

House Takes a Swing at Class Actions

By Alisha Mahalingam, J.D. Candidate 2018 | April 18, 2017

On March 9, the House voted 220 to 201 to pass the Fairness in Class Action Litigation Act. According to its author, Bob Goodlatte (R-Va.), the Act is intended to make “an efficient and just legal system” by limiting frivolous class action litigation. Its major provision prevents the certification of a plaintiff class unless every individual member of the class suffers “the same type and scope of injury.”

[Proponents argue](#) that the Act reduces frivolous suits by requiring that all class members suffer a comparable injury, preventing uninjured individuals from riding the coattails of their injured co-plaintiffs. This would also [prevent lawyers](#) from artificially inflating class sizes in order to increase their own share of the settlement. Rep. Goodlatte further suggests that the bill serves a protective function, shielding the small businesses and low net worth individuals whom he believes are the true victims of these suits.

While on paper the bill may sound uncontroversial and even beneficial, [a host of critics](#) ranging from civil rights groups to labor organizations have claimed that the new requirements would “obliterate class actions in America.” Christine Hines, legislative director of the National Assn. of Consumer Advocates, explained that under the current system, classes “typically include a range of individuals who almost never suffer precisely the same degree of injury.” Take for example, the class action suit against air bag manufacturer, Takata. Their malfunctioning airbags caused harms ranging from superficial wounds to fatalities. Though few would consider the Takata claims frivolous, the range of injuries presented by the plaintiffs are unlikely to be considered of the same type and scope under the proposed Act.

Regardless of these significant class formation issues, even if a sufficiently similar class could be assembled it would still face a lengthier certification process. This process would increase the administrative burden on courts and the financial burden on plaintiffs. As Rep. Jamie Raskin (D-Md.) summarized “it’s not the guillotine, but it’s a straight-jacket.”

So far, the bill shows no signs of losing steam. It was introduced in early February, approved by the Judiciary Committee less than a week later, and passed by the House in March. Now the viability of the class action suit rests in the hands of the Senate.