Rep. Doug Collins R-GA) /REVIEW Act/Sunshine for Regulatory Decrees and Settlements Act/Regulatory Accountability Act
 - These bills 1) would end funding or authorization to numerous federal agencies, 2) would roll back safety regulations, and/or 3) change the *Chevron* deference doctrine, based on a Supreme Court case holding that agency regulations should receive deference so long as they comport with certain reasonableness qualifications.
- Lawsuit Abuse Reduction Act
 - This legislation would mandate “Rule 11” sanctions under the Federal Rules of Civil Procedure in certain cases. Rule 11 allows the court to impose sanctions on any attorney, law firm, or party that has violated, or is responsible for the violation of, the rule with regard to representations to the court.
- Fairness in Class Actions Act (HR 985; Passed House 3/9/17; Introduced by Rep. Bob Goodlatte R-VA)
 - Amends 28 USC to alter how class actions are formed, prohibiting federal courts from certifying any proposed class seeking monetary relief for personal injury or economic loss unless the party seeking to maintain such a class action affirmatively demonstrates that each proposed class member suffered an injury of the same type and scope as the injury of the named class representatives.
 - A court's certification of such a class must include a determination, based on a rigorous analysis of the evidence presented, that the requirements of this Act have been satisfied.
 - Includes provisions on asbestos cases. Affects the asbestos bankruptcy trusts by making them publicly available. The bill 1) attacks a problem that does not exist,

as the bankruptcy trusts were established separately, to be applied to separately by each victim, and 2) would publicize personal information about the victims and their intimate medical conditions.

- In 2016, this bill was joined with the FACT Act.
- Stop Settlement Slush Funds Act (HR 732; Introduced in House by Rep. Goodlatte)
 - Limits donations made pursuant to settlement agreements to which the United States is a party. These donations often play an important role in settlements for government enforcement actions, especially when the victims of corporate misconduct cannot be identified. In such cases, justice is only served by ensuring that settlement funds go to a worthy alternative, rather than reverting back to the very corporations that broke the law.
- Sunshine in Litigation Act (HR 1053; Introduced in House by Rep. Jerrold Nadler D-NY)
 - Amends 28 USC 111, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions. The bill would limit the ability for a party to a case in litigation to keep information private.
 - Would prohibit a court, in any civil action in which the pleadings state facts relevant to the protection of public health or safety, from entering an order restricting the disclosure of information obtained through discovery, approving a settlement agreement that would restrict such disclosure, or restricting access to court records, except in certain limited situations.

Issues in Legislation Affecting Civil Justice

- Heightened pleading standards: Raise the disclosure requirements to bring a suit. Often this information is unknown at the onset of a lawsuit. Pleading standards were raised in the past decade by the *Iqbal/Twombly* Supreme Court decisions.
- Arbitration: Forced pre-dispute arbitration occurs when a party is forced to sign a contract giving up their right to civil action and instead proffering themselves to arbitration. Often the parties do not know they are signing an arbitration clause, do not understand what it means, or have no other option to receive the necessary services, enrollment, or employment. This contract has been upheld by the Supreme Court.
- Preemption of state common law: State common law often offer causes of action unavailable at the federal level. State courts also act faster than federal courts and are more local than a federal court, making it a much less inconvenient option.
- Bills affecting the structure of the CFPB: Regulatory bills have attempted to 1) restructure the CFPB to have a tribunal rather than a single director, 2) to abolish the CFPB, and 3) to subject the CFPB to the normal budgeting process, which would give the majority the opportunity to de-fund it.
- Bills affecting class actions: Many pieces of legislation would increase the difficulty to

bring class actions. Many civil rights suits and suits against large corporations by individuals are class actions.

- “Loser pays”: A type of fee-shifting where the person who loses the suit is forced to pay the attorney fees of the prevailing party. This would have a chilling effect on civil justice, allowing only the wealthy to go forward with their causes of action.

Forced arbitration

- The Arbitration Fairness Act, which would prohibit the use of mandatory, pre-dispute arbitration agreements in consumer, employment, civil rights, and antitrust cases.
- The Restoring Statutory Rights and Interests of the States Act, which would ensure that forced arbitration clauses cannot be interpreted to preempt civil rights claims or other constitutional or statutory rights.
- The Justice for Victims of Fraud Act, which would close the “Wells Fargo loophole” by clarifying that forced arbitration clauses do not apply to checking and credit card accounts fraudulently opened without a customer’s consent.