



March 11, 2008

Assembly Judiciary Committee  
California State Assembly  
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Re: AB 1905

Dear Committee:

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I am writing on behalf of The Impact Fund, AARP California, American Civil Liberties Union of Northern California, Southern California and San Diego and Imperial Counties, Asian Pacific American Legal Center, California Women's Law Center, California Rural Legal Assistance Foundation, Center on Race, Poverty & the Environment, Consumers for Auto Reliability & Safety, Consumer Federation of California, Disability Rights Advocates, Equal Justice Society, Equal Rights Advocates, Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Legal Aid Society of San Francisco-Employment Law Center, Legal Services for Prisoners with Children, Mexican American Legal Defense and Education Fund (MALDEF), National Center for Youth Law, National Center for Lesbian Rights, National Consumer Law Center on behalf of its low income clients, National Senior Citizens Law Center, Protection & Advocacy, Inc., Public Advocates, Public Counsel, Public Interest Law Project/California Affordable Housing Law Project, Public Interest Law Firm of the Law Foundation of Silicon Valley, Western Center on Law and Poverty, the Women's Employment Rights Clinic of Golden Gate University Law School and the Youth Law Center to oppose AB 1505. We are non-profit organizations who seek to vindicate the rights of people and groups that have historically been disenfranchised including, but not limited to, women, ethnic minorities, people with disabilities, older persons, consumers, lesbians and gays, tenants, low wage workers and the impoverished.

Historically, and currently, an essential tool in all of our struggles for equality is a viable class action mechanism. This bill, however, would overturn decades of

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well established California law and severely undermine class action cases in California, thus providing a windfall to defendants who harm many people when they violate the law.

Currently under California law, while there is a right to appeal a denial of class certification, there is no automatic right to appeal from a grant of class certification. This approach makes sense: a denial of class certification essentially ends the case, thus making an appeal the only logical procedure. A grant of class certification, on the other hand, does not act as a "death knell" for either side, especially since class certification rulings are not decisions on the merits, and may be modified or reconsidered as additional proceedings occur.

The proposed bill would grant an automatic right to appeal when a class is certified. The practical effect of this would be to stay the entire action during the one or more years of appeal. See C.C.P 916. This would be true no matter what relief is sought in the action, including actions that seek injunctive relief to stop ongoing illegal behavior. Such a stay would delay the ultimate resolution of the case and grant a windfall to defendants, since justice delayed is often justice denied. This is especially true in class cases, where the passage of time makes it harder to locate class members who are unlikely to know about the class action or their rights, since the appeal would occur prior to the issuance of class notice.

Given the extremely broad discretion given to trial judges in ruling on class certification, See *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4<sup>th</sup> 319, 326-327 (2004), it is unlikely that most appeals from the grant of class certification will succeed, yet an appealing defendant automatically gains an advantage by filing an appeal, stopping the action in its tracks.

We urge the Committee to reject this bill.

Sincerely,



Brad Seligman

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