



L. Joseph Loveland
Chair
Federal Civil Procedure Committee
jloveland@kislaw.com

April 19, 2011

Via email and FedEx Overnight

The Honorable Patrick J. Leahy, Chairman
Senate Judiciary Committee
437 Russell Senate Building
United States Senate
Washington DC 20510
FedEx Tracking 7946 6678 6556
Email: senator_leahy@leahy.senate.gov

The Honorable Chuck Grassley
Ranking Member
Senate Judiciary Committee
135 Hart Senate Office Building
United States Senate
Washington DC 20510
FedEx Tracking 7970 0538 4370
Email: c/o susan_hoing@grassley.senate.gov

Re: Proposed "Sunshine in Litigation Act of 2011"

Dear Chairman Leahy and Ranking Member Grassley:

The American College of Trial Lawyers is dedicated to maintaining and improving the standards of trial practice, the administration of justice and the ethics of the legal profession. Founded in 1950, the American College of Trial Lawyers is an honorary, invitation-only organization composed of leading trial lawyers and is widely considered the premier professional trial organization in America. The College is neither plaintiffs' nor defense oriented. Its membership cannot exceed one percent of the total lawyer population of any state, and in virtually every state is a fraction of that number.

The Federal Rules of Civil Procedure Committee of the College is charged with monitoring the operation of the Federal Rules of Civil Procedure and evaluating proposed changes. The Federal Rules of Civil Procedure Committee has reviewed the proposed "Sunshine in Litigation Act of 2011," which was introduced as S.263 on March 17. This proposed legislation is substantially similar to legislation that was also proposed in 2009, which our Committee reviewed at the request of the Chair of the Advisory Committee on the Federal Rules of Civil Procedure of the Judicial Conference of the United States.

NATIONAL OFFICE
19900 MacArthur Blvd.
Suite 530
Irvine, CA 92612
t: 949.752.1801
f: 949.752.1674
www.actl.com



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Our Committee members have concluded that the "Sunshine in Litigation Act" is ill-conceived and unnecessary for two fundamental reasons:

1. The "Sunshine in Litigation Act of 2011" would establish an undesirable precedent of circumventing the process set out in the Rules Enabling Act, the procedure that Congress established for amending the Federal Rules of Civil Procedure. The Rules Enabling Act provides for a thorough consideration of proposed changes in the Federal Rules of Civil Procedure, including the ways in which such proposed changes relate to other Rules and practices in the federal courts. We are concerned that *ad hoc* legislative initiatives that address specific aspects of the Federal Rules are ill-advised, and believe that changes in the Rules should be enacted through the procedure Congress endorsed in the Rules Enabling Act.

2. The "Sunshine in Litigation Act of 2011" as drafted would unduly restrict the discretion of trial judges to regulate civil litigation and would impose substantial new fact finding burdens on the courts, without a demonstrated need for those changes. The experience of most of our Committee members does not suggest that protective orders governing discovery or confidentiality provisions in settlement agreements are frequently abused, or that they serve to keep private information that is important to protecting public health and safety. Requiring federal trial judges to engage in the specific fact-finding set out in the Act would add an unnecessary procedural hurdle in what already is a complex, expensive and time-consuming process.

For these reasons, we respectfully request that the Judiciary Committee vote against S.263. The proposed legislation would serve to make civil litigation in the federal courts more expensive and protracted than it currently is, and would do so without generating substantial benefits to the public health, safety or welfare.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Joseph Loveland". The signature is fluid and cursive.

L. Joseph Loveland
Chair, Federal Rules of Civil Procedure Committee

cc: Board of Regents
Federal Rules of Civil Procedure Committee