

Member of Congress
House Office Buildings
Washington, D.C. 20515

April 16, 1998

Dear Representative,

We, the undersigned civil rights and civil liberties, consumer, disabilities, environmental, labor, women, and other organizations representing millions of members at the national, state, and local level, strongly urge you to vote against H.R. 1252, the Judicial Reform Act. This legislation is designed to limit judicial powers. In fact, it effectively limits judicial remedies and makes justice harder and more costly to obtain for litigants. We oppose the bill and believe it should be defeated.

Section five of H.R. 1252 prohibits a district court from entering any order or approving any settlement that "requires" any state or political subdivision to impose or increase any tax for the purpose of enforcing the court's decision without satisfying some virtually impossible procedures. Preventing federal courts from reaching decisions that may "require" taxes would destroy a key element of judicial remedial power. State or local authorities would argue that any order or settlement requiring expenditures for compliance would "require" tax increases, thereby triggering this provision. Brown v. Board of Education required expenditures by the local government to desegregate its public schools. Litigation under the American with Disabilities Act to improve access to courthouses or town halls would require funds for construction. Concerned citizens seeking to compel a locality to clean up environmental waste could require the locality to raise additional funds. Finally, section five of H.R. 1252, as amended, would apply to all ongoing cases, orders, and settlements, which would be extremely disruptive to the litigation process.

Section six of H.R. 1252 grants parties in federal court the right to obtain a reassignment of their case from one judge for any reason, known as a peremptory strike. This provision is unnecessary because judges are already removable for bias or prejudice. Constitutional due process only guarantees an impartial and competent judge, not a specific judge whom a party does or does not want. Because the strike must be exercised at the outset of a lawsuit in most instances, the decision is more likely to be based on a judge's race, gender, or experience before taking the bench, instead of a demonstrated bias for or against a particular party. Furthermore, the prospects of judge-shopping allowed by the peremptory strike provision could have the effect of chilling judicial decision-making in difficult or controversial cases. As Chief Judge J. Harvie Wilkinson commented, "this legislation replaces the traditional process with a dangerous alternative. . . . We would be wrong to buy into a proposed reform whose basic effect is to influence judges through considerations extrinsic to the merits of a case." This provision also permits strategic intervention and subsequent strikes against the sitting judge midway in litigation, even if a decision has been rendered against that side of the lawsuit. Finally, this provision would encourage malevolent behavior on the part of parties who deliberately seek to delay judicial proceedings. Because the peremptory challenge is clearly intended to influence

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future judicial behavior, it threatens judicial independence.

Section two of H.R. 1252 would replace a single district court judge with a special three-judge court in all cases involving constitutional challenges to state initiatives and referenda. This section would lead to a two-tier system of state law that decades of experience have shown to be cumbersome and confusing. From 1910 through 1976, three-judge panels were used when claimants brought challenges to state statutes, alleging violations of the United States Constitution. After years of criticism, Congress largely abolished this practice because it was both inefficient and awkward to have three judges simultaneously performing the job of fact-finding. Additionally, Congress found there was an insufficient record when such cases were heard by the Supreme Court, without prior appellate review. This provision would lead to the absurd result that an identical law adopted by two different states would be treated completely differently by the federal courts. Testifying before the Judiciary Committee, Lee Cooper, the past President of the American Bar Association, said that, "In effect such a legislative scheme sets up two classes of democratic activity. Referenda are deemed 'first class' democratic exercises worthy of three-judge court review. Statutes enacted by legislatures are seen as 'second class' exercises in democracy meriting single judge protection. . . . Congress should not discriminate in favor of referenda and against legislative enactments in setting up procedural ground rules."

Fundamental to the preservation of the American Constitutional system is a functioning, effective federal judiciary. To avoid tyranny, the Founders charged the judiciary with interpreting the Constitution and protecting the civil liberties and fundamental rights of each and every citizen. Because of this unique role, federal court rulings have sometimes been the source of controversy and political debate. We do not suggest that court decisions or judges are above criticism; however, it is inappropriate to manipulate court jurisdiction and procedure in retaliation against particular decisions. The provisions contained within H.R. 1252 would add substantial delays and costs to an overworked court system, where it already takes too long for litigants to obtain redress. Clearly, these provisions would impose burdens on access to justice, particularly on those with the most limited resources. They would hinder the orderly progression of litigation through the courts and overturn longstanding traditions and rules of the judiciary.

We urge you to consider our concerns, respect judicial independence, and vote against H.R. 1252. If you have any questions, please contact Stephan Kline at (202) 822-6070.

Sincerely,

Civil Rights and Civil Liberties Organizations

Alliance for Justice
American Civil Liberties Union
American Civil Liberties Union of Utah Foundation
Americans for Democratic Action
Asian American Legal Defense and Education Fund

Brennan Center for Justice
Chicago Lawyers' Committee for Civil Rights Under Law
Gay and Lesbian Community Center of Utah
Gay, Lesbian, Straight Education Network of Utah
Hispanic National Bar Association
Lawyers Committee for Civil Rights Under Law
Mexican American Legal Defense and Educational Fund
NAACP
National Asian Pacific American Legal Consortium
National Bar Association
National Council of La Raza
National Gay and Lesbian Task Force
Parents, Families, Friends of Lesbians and Gays, Salt Lake
People for the American Way
Salt Lake County Government Gay and Lesbian Employees Association
Utah Civil Rights and Liberties Foundation

Consumer Organizations

Consumer Federation of America
Consumers Union
National Consumers League
Oregon Consumer League

Disability Rights Organizations

Bazon Center for Mental Health Law
Disability Rights of Greater Washington
National Association of Protection and Advocacy Systems
Rehabilitation for Wisconsin, Inc.
Stone Belt Arc, Inc.

Environmental and Conservation Organizations

Community Rights Council
Defenders of Wildlife
Earthjustice Legal Defense Fund
Kentucky Resources Council
Natural Resources Defense Council
Newton County Wildlife Association
Sierra Club
Southern Utah Wilderness Alliance
United Church of Christ Network for Environmental Responsibility

US Public Interest Research Group, Utah
Utah Chapter of the Sierra Club
Vermont PIRG
Wyoming Outdoor Council

Labor Unions

American Federation of State, County, and Municipal Employees
American Federation of State, County, and Municipal Employees, Local #1004
American Federation of Teachers
American Federation of Teachers of Utah
Central Utah Federation of Labor
Coalition of Labor Union Women
Service Employees International Union
Union of Needletrades, Industrial and Textile Employees
United Food and Commercial Workers
United Steel Workers of America

Women's Organizations

California Women's Law Center
Center for Women Policy Studies
Justice, Economic Dignity, and Independence for Women
National Organization for Women
National Partnership for Women and Families
National Women's Law Center
Ni-Tak-Nee National Organization for Women
Northwest Women's Law Center
Salt Lake National Organization for Women
Utah National Organization for Women
Utah Women Political's Caucus
Women Lawyers of Los Angeles

Other National Organizations

American Ethical Union
Avenel Associates, Inc.
Center for Law and Social Policy
Education Law Center
NARAL
National Committee Against Repressive Legislation
National Employment Lawyers Association
National Legal Aid and Defender Association

OMB Watch

Other State and Local Organizations

Austin Alliance for Democracy
Coalition of Advocates for Utah Survivors' Empowerment
Georgia Rural Urban Summit
North Dakota Progressive Coalition
Planned Parenthood Association of Utah
Predator Education Fund
St. John's Church
Utahns for Choice
Utah Pro-Choice Coalition
Virginia NARAL
Wasatch Humane