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**Hearing on "The State of Class Actions Ten Years after
the Class Action Fairness Act"**

Before the Committee on the Judiciary
Subcommittee on the Constitution and Civil Justice
United States House of Representatives

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Good morning, Mr. Chairman, Ranking Member Cohen, and Members of the Subcommittee. Thank you for inviting me to testify on "The State of Class Actions Ten Years after the Class Action Fairness Act" (CAFA). It is my pleasure to be here today.

It is my understanding that no specific legislation has been proposed as of today, and that this is an investigatory hearing. I offer three overall points to help place into a broader perspective the specific suggestions that others may make.

First, in evaluating suggestions in some quarters that class actions impose significant private costs, we must not forget the public benefits of class actions, and why, despite their imperfections, they are a quintessentially American feature of the civil justice system. Class actions vindicate the rights of people whose individual claims, while legally valid, are too small to justify the expense of a lawsuit. In other words, class actions allow a large number of similarly-situated people to redress harm. In addition, class actions deter wrongful conduct by corporations that otherwise could violate existing laws with impunity.¹ Class actions also promote economy and efficiency, reducing the number of lawsuits by bringing issues affecting all class members under one umbrella. These benefits will be diminished if class actions are further restricted or become uneconomical to pursue.

Second, in looking at the big picture of class actions since CAFA's passage, it is essential to consider legislative developments and Supreme Court decisions that have severely restricted not only class actions, but access to justice for average Americans.² This is particularly true in federal courts, which at least partly explains corporate defendants' frequent preference to be in federal court rather than state court.³ Many in academia and elsewhere consider the most important of the Supreme Court's recent class action decisions – *Wal-Mart v. Dukes* and *AT&T Mobility v. Concepcion* -- to have cut off the ability to even file a class action, let alone obtain class certification.⁴ More broadly, many believe that there has been a sustained and concerted attack on the legal remedies of workers, consumers, and other injured parties, masked as

¹ See, e.g., Elizabeth Chamblee Burch, *Securities Class Actions as Pragmatic ex Post Regulation*, 43 GA. L. REV. 63 (2008); DEBORAH HENSLER, ET AL., CLASS ACTION DILEMMAS: PURSUING PUBLIC GOALS FOR PRIVATE GAIN 421 (RAND Institute for Civil Justice 2000) ("Forcing defendants to return ill-gotten gains may send powerful deterrent signals to businesses contemplating illegal practices.")

² "Access to justice is fundamental to all democratic societies, and it is a bedrock principle of our nation." Jonathan Lippman, *State Courts: Enabling Access*, 143 DAEDALUS 28 (Summer 2014) (Chief Judge of the State of New York describing efforts to improve access to justice in that state). See also, e.g., Stephen B. Burbank & Sean Farhang, *Litigation Reform: An Institutional Approach*, 162 U. PENN. L. REV. 1543, 1545 (2014) (authors' data compilation shows that "once highly supportive of private enforcement [of public laws], the Supreme Court, increasingly influenced by ideology and increasingly conservative, has become antagonistic"); Brooke D. Coleman, *The Vanishing Plaintiff*, 42 SETON HALL L. REV. 501 (2012).

³ See *infra* at Section II(B).

⁴ E.g., Arthur R. Miller, *The Preservation and Rejuvenation of Aggregate Litigation: A Systemic Imperative*, 64 EMORY L.J. 293, 298-302 (2014); Georgene Vairo, *Is the Class Action Really Dead? Is That Good or Bad for Class Members?*, 64 EMORY L.J. 477, 479 (2014) ("It is no secret that the United States Supreme Court has made obtaining class certification and group dispute resolution more difficult."); Robert H. Klonoff, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729, 735 (2013) ("the emergence of myriad cases that cut back the ability to pursue classwide relief represents a troublesome trend that undermines the compensation, deterrence, and efficiency functions of the class action device.")

"procedural reform" or "tort reform."⁵ Further restrictions on class actions must be seen as part of this campaign.

Finally, any contention that might be made about class actions must be placed in perspective by realizing that there are very little statistics on any aspect of class actions or class action practice that is publicly available for either the federal courts or the state courts. One implication of the lack of official data is that it is difficult, if not impossible, to fit into the "big picture" of class actions any reference to a few lower-court cases. We do not and cannot know if a given case is normal or aberrant. This makes it easy for proponents of any particular view to conduct policy analysis by anecdote. Therefore, as you consider the advisability of further legislation, I hope you will consider mandating the public release of court data on class actions that is already in existence, but currently shielded from public view. As I said in an earlier article, "A topic that is important enough to require legislation is important enough to require adequate record-keeping."⁶

I discuss these three points in greater detail below.

I. Class Actions Provide Numerous Societal Benefits for Workers, Consumers, Small Businesses, and Others.

As this Subcommittee ponders the direction of class actions, it should evaluate not just the private costs of class actions, but the public benefits. Class actions do not only benefit class members or lawyers – their most important benefits are "shared among society as a whole."⁷

Class actions are "a means of private enforcement of various public policies that serve as a supplement to government enforcement."⁸ From the class action in *Brown v. Board of Education*⁹ in the 1950's to today's class action against the City of New York seeking to correct the brutally violent conditions at Rikers Prison,¹⁰ class actions have sought and obtained the vindication of civil rights and human rights.

Another type of class action allows a large number of consumers who have each been cheated of a relatively small amount of money to band together to enforce the law, overcoming the transaction costs that would prohibit any of them from suing individually. Thus, class actions force the defendant-wrongdoer to "internalize the social costs" of its illegal actions.¹¹ In so doing, class actions deter "large-scale wrongdoing"¹² more strongly than any alternative.

⁵ See, e.g., Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. REV. 286 (2013).

⁶ *Confronting the Myth of "State Court Class Action Abuses" Through an Understanding of Heuristics and a Plea for More Statistics*, 82 UMKC L. REV. 133 (2013) (applying the influential work of Nobel laureate Daniel Kahneman on the role of heuristics and biases in judgment and decision-making to the long-running debates about the civil justice system and class actions in particular).

⁷ Erik D. Cansler, *Forcing Defendants to Internalize the Costs of Wrongdoing*, 38-Feb. COLO. LAW. 53 (2009).

⁸ Miller, *supra* note 4, at 297.

⁹ 347 U.S. 483 (1954).

¹⁰ Michael Winerip et al., *Even as Many Eyes Watch, Brutality at Rikers Persists*, N.Y. TIMES (Feb. 22, 2015).

¹¹ See also Myriam Gilles & Gary B. Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. PA. L. REV. 103, 105 (2006) ("There is but one true objective here--one valid

Class actions also provide benefits to small businesses, corporate defendants, and the court system itself. Class treatment of common issues enables defendants and courts to treat a large volume of similar claims in the aggregate rather than one by one, which is more efficient and more economical. Class actions also enable corporations to gain the certainty they desire by estimating a limit to their liability – a global peace -- when a final judgment is entered. The limit occurs because all class members who did not opt out are bound, and will be barred from suing on their own.¹³

Just a few recent examples will suffice to illustrate the way in which class actions are used by average citizens to redress harms:

- In a class action filed on behalf of a class of checking account holders against a bank for charging excessive overdraft fees, the court after a two-week bench trial held that by using "a bookkeeping device to turn what would ordinarily be one overdraft into as many as ten overdrafts," the bank "thereby dramatically [multiplied] the number of fees the bank [could] extract from a single mistake."¹⁴
- A class action alleged that a for-profit college used deceptive practices to urge minority and low-income students to shoulder large student loans for what the college knew was an inadequate education. The action was later settled for approximately \$5 million.¹⁵
- A class action filed by oil and gas mineral owners in Oklahoma and Texas against an operator alleges the systematic underpayment of royalties by selling the hydrocarbons produced to an affiliate entity at less than market price.¹⁶

There are also numerous examples of small businesses using class actions to combat antitrust violations committed by much larger companies. Just two examples include:

- A class of purchasers of diamonds alleged anticompetitive behavior by De Beers Diamonds and ultimately negotiated a settlement of \$295 million.¹⁷

normative measure by which to gauge any class action procedure or practice, or any proposed reform. All that matters is whether the practice causes the defendant-wrongdoer to internalize the social costs of its actions.")

¹² Miller, *supra* note 4, at 297.

¹³ FED. R. CIV. P. 23(c)(2)(B)(vii). See Vairo, *supra* note 4, at 479.

¹⁴ *Gutierrez v. Wells Fargo Bank, N.A.*, No. C 07-05923 (C.D. Cal. Aug. 10, 2010) (holding after a two-week bench trial that this was an unfair and deceptive business practice in violation of California law). Incidentally, plaintiffs filed this case originally in federal court under CAFA jurisdiction.

¹⁵ Order Approving Class Action Settlement, *Morgan v. Richmond School of Health & Technology, Inc.*, No. 3:12-cv-373 (E.D. Va. July 25, 2013).

¹⁶ Plaintiff's Original Class Action Complaint, *Coffey v. Chesapeake Exploration, L.L.C.*, No. 10-cv-1054 (W.D. Okla. Sept. 27, 2010). Again, plaintiffs filed this case originally in federal court under CAFA jurisdiction.

¹⁷ *Sullivan v. DB Investments, Inc.*, No. 08-2784 et al. (3d Cir. Dec. 21, 2011) (en banc).

- A class of freight forwarders that purchased air freight services from domestic and foreign airlines that provide airfreight-shipping services alleged that the defendants unlawfully fixed prices to charge higher rates.¹⁸

Some dispute the benefits of class actions.¹⁹ Class actions are an imperfect device in an imperfect world. Plaintiffs, defendants, and lawyers act in their own self-interest. But that is why there is so much judicial oversight of class actions as compared to a non-class action: so that the benefits of class actions can be achieved with a minimum of prejudice.

At bottom, class actions' detractors have simply failed to offer an effective substitute for achieving the enforcement, deterrence, compensation, and efficiency goals of the class action device. A frequently-mentioned substitute for class actions is governmental enforcement of companies' legal violations, such as actions brought by state attorneys general and other public agencies. But while this is an important part of regulatory enforcement, it does not and cannot accomplish everything that private enforcement by class actions does.²⁰ First, "public agencies lack sufficient financial resources to monitor and detect all wrongdoing or to prosecute all legal violations,"²¹ and in today's political climate it is unlikely that taxes would be raised to augment the enforcement resources of agencies like the Federal Trade Commission or the Food and Drug Administration. Second, regulatory agencies are part of the executive branch of government, and their political priorities may shift with changing administrations.

In addition, the suggestion that private arbitration is an adequate substitute for a class action is fanciful. Discovery limitations in arbitration disadvantage the claimant, who bears the burden of proof. The significant costs of the arbitration must be partially borne by the claimant up front. Arbitration "does not typically provide a right to appeal, and review of arbitral awards by courts is limited under the [Federal Arbitration Act] to grounds of corruption, fraud, 'evident partiality,' misconduct, and actions that are ultra vires."²² Moreover, arbitration is typically a private and confidential process that does not result in published opinions.²³ As such, arbitration awards do not contribute to the development of the law, fail to stimulate interest in legal reform, and have no deterrent effect on future wrongdoing.²⁴ Data on arbitrations is even harder to come by than data on court filings. The Consumer Finance Protection Bureau has been studying

¹⁸ In re Air Cargo Shipping Services Antitrust Litigation, 2014 WL 7882100 (E.D.N.Y. Oct. 15, 2014).

¹⁹ See, e.g., Linda S. Mullenix, *Ending Class Actions as We Know Them: Rethinking the American Class Action*, 64 EMORY L.J. 399 (2014).

²⁰ See, e.g., Georgene M. Vairo, *What Goes Around, Comes Around: From the Rector of Barkway to Knowles*, 32 REV. OF LITIG. 721, 803 (2013) (citing recent studies showing that "private enforcement can be more effective than governmental enforcement").

²¹ CLASS ACTION DILEMMAS, *supra* note 1, at 69.

²² J. Maria Glover, *Beyond Unconscionability: Class Action Waivers and Mandatory Arbitration Agreements*, 59 Vand. L. Rev. 1735 (2006).

²³ See Jean R. Sternlight & Elizabeth J. Jensen, *Using Arbitration to Eliminate Consumer Class Actions: Efficient Business Practice or Unconscionable Abuse?*, 67 LAW & CONTEMP. PROBS. 75, 91 (2004) ("Unlike public litigation . . . journalists cannot usually read and report on arbitration claims").

²⁴ Richard Alderman, *Pre-Dispute Mandatory Arbitration in Consumer Contracts*, 38 HOUS. L. REV. 1237, 1262-64 (2001) (arbitration undermines the development of the law); Richard Reuben, *Democracy and Dispute Resolution: The Problem of Arbitration*, 2004 LAW & CONTEMP. PROBS. 279, 298-303 (mandatory arbitration conflicts with "democratic values").

mandatory arbitration clauses for years and has not yet issued a final report.²⁵ Arbitration lacks the transparency and public accountability of court proceedings.²⁶

In summary, there is no substitute for the vindication of public rights afforded by the class action. Hampering class actions any further will entail real costs to society.

II. Legislative and Caselaw Developments Have Increasingly Restricted Not Only Class Actions, but Access to Justice Generally, and Have Rendered the Environment of the Federal Courts Even More Welcoming to Large Institutional Defendants Over Individual Plaintiffs.

A. The Supreme Court's Recent Decisions on Class Actions Have Broadened CAFA Jurisdiction, Obstructed Class Certification, and Allowed Businesses to Unilaterally Block People from Even Filing Class Actions.

Any investigation into the state of class actions today needs to consider important developments in the Supreme Court since the passage of CAFA. The most important of these decisions have seriously undercut plaintiffs' ability to bring and maintain class actions.²⁷

- ***CAFA jurisdiction.*** With respect to CAFA specifically, the Supreme Court has decided two cases that make it even easier for defendants to remove class actions from state court to federal court: *Standard Fire Insurance Co. v. Knowles*²⁸ and *Dart Cherokee Basin Operating Co., LLC v. Owens*.²⁹ These decisions go a long way towards answering the concerns of the U.S. Chamber of Commerce or DRI – the Voice of the Defense Bar that not all federal judges were welcoming CAFA removals with open arms.
- ***Mandatory arbitration clauses barring class actions, jury trials, and class arbitration.*** The Supreme Court has strengthened its support for binding mandatory arbitration clauses in contracts, even when a consumer has no opportunity to negotiate that contract any greater than clicking "accept" on a mouse,³⁰ and even when the cost to a plaintiff of proceeding alone, without class treatment, is greater than any potential recovery that plaintiff could win even if successful.³¹ As a result, companies can keep almost any dispute that arises from a contract with a mandatory arbitration clause out of court, away from a jury, and can force the lone claimant to go it alone, without recourse to combining with others similarly injured.³² Even the

²⁵ *Arbitration Study Preliminary Results: Section 1028(a) Study Results To Date* (Dec. 12, 2013), http://files.consumerfinance.gov/f/201312_cfpb_arbitration-study-preliminary-results.pdf.

²⁶ While the American Arbitration Association's rules require some public access to records of class arbitrations, a quick review of these online records reveals that they are woefully incomplete.

²⁷ See *supra* note 4.

²⁸ 133 S. Ct. 1345 (2013).

²⁹ 135 S. Ct. 547 (Dec. 15, 2014).

³⁰ *AT&T Mobility v. Concepcion*, 131 S. Ct. 1740 (2011).

³¹ *American Express Co. v. Italian Colors*, 133 S. Ct. 2304 (2013).

³² This development has not been without its staunch detractors, particularly in those agencies whose duty is to protect workers and consumers. Pursuant to the mandate of the Dodd-Frank Wall Street Reform and Consumer

conservative Federalist Society published a piece shortly after the *Concepcion* decision entitled, "Did the Supreme Court Just Kill the Class Action?"³³

- **Employment discrimination.** Perhaps no Supreme Court decision on class actions has ever generated as much controversy as *Wal-Mart v. Dukes*,³⁴ which reversed the certification of a class of female Wal-Mart employees alleging gender discrimination in promotion and pay. The majority of commentators believe that *Dukes* raises new barriers to class certification in employment discrimination class actions,³⁵ and that such new barriers have affected all class actions.³⁶ One reason is that, as dissenting Justice Ginsburg noted, the majority in *Dukes* erroneously heightened, in the absence of any rules-based textual support, the standard for satisfying one of the preliminary prerequisites of a class action.³⁷
- **Wage and hour litigation.** In *Genesis Healthcare Corp. v. Symczyk*,³⁸ the Court, by a 5-4 majority, held that a plaintiff could not continue to pursue a collective action under the Fair Labor Standards Act by refusing to accept an offer of judgment under Rule 68 that fully satisfied the plaintiff's individual claim. Although the dissenters in *Symczyk* took pains to point out that the case came to the Court in a unique procedural posture – the plaintiff had failed to challenge below the erroneous holding that the offer of judgment mooted the individual suit – the dissent found the implication of the case very troublesome: "No more in a collective action brought under the FLSA than in any other class action may a court, prior to certification, eliminate the entire suit by acceding to a defendant's proposal to make only the named plaintiff whole. That course would short-circuit a collective action before it could begin, and thereby frustrate Congress's decision to give FLSA plaintiffs 'the opportunity to proceed collectively.'"³⁹

Wage and hour class actions and collective actions deserve special mention because empirical research shows that the most common type of class action filed today is one that

Protection Act, the Consumer Financial Protection Bureau has been studying the use of pre-dispute arbitration clauses in consumer financial markets. The CFPB's preliminary report was issued in December 2013, and it is expected that its final report will be released soon. See *Arbitration Study*, *supra* note 25. And the National Labor Relations Board has again held that an employer violates the National Labor Relations Act when it requires an employee to sign an agreement that she will not resort to class or collective action to pursuant violations of the Fair Labor Standards Act. *Murphy Oil USA, Inc.*, 361 NLRB No. 72 (2014).

³³ Brian T. Fitzpatrick, *Did the Supreme Court Just Kill the Class Action?*, CLASS ACTION WATCH (September 2011), <http://www.fed-soc.org/publications/detail/did-the-supreme-court-just-kill-the-class-action>.

³⁴ 131 S. Ct. 2541 (2011).

³⁵ *E.g.*, Nina Martin, *The Impact and echoes of the Wal-Mart Discrimination Case*, Business Ethics: The Magazine of Corporate Responsibility (Oct. 1, 2013), <http://business-ethics.com/2013/10/01/0958-the-impact-and-echoes-of-the-wal-mart-discrimination-case/> ("Jury verdicts have been overturned, settlements thrown out, and class actions rejected or decertified, in many instances undoing years of litigation.")

³⁶ *E.g.*, A. Benjamin Spencer, *Class Actions, Heightened Commonality, and Declining Access to Justice*, 93 B. U. L. Rev. 441 (2013) (discussing the effects of the Court's heightened commonality standard).

³⁷ *Wal-Mart v. Dukes*, 131 S. Ct. at 2562 (Ginsburg, J., dissenting).

³⁸ 133 S. Ct. 1523, 1532 (2013).

³⁹ *Id.* at 1536 (Kagan, J., dissenting).

charges a violation of wage and hour legislation.⁴⁰ To be blunt, these suits allege that employers are nickel-and-diming working people all over the country by failing to pay them the wages to which they are entitled under the law.⁴¹ In fact, complaints of these violations have become so common that last year President Obama directed the Labor Department "to modernize and streamline the existing overtime regulations" because those "regulations regarding exemptions from the [Fair Labor Standards] Act's overtime requirement, particularly for executive, administrative, and professional employees (often referred to as 'white collar' exemptions) have not kept up with our modern economy."⁴²

Employers have learned that an effective way to get rid of these suits is to pick off the named plaintiff – offer the plaintiff a settlement that consists of everything the plaintiff is asking for, plus fees for his or her lawyer, and make the entire case go away. It takes a certain kind of employee, some might say brave, some might say cantankerous, to undergo the emotional upheaval of bringing a lawsuit. If the employee is still employed by the company, he or she is risking unemployment by upsetting those in charge. The employee also may be risking future employment opportunities by seeming to be a "troublemaker" to other employers. Not all employees are willing to assume these risks and throw down the gauntlet. By eliminating the one employee who has done so, an employer has a good chance of quieting the rest.

In *Symczyk*, a majority of the Supreme Court showed a willingness to tolerate this behavior by employers.⁴³ Adding insult to injury, federal courts are also upholding mandatory

⁴⁰ EMERY G. LEE III & THOMAS E. WILLGING, THE IMPACT OF THE CLASS ACTION FAIRNESS ACT OF 2005 ON THE FEDERAL COURTS: FOURTH INTERIM REPORT TO THE JUDICIAL CONFERENCE ADVISORY COMMITTEE ON CIVIL RULES, FEDERAL JUDICIAL CENTER 4-5, 31 (2008); Hilary Hehman, *Findings of the Study of California Class Action Litigation, 2000-2006: First Interim Report*, Judicial Council of California: Administrative Office of the Courts (March 2009), at 5, <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (last visited Feb. 23, 2015).

⁴¹ A few examples include: failing to pay overtime when more than forty hours per week are worked; failing to give workers the breaks and meal breaks they are entitled to under the law; or failing to pay for time spent performing time-consuming activities that are necessary to the job, such as wearing special protective clothing or accessing necessary computer applications.

⁴² Presidential Memorandum for the Secretary of Labor: Updating and Modernizing Overtime Regulations (March 13, 2014), <http://www.whitehouse.gov/the-press-office/2014/03/13/presidential-memorandum-updating-and-modernizing-overtime-regulations>. At the signing of the Presidential Memorandum, President Obama explained:

[T]oday, millions of Americans aren't getting the extra pay they deserve. That's because an exception that was originally meant for high-paid, white-collar employees now covers workers earning as little as \$23,660 a year. So if you're making \$23,000, typically, you're not high in management. If your salary is even a dollar above the current threshold, you may not be guaranteed overtime. It doesn't matter if what you do is mostly physical work like stocking shelves, it doesn't matter if you're working 50 or 60 or 70 hours a week -- your employer doesn't have to pay you a single extra dime.

And I think that's wrong. It doesn't make sense that in some cases this rule actually makes it possible for salaried workers to be paid less than the minimum wage.

The White House Blog, *Action for Our Workers: President Obama Signs Memorandum to Update Overtime Pay* (March 13, 2014), <http://www.whitehouse.gov/blog/2014/03/13/action-our-workers-president-obama-signs-memorandum-update-overtime-pay>.

⁴³ *Genesis v. Symczyk*, *supra* note 38.

arbitration clauses that specifically apply to the FLSA and state wage laws.⁴⁴ And several states have eliminated by statute employees' rights to bring wage and hour litigation as a class.⁴⁵

In light of all these recent serious judicial restrictions on class actions, Congress should be very cautious and observe restraint in proceeding with legislation in response to asserted concerns with class actions raised by special interests.⁴⁶ Many of the "concerns" of special interests that I have seen appear to boil down to a belief that one judge here or another judge there ruled against them on some point. The judicial system has an age-old system for handling such "concerns": appeal, petition for certiorari, or filing *amicus curiae* briefs. And there is no shortage of lawyers working for these special interests and fighting these battles in legislatures, rules committees,⁴⁷ and courtrooms across the country.⁴⁸ In fact, spurred on by the same special interests, the Advisory Committee on Civil Rules has a very active "Rule 23 Subcommittee" that is currently evaluating possible modifications to the federal class action rule.⁴⁹

Although I have seen no draft language of any legislation or rule amendment that might be proposed, adding more restrictions or specificity to the text of Rule 23 or to CAFA may remove judges' discretion to handle a particular class action as he or she sees fit based on an intimate knowledge of the case. One scholar's recent examination of numerous decisions on class certification emphasizes the critical role of preserving judicial discretion in ruling on class certification.⁵⁰ Statutory "solutions" often have unintended consequences.

⁴⁴ *E.g.*, *Sutherland v. Ernst & Young LLP*, 726 F.3d 290, 293 (2d Cir. 2013) (upholding a mandatory arbitration clause that specifically applied to the FLSA and state wage laws, as well as a provision that "disputes pertaining to different employees will be heard in separate proceedings").

⁴⁵ Kentucky, Tennessee, and Alabama.

⁴⁶ *See, e.g.*, Lawyers for Civil Justice, Comment to the Advisory Committee on Civil Rules and its Rule 23 Subcommittee (Aug. 13, 2014).

⁴⁷ The same special interests are pressing the Advisory Committee on Civil Rules for amendments to Rule 23, airing many of the same "concerns."

⁴⁸ Business and corporate interests – defendants in class actions – employ an army of elite lawyers and well-funded conservative "think tank" organizations who deploy themselves in every possible arena of influence to assert what they see as their interests in the civil justice system. *E.g.*, IADC Amicus Brief Program, 81 DEF. COUNS. J. 404 (2014) ("The International Association of Defense Counsel has an active *amicus curiae* program, submitting briefs on issues of importance to IADC members and their clients.") In addition to the IADC, other influential organizations that regularly submit pro-business *amicus* briefs on class actions and other issues are the "Lawyers for Civil Justice," the "Center for Class Action Fairness," the National Association of Manufacturers, the U.S. Chamber of Commerce, DRI – Voice of the Defense Bar, and The Cato Institute. Indeed, the very able and distinguished Andrew Pincus just filed an *amicus* brief on behalf of the U.S. Chamber of Commerce in the Ninth Circuit Court of Appeals. *Jones v. ConAgra Foods, Inc.*, No. 14-16327 (9th Cir.), Brief of the Chamber of Commerce of the United States of America as *Amicus Curiae* in Support of Defendant-Appellee, filed Jan. 28, 2015. In that case, the trial judge in the Northern District of California *denied* class certification, and the *amicus* just wants to make sure that the Ninth Circuit affirms the denial.

⁴⁹ Memorandum from Advisory Committee on Civil Rules to Committee on Rules of Practice and Procedure (Dec. 2, 2014) (reporting on Advisory Committee meeting of Oct. 30, 2014).

⁵⁰ Tobias Barrington Wolff, *Discretion in Class Certification*, 162 U. PENN. L. REV. 1897, 1951 (2014) ("The point of recognizing discretion in class certification is not to restrict the class action as a tool for the private enforcement of public norms. To the contrary, the point is to preserve it.") *See also* CLASS ACTION DILEMMAS, *supra* note 1, at 485 ("We think it is judges who hold the key to improving the balance of good and ill consequences of damage class actions.")

B. Other Legislative and Judicial Developments Have Hampered the Pursuit of Justice for People Harmed By the Illegal Actions of Others, Especially in Federal Court

Any suggestion that Congress should further expand CAFA jurisdiction still rests on the premise that federal courts are simply "tougher" on class actions than state courts. But empirical studies did not support that premise when CAFA was passed, and they still do not.⁵¹

Without solid evidence that state courts do not scrutinize class actions as closely as federal courts, institutional defendants' stated desire to be in federal court over state court must transcend any theoretical difference in class action standards. Corporate defendants' preference for federal courts in the class action context is only one facet of their preference for federal courts in general.⁵²

There are many procedural differences between federal and state courts, and many of those procedural differences are favorable to defendants in federal court.⁵³ Plaintiffs in federal court are mostly individuals suing a business or governmental organization,⁵⁴ and plaintiffs' success rate in federal court has declined in recent years.⁵⁵

A brief catalogue of the growing procedural disadvantages plaintiffs face in federal court would include the following. The heightened pleading standard discernable after the *Twombly* and *Iqbal* cases makes it more difficult for plaintiffs to formulate a complaint that will survive a motion to dismiss.⁵⁶ Oddly, in an era of global business, it has become harder for plaintiffs to assert personal jurisdiction over foreign defendants.⁵⁷ Discovery has been incrementally restricted in federal courts time and again over the past thirty years, and more defense-favoring restrictions on discovery in federal court are in the works, in the package of amendments to the

⁵¹ See *Confronting the Myth*, *supra* note 6.

⁵² See, e.g., Arthur R. Miller, *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Clichés Eroding Our Day in Court and Jury Trial Commitments?*, 78 N.Y.U. L. Rev. 982 (2003); Patricia W. Moore, *Comments in Opposition to the Proposed Amendments to the Federal Rules of Civil Procedure*, <http://www.regulations.gov/#!documentDetail;D=USC-RULES-CV-2013-0002-0491> (Jan. 31, 2014).

⁵³ A survey by the Federal Judicial Center found that over 46% of plaintiffs' attorneys (almost half of them) did not affirmatively agree with the statement that "The outcomes of cases in the federal system are generally fair." See EMERY G. LEE III & THOMAS E. WILLING, FEDERAL JUDICIAL CENTER NATIONAL, CASE-BASED CIVIL RULES SURVEY: PRELIMINARY REPORT TO THE JUDICIAL CONFERENCE ADVISORY COMMITTEE ON CIVIL RULES 68-69 (Federal Judicial Center, Oct. 2009).

⁵⁴ Patricia W. Hatamyar Moore, *The Civil Caseload of the Federal District Courts*, ___ U. ILL. L. REV. ___ (forthcoming 2015), draft posted at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2416864; Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differences Between Individual and Organizational Litigants in the Disposition of Federal Civil Cases*, 57 Stanford L. Rev. 1275, 1314-17 (2005)

⁵⁵ E.g., Kevin M. Clermont & Theodore Eisenberg, *Plaintiphobia in the Supreme Court*, Cornell Law School Legal Studies Research Paper Series, No. 13-94 (2013); Terence Dunworth & Joel Rogers, *Corporations in Court: Big Business Litigation in U.S. Federal Courts, 1971-1991*, 21 Law & Soc. Inquiry 497, 501-502 (1996) (finding that "[b]ig business wins overwhelmingly, as plaintiff and defendant, in cases that involve it");

⁵⁶ E.g., Patricia W. Hatamyar, *An Updated Quantitative Study of Iqbal's Impact on 12(b)(6) Motions*, 46 U. RICHMOND L. REV. 603 (2012); Elizabeth Schneider, *The Changing Shape of Federal Civil Procedure*, 158 U. PENN. L. REV. 517 (2010) (arguing that *Twombly* and *Iqbal* altered litigation practices so that fewer civil rights and employment discrimination cases are filed while a greater number of these cases are dismissed).

⁵⁷ *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014); *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846 (2011).

Federal Rules of Civil Procedure that is currently awaiting the Supreme Court's approval.⁵⁸ It is often much easier for defendants to win summary judgment in federal court, so that the case never proceeds to a jury. Limitations on expert witnesses can be stricter in federal court, leading to the barring of plaintiffs' expert witnesses that in turn lead to the loss of the case.⁵⁹

Besides the procedural advantages that defendants hold in federal court, which may seem pedantic or at least profoundly boring to the lay observer, a more visceral difference between the federal and state court systems is the identity of the decision makers, namely the judges. In federal court, corporations and the lawyers who represent corporations are very likely to face a judge who has a background just like theirs. Most federal judges, whether appointed by a Republican or a Democratic president, spent most of their career prior to becoming a judge practicing law in large, elite law firms that primarily represent corporations, primarily on the defense side.⁶⁰ I am not suggesting that federal judges are consciously biased; most are distinguished, dedicated professionals of the highest integrity. But their background shapes their perceptions, and in the course of litigation where there are many avenues for the judge to exercise a tremendous range of discretion, it would not be surprising if in their discretion they were more likely to see things from a corporation's or a defendant's point of view.⁶¹

In summary, the most common type of case in our federal district courts today is a case by an individual citizen against an organization, either a business organization or a governmental organization.⁶² Despite the underdog victory in the original battle of David and Goliath, in today's federal court lawsuit, Goliath usually wins.⁶³ This is the principal reason for defendants' usual preference for federal court; class action standards are just a piece of it.

⁵⁸ Patricia W. Hatamyar Moore, *The Anti-Plaintiff Pending Amendments to the Federal Rules of Civil Procedure and the Pro-Defendant Composition of the Federal Rulemaking Committees*, __ U. CINN. L. REV. __ (forthcoming 2015).

⁵⁹ For a general discussion of the progression of rights-restricting changes in procedure, see, e.g., Miller, *supra* note 5.

⁶⁰ See, e.g., Nat'l Emp't Lawyers Ass'n Rpt.: Judicial Hostility To Workers' Rights: The Case For Professional Diversity On The Federal Bench, <http://exchange.nela.org/NELA/Contribute/Resources/ViewDocument/?DocumentKey=4c6e4546-acac-48fc-8bb3-7b1ce2bdc443> (2012) ("Like his predecessors, President Obama's nominees have largely been corporate lawyers, judges, or prosecutors prior to their nominations, while fewer have been public defenders, legal services attorneys, or public interest lawyers. Even fewer have devoted their professional careers to representing workers and civil rights litigants"); Michael J. Yelnosky, *The Bar Association Panel Should Diversify its Representation*, Wash Post, Aug. 15, 2013, http://www.washingtonpost.com/opinions/the-bar-association-panel-should-diversify-its-representation/2013/08/15/b79c5a18-045f-11e3-88d6-d5795fab4637_story.html (noting that in the ABA's Standing Committee on the Federal Judiciary, which rates potential nominees for federal judicial vacancies, "[n]ot one of the lawyers on the committee for 2013–14 regularly represents individuals who bring lawsuits alleging they were harmed by the actions of corporations or other business entities, and not one represents individuals charged with anything other than white-collar crimes").

⁶¹ See Coleman, *supra* note 2.

⁶² Moore, *supra* note 54.

⁶³ See *supra* note 55.

III. There Are No Publicly Available Court Data on Class Actions, Federal or State, to Use as a Baseline in Evaluating Claims Based on Anecdotal Cases.

"The kind of basic information that we demand in discussions of other policy issues like the economy, or employment, or education, simply does not exist [for the legal system]." ⁶⁴ In no area of civil practice is this truer than for class actions.

CAFA is a primary focus of this hearing. Since the major purpose of CAFA was to bring more diversity class actions into federal court, we might now want to know the answer to some simple questions: how many diversity class actions are either filed in or removed to federal court today, ten years after CAFA? Has the volume increased or decreased? What types of class actions are most frequently filed? Do they allege mostly wage and hour violations, consumer complaints, or something else? What was the estimated total harm to class members? How many class actions were dismissed? How many were certified? Of those class action cases that were certified, how many were settled? What was the range of settlement amounts? Of the settlement fund, how much went to attorneys' fees? How much on average did each class member ultimately recover? And so forth.

There are no publicly available aggregate data anywhere that answer any of the above questions about any federal or state court in the United States. Without access to official court records, litigants or lobbyists with different axes to grind now run to the legal databases such as Westlaw and Lexis to try to find these answers. They pick and choose the particular cases that support the outcome they want to achieve. It would be all but impossible for a policy maker to put the competing claims into the neutral context that would be provided by full statistical records. This was the main point of my article, *Confronting the Myth of "State Court Class Action Abuses" Through an Understanding of Heuristics and a Plea for More Statistics*. ⁶⁵

In *Confronting the Myth*, I studied the legislative history leading up to CAFA's passage in 2005. I noticed that it was filled with overblown assertions of "state court class action abuses" and a "flood of class actions overwhelming the state courts." There was no good empirical support for these assertions; in fact, the only existing rigorous empirical studies did *not* support these assertions. Instead, CAFA's proponents offered only anecdotal evidence of a few allegedly "outrageous" cases hand-picked to create revulsion in the hearer, and some unscientific and nonrandom data collected from self-selected and self-interested survey participants. ⁶⁶

After a diligent and thorough search for basic statistical information on class actions, I concluded that it largely did not exist, either pre-CAFA or post-CAFA:

It is an amazing but true fact that no court, state or federal, in the United States actually compiles, on a regular basis, to be generally distributed to the public, any

⁶⁴ Elizabeth G. Thornburg, *Judicial Hellholes, Lawsuit Climates and Bad Social Science: Lessons from West Virginia*, 110 W. VA. L. REV. 1097, 1134 (2008). See also, e.g., Stephen C. Yeazell, *Courting Ignorance: Why We Know So Little About Our Most Important Courts*, 143 DAEDALUS 129 (2014) (describing dearth of data on state courts, where the vast number of civil lawsuits are filed).

⁶⁵ 82 UMKC L. Rev. 133 (2013).

⁶⁶ See *id.* at 138-154.

information about the number, type, or disposition of class actions filed. The federal courts, despite releasing annually an impressive volume of data, do not release figures on class actions. State courts, which rarely release anything but the most general data on caseloads, may not even keep, let alone release, figures on class actions. The limited data that do exist on class actions have been compiled by government-sponsored and academic researchers.⁶⁷

In my article, I went on to argue that without the baseline of data provided by statistical records, it was too easy for parties to exploit the well-documented psychological biases that human beings all share. We are hard-wired to jump to hasty conclusions in the absence of full information, particularly when the limited information that we do have appeals to the emotions.⁶⁸

The lack of court data on class actions continues to the present day. Exhibit A is a list of all fifty states' judicial websites, none of which contain any aggregate information on class actions filed in their state. But for the federal courts, the status quo could be easily changed. Since class actions are the subject of passionate debate and many Supreme Court opinions, Congress can and should illuminate the facts by requiring the information on federal class actions that is already being collected to be made available to the public and to Congress itself.

Two types of court records on federal class actions should be publicly accessible but currently are not. First, Congress should require the Administrative Office of the United States Courts ("AO") to start releasing Tables X-4 and X-5 again along with the voluminous statistics that it already releases annually.⁶⁹ Up until 2004, these statistical tables compiled, for every federal district court in the country, the number and types of class actions pending (Table X-4) and the number and types of class actions filed, by basis for federal jurisdiction (Table X-5).⁷⁰ For no apparent reason, the AO stopped releasing these tables in the year CAFA was passed – 2005 – and has not released them in the ten years since then.

The second set of existing government data that would aid in research about class actions and many other facets of the federal courts is the Integrated Federal Courts Database series ("IDB"), which contains records of every case termination in federal district court.⁷¹ The IDB

⁶⁷ *Id.* at 135.

⁶⁸ *Id.* at 154-160, *citing, e.g.*, DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011); DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS (2008).

⁶⁹ *E.g.*, ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2012 ANNUAL REPORT OF THE DIRECTOR, *available at* <http://www.uscourts.gov/Statistics/JudicialBusiness/2012.aspx>. The federal courts compile much of their civil caseload statistics from the Civil Cover Sheet, required when filing a civil case in federal district court. *See Civil Cover Sheet Form*, <http://www.uscourts.gov/uscourts/FormsAndFees/Forms/JS044.pdf> (last visited Feb. 22, 2015). The Civil Cover Sheet has long a box to check indicating whether the suit is brought as a class action, and this information can easily yield aggregate data on class action filings.

⁷⁰ *See, e.g.*, ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE UNITED STATES COURTS: 2004 ANNUAL REPORT OF THE DIRECTOR, Tables X-4, X-5 (2005), *available at* <http://www.uscourts.gov/Statistics/JudicialBusiness/JudicialBusiness2004.aspx> [hereinafter 2004 ANNUAL REPORT].

⁷¹ The IDB is maintained and distributed by the National Archive of Criminal Justice Data ("NACJD"), the criminal justice archive within the Inter-University Consortium for Political and Social Research.

contains at least thirty variables coded for each case, including the variable CLASSACT (Class Actions), which purports to indicate whether the case was filed as a class action.⁷²

This entire series of government databases of all federal civil cases was available without restriction up until May 2012. However, since then it has become virtually impossible to conduct certain types of academic research using the IDB, for two reasons. First, in 2012 the IDB database series was suddenly restricted from general dissemination. A researcher must now be approved to gain access to these datasets.⁷³ Second, even if the researcher is approved, the copy of the database that is provided to the researcher has the docket numbers of the cases and the judges to whom the cases are assigned blacked out.⁷⁴ These incomprehensible restrictions were imposed only recently, in November 2012.⁷⁵ For decades, important empirical studies of the federal courts were conducted without these "blackouts" in place.⁷⁶ Concealment of this data seems to be protecting judges, and perhaps litigants, from critical scrutiny, and it contravenes the transparency that American citizens expect from their government.

⁷² E.g., Federal Judicial Center, CODEBOOK FOR CIVIL PENDING DATA – WITH PLT AND DEF BLANKED, at 17 (2010) (ICPSR 29281), available at <http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/29281/documentation>.

⁷³ See <http://www.icpsr.umich.edu/icpsrweb/ICPSR/series/00072/studies/30401?archive=ICPSR&sortBy=7&permit%5B0%5D=AVAILABLE> ("Users interested in obtaining these data must complete a Restricted Data Use Agreement form and specify the reasons for the request."). Gaining approval is a time-consuming process that inexplicably involves the approval of an academic researcher's Institutional Review Board. IRBs typically provide "ethical and regulatory oversight of research that involves human subjects." See, e.g., National Institute of Environmental Health Science, <http://www.niehs.nih.gov/about/boards/irb/>. But using the IDB does not involve "human subjects": the IDB contains no information that is not already publicly available on PACER, meaning it contains no information that is not *already* a matter of public record on the court docket. The IDB simply codes this information in a way that can be used for quantitative statistical research. A private researcher, in theory, could put this information in his or her self-created database from what is on PACER, but it would take the researcher the rest of his or her career to even do one year of case terminations. And PACER is not free, even to academic researchers, who must pay the standard \$0.10 per page accessed. The IDB contains no proprietary, confidential, or sensitive information that justifies obscuring its content from Congress and the public.

⁷⁴ Without the identifying docket numbers of each case, one cannot easily (if at all) find the PACER records of the case to check the accuracy of any of the coding, contact the parties or attorneys in the case, study the behavior of "repeat players" in federal courts, or compare other available databases such as Westlaw or CourtLink to see how they may differ from the official records of the court. See Lynn M. LoPucki, *The Politics of Access to Court Data*, 80 Tex. L. Rev. 2161, 2169-70 (2002) (describing similar blackouts in bankruptcy court records). Without the judge's name, one cannot perform quantitative research of outcomes by any particular judge.

⁷⁵ Federal Judicial Center, Federal Court Cases: Integrated Data Base, 2010. ICPSR30401-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2012-11-26, available at <http://www.icpsr.umich.edu/icpsrweb/ICPSR/series/00072/studies/30401?archive=ICPSR&sortBy=7&permit%5B0%5D=AVAILABLE> (last visited Feb. 22, 2015) (on "2012-11-26 [the date of a new version of the 2010 database][,] The docket numbers were recoded to 9-fill to protect the confidentiality of individuals involved in the case.").

⁷⁶ See, e.g., Gillian K. Hadfield, *Exploring Economic and Democratic Theories of Civil Litigation: Differences Between Individual and Organizational Litigants in the Disposition of Federal Civil Cases*, 57 STAN. L. REV. 1275, 1314-17 (2005) (used IDB to calculate a greater trial rate than that suggested by the AO's aggregate figures); Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1579 (2003); Theodore Eisenberg & Margo Schlanger, *The Reliability of the Administrative Office of the U.S. Courts Database: An Initial Empirical Analysis*, 78 NOTRE DAME L. REV. 1455, 1460 (2003) ("[T]he AO data are very accurate when they report a judgment for plaintiff or defendant, except in cases in which judgment is reported for plaintiff but damages are reported as zero."); Terence Dunworth & Joel Rogers, *Corporations in Court: Big Business Litigation in U.S. Federal Courts, 1971-1991*, 21 LAW & SOC. INQUIRY 497, 501-502 (1996) (using the IDB, finding that "a very small number of business 'mega-litigants' account[ed] for most of the [business litigation] activity" in the federal courts");

Without better access to court information on class actions, the important class action debate can devolve into cherry-picking information and mischaracterizing an anecdote as the status quo.

I deeply appreciate the Subcommittee allowing me to testify today, and I will attempt to answer any questions that the members of the Subcommittee may have.

Exhibit A

State Court Judiciary Web Sites (no aggregate information on class actions)

Alabama Judiciary, <http://judicial.alabama.gov> (last visited Feb. 19, 2015).
Alaska Judiciary, <http://courts.alaska.gov> (last visited Feb. 19, 2015).
Arizona Judiciary, <http://www.azcourts.gov> (last visited Feb. 19, 2015).
Arkansas Judiciary, <https://courts.arkansas.gov> (last visited Feb. 19, 2015).
California Judiciary, <http://www.courts.ca.gov> (last visited Feb. 19, 2015).
Colorado Judiciary, <http://www.courts.state.co.us> (last visited Feb. 19, 2015).
Connecticut Judiciary, <http://www.jud.ct.gov> (last visited Feb. 19, 2015).
Delaware Judiciary, <http://courts.delaware.gov> (last visited Feb. 19, 2015).
District of Columbia Judiciary, <http://www.dccourts.gov> (last visited Feb. 19, 2015).
Florida Judiciary, <http://www.flcourts.org> (last visited Feb. 19, 2015).
Georgia Judiciary, <http://www.georgiacourts.gov> (last visited Feb. 19, 2015).
Hawaii Judiciary, <http://www.courts.state.hi.us> (last visited Feb. 19, 2015).
Idaho Judiciary, <http://www.isc.idaho.gov> (last visited Feb. 19, 2015).
Illinois Judiciary, <http://www.state.il.us/court> (last visited Feb. 19, 2015).
Indiana Judiciary, <http://www.in.gov/judiciary> (last visited Feb. 19, 2015).
Iowa Judiciary, <http://www.iowacourts.gov> (last visited Feb. 19, 2015).
Kansas Judiciary, <http://www.kscourts.org> (last visited Feb. 19, 2015).
Kentucky Judiciary, <http://courts.ky.gov> (last visited Feb. 19, 2015).
Louisiana Judiciary, http://louisiana.gov/Government/Judicial_Branch (last visited Feb. 19, 2015).
Maine Judiciary, <http://www.courts.state.me.us> (last visited Feb. 19, 2015).
Maryland Judiciary, <http://www.courts.state.md.us> (last visited Feb. 19, 2015).
Massachusetts Judiciary, <http://www.mass.gov/courts> (last visited Feb. 19, 2015).
Michigan Judiciary, <http://www.courts.michigan.gov> (last visited Feb. 19, 2015).
Minnesota Judiciary, <http://www.mncourts.gov> (last visited Feb. 19, 2015).
Mississippi Judiciary, <http://courts.ms.gov> (last visited Feb. 19, 2015).
Missouri Judiciary, <http://www.courts.mo.gov> (last visited Feb. 19, 2015).
Montana Judiciary, <http://courts.mt.gov> (last visited Feb. 19, 2015).
Nebraska Judiciary, <http://www.supremecourt.ne.gov> (last visited Feb. 19, 2015).
Nevada Judiciary, <http://www.nevadajudiciary.us> (last visited Feb. 19, 2015).
New Hampshire Judiciary, <http://www.courts.state.nh.us> (last visited Feb. 19, 2015).
New Jersey Judiciary, <http://www.judiciary.state.nj.us> (last visited Feb. 19, 2015).
New Mexico Judiciary, <http://www.nmcourts.gov> (last visited Feb. 19, 2015).
New York Judiciary, <http://www.courts.state.ny.us> (last visited Feb. 19, 2015).
North Carolina Judiciary, <http://www.nccourts.org> (last visited Feb. 19, 2015).
North Dakota Judiciary, <http://www.ndcourts.gov> (last visited Feb. 19, 2015).
Ohio Judiciary, <http://www.supremecourt.ohio.gov> (last visited Feb. 19, 2015).
Oklahoma Judiciary, <http://www.oscn.net> (last visited Feb. 19, 2015).
Oregon Judiciary, <http://courts.oregon.gov> (last visited Feb. 19, 2015).
Pennsylvania Judiciary, <http://www.pacourts.us> (last visited Feb. 19, 2015).
Rhode Island Judiciary, <http://www.courts.ri.gov> (last visited Feb. 19, 2015).
South Carolina Judiciary, <http://www.judicial.state.sc.us> (last visited Feb. 19, 2015).

South Dakota Judiciary, <http://ujs.sd.gov> (last visited Feb. 19, 2015).
Tennessee Judiciary, <http://www.tncourts.gov> (last visited Feb. 19, 2015).
Texas Judiciary, <http://www.txcourts.gov> (last visited Feb. 19, 2015).
Utah Judiciary, <http://www.utcourts.gov> (last visited Feb. 19, 2015).
Vermont Judiciary, <http://www.vermontjudiciary.org> (last visited Feb. 19, 2015).
Virginia Judiciary, <http://www.courts.state.va.us/courts> (last visited Feb. 19, 2015).
Washington Judiciary, <http://www.courts.wa.gov> (last visited Feb. 19, 2015).
West Virginia Judiciary, <http://www.courts.wv.gov> (last visited Feb. 19, 2015).
Wisconsin Judiciary, <http://www.wicourts.gov> (last visited Feb. 19, 2015).
Wyoming Judiciary, <http://www.courts.state.wy.us> (last visited Feb. 19, 2015).