



The Daily Whip

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THURSDAY, JUNE 12, 2003

House Meets At...	Last Vote Predicted At...
10:00 a.m.: Legislative Business Five "One Minutes" Per Side	5:00 – 6:00 p.m.

FLOOR SCHEDULE AND PROCEDURE

The House will convene at 10:00 a.m. for legislative business.

H.R. 1115 - Class Action Fairness Act of 2003 (*Rep. Goodlatte - Judiciary*) (*Subject to a Rule*)

H.Res. 270 - Rule providing for adoption of H.R. 1308 - All-American Tax Relief Act of 2003 with a House Amendment to the Senate Amendment (*Rep. Reynolds - Rules Committee*)

Motion to go to Conference on H.R. 1308 - All-American Tax Relief Act of 2003

BILL SUMMARY AND KEY ISSUES

H.R. 1115 - Class Action Fairness Act of 2003 (*Rep. Goodlatte - Judiciary*) (*Subject to a Rule*). This misguided legislation 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.

- **H.R. 1115 weakens accountability of major companies involved in pending class actions** including Enron, WorldCom and Arthur Anderson. Moreover, this is done on a retroactive basis and would apply to pending cases, unlike the bill considered in the last Congress.
- **H.R. 1115 would delay judicial relief** by giving defendants vast new opportunities for delaying cases and staying discovery during that time period. Again, this would apply retroactively to pending cases.
- **H.R. 1115 burdens federal courts** by broadly defining "class actions" to include mass torts and state actions brought on behalf of the general public.
- **H.R. 1115 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.
- **H.R. 1115 eliminates current uniform rules of federal civil procedure** regarding diversity jurisdiction, removal, dismissal, remand, appellate review, and discovery for class action cases only.
- **H.R. 1115 is opposed by federal and state judges** including the Federal Judicial Conference, headed by Chief Justice William Rehnquist and the Conference of Chief Justices (which represents the state chief justices).

The Rules Committee has recommended a structured rule that provides for one hour of general debate; provides that the amendment in the nature of a substitute recommended by the Judiciary Committee shall be considered as an original bill for the purpose of amendment; and provides one motion to recommit with or without instructions. The Rule also makes in order four amendments in the following order:

- 1) Sensenbrenner/Boucher/Goodlatte/Moran (VA)/Dooley/Stenholm/Terry Amendment (10 minutes)** - This amendment slightly broadens the category of class action cases that would remain in state court in two ways: (1) this amendment raises the aggregate amount in controversy required for federal court jurisdiction from \$2 million to \$5 million; (2) it allows federal court discretion to return intrastate class actions in which local law governs to state courts after weighing five factors to determine if the case is appropriately of a local character. This discretion would apply when between one-third and two-thirds of the plaintiffs are citizens of the same state as the primary defendants. If less than one-third of the plaintiffs are citizens of the same state, the case would automatically be eligible for federal court jurisdiction under the new diversity rules in this bill. Likewise, if more than two-thirds are citizens of the same state, the case would not be subject to the new rules in this bill and would remain in state court.
- 2) Jackson-Lee Amendment (10 minutes)** - Prevents domestic corporations from not being subject to the jurisdiction of U.S. Federal Courts, and liability in class action lawsuits filed in Federal Courts, through mergers or repatriations with foreign companies.
- 3) Lofgren/Linda Sanchez Amendment (10 minutes)** - Preserves the ability of local prosecutors to enforce state antitrust and consumer protection laws in state courts.
- 4) Sandlin/Conyers Amendment in the Nature of a Substitute (Democratic Substitute) (20 minutes)** - The Democratic substitute would address settlement abuses, protections against losses, and discretion of appeals. Democrats protect class action members by:



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- Basing attorneys' fees on the amount redeemed by class members rather than on the amount of the settlement, thus eliminating any incentive for a collusive agreement between plaintiffs' and defendants' counsel;
- Requiring the court to make a written finding that non-monetary benefits to the class members in a settlement outweigh the monetary loss;
- Requiring the court to determine that a settlement is fair, reasonable, and adequate to the class, and that it applies only to claims on which the class is authorized to represent members; and
- Authorizing the National Center for State Courts to develop and implement a procedure by which state courts or the state court multi-district litigation panel may transfer certain class actions to federal court.

Democrats are urged to VOTE YES on the Democratic Substitute. If the substitute is not adopted, **Democrats are urged to VOTE NO on FINAL PASSAGE of H.R. 1115.**

H.Res. 270 – Rule providing for adoption of H.R. 1308 – All-American Tax Relief Act of 2003 with a House Amendment to the Senate Amendment (Rep. Reynolds – Rules Committee). The Rules Committee has recommended a Rule that would self-execute the adoption of the flawed \$82 billion House Republican response to the Senate's near-unanimous action to fix a \$3.5 billion child tax credit problem.

Democrats are strongly urged to VOTE NO on the PREVIOUS QUESTION in order to allow consideration of the Senate-passed Child Tax Credit Measure and the Armed Forces Tax Fairness Act which are currently pending at the Speaker's desk. If the Previous Question is not defeated Democrats are strongly urged to VOTE NO on the unfair Republican RULE.

- **House Republicans increase the federal deficit by** borrowing another \$82 billion at a time when the federal deficit has exceeded \$400 billion for 2003 and approaches \$500 billion for 2004, adding billions in dollars of "debt tax" onto the backs of the very families that need this assistance the most.
- **House Republicans ignore the compromise reached in the Senate.** The Senate already rejected a similar proposal with roughly the same cost. The House Republican plan cannot be considered a serious proposal and get the 60 votes needed to pass the Senate. It is simply a ploy to avoid fixing the problem at all.

The new Republican proposal purports to do the following:

- Increase the refundable portion of the child tax credit from 10 to 15 % of earned income above a threshold of \$10,500 for 2003 and 2004. This acceleration was implemented as a part of the 2001 tax bill, and is already scheduled to take place in 2005. **This action costs approximately \$3.5 billion and is the very provision that House Republicans insisted on being dropped in conference.**
- Extend the increase of \$1,000 in the child tax credit past 2005 through 2010, eliminating the phase out scheme they just enacted to make the total cost of their tax cut fit a \$350 billion reconciliation window. **This costs \$57.3 billion.**
- Increase in the threshold under which the tax credit begins to phase out for higher-income families from \$110,000 to \$150,000. **This costs approximately \$20 billion** and expands on the Senate provision that increased the threshold from \$110,000 to \$115,000 in 2008 and 2009, and then to \$150,000 in 2010 at a cost of approximately \$4.8 billion. Under this proposal, and depending on the number of children, the credit may now extend to families with up incomes up to \$209,000.

Motion to go to Conference on H.R. 1308 – All-American Tax Relief Act of 2003. The House will then consider a motion to go to conference on H.R. 1308. Mr. Rangel, Ranking Member of the Ways and Means Committee, is expected to offer a Motion to Instruct Conferees to insist on the Senate-passed Child Tax Credit Measure, which is entirely paid for by extending existing customs user fees that are set to expire in September 2003 through 2010, and which is now at the House desk. Democrats want to immediately get this bill to the President so that the affected families can be included as soon as possible.

Democrats are strongly urged to VOTE YES on the Rangel Motion to Instruct.

Daily Quote...

"Pass it. His advice to the House Republicans is to pass it, to send it to him, so he can sign it."

- White House Press Secretary Ari Fleischer, when asked what President Bush would say to House Republicans who disagree with Senate legislation to accelerate the child tax credit for low-income families.