



November 12, 2013

The Honorable John Boehner  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Nancy Pelosi  
Majority Leader  
U.S. House of Representatives  
Washington, DC 20515

Re: NELA Strongly Opposes "Lawsuit Abuse Reduction Act"

Dear Speaker Boehner and Minority Leader Pelosi:

We are writing on behalf of the National Employment Lawyers Association (NELA) to express our opposition to H.R. 2655, the "Lawsuit Abuse Reduction Act (LARA)." We understand this bill may be considered on the House floor this week.

NELA is the country's largest professional membership organization of lawyers who exclusively or primarily represent employees in cases involving employment discrimination, illegal workplace harassment, wrongful termination, denial of employee benefits, and other employment-related matters. NELA and its 68 circuit, state and local Affiliates have more than 3,000 members nationwide. NELA members represent workers in diverse sectors—farms and fields, schools, factories, executive offices, military service, hospitals, and many others—and bring a unique voice to the issues that affect workers on a daily basis.

NELA joins many other organizations in opposing LARA because it would roll back federal legal procedural rules, burden an understaffed judiciary, prolong expensive litigation, and unfairly penalize consumers and employees as participants in civil lawsuits.

H.R. 2655 would make major, substantive changes to Rule 11 of the Federal Rules of Civil Procedure, bypassing both the Judicial Conference of the United States and the U.S. Supreme Court in the process. Currently, Rule 11 sensibly provides judges with discretion to impose sanctions as a means to deter abuses in the signing of pleadings, motions, and other court papers. This bill would make sanctions mandatory rather than discretionary by the judge. Not only would this legislation constitute interference by Congress into the workings of the judicial branch, it would take us backwards to an earlier system that proved to be unworkable, unfair and unnecessary, and was thus abandoned 20 years ago.

In 1983, the federal rules were changed along the lines specified by H.R. 2655. As Professor Lonny Hoffman of the University of Houston Law Center testified before the Subcommittee on the Constitution in 2011, “there is a remarkable degree of agreement among judges, lawyers, legal scholars and litigants across the political spectrum that the 1983 amendment of Rule 11 was one of the most ill-advised procedural experiments ever tried.” The Rule produced “an avalanche of unwelcome satellite litigation” over the new obligations imposed, which in turn impeded cooperation and settlement. Litigation costs and delays increased. In addition, “civil rights and employment discrimination plaintiffs, in particular, were impacted the most severely” with these cases being subject to sanction motions “more than 28% of the time, well out of proportion to the percentage of such cases filed.” Empirical evidence showed that the Rule deterred the filing of meritorious cases as plaintiffs feared the rule would be inappropriately applied to them.

In 1993, using the proper process set out in the Rules Enabling Act, with hearings and consideration by the Supreme Court and Congress, the 1983 Rule was abandoned. The requirement for mandated sanctions was removed and replaced, once again, with a far more workable and fair discretionary standard. The new Rule also provided a “safe harbor” provision, allowing a filing to be withdrawn in a timely manner before sanctions can be imposed. This Rule works perfectly well. There is absolutely no reason for Congress to interfere with it, reverse the positive changes made to Rule 11 by the 1993 amendments, and impose a system that is a proven failure.

With an already understaffed federal judiciary, Congress should be looking for ways to decrease, not increase, wasteful burdens on the courts, and should avoid rules changes that have a discriminatory impact on employment, civil rights, environmental, and consumer cases.

We urge you to oppose H.R. 2655.

Thank you for your consideration.

Sincerely,



Terisa E. Chaw  
Executive Director



Julie M. Strandlie  
Legislative & Public Policy Director

cc: Members of the House of Representatives