

April 24, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
152 Dirksen Building
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Specter:

The undersigned members of the Coalition to Protect Privacy, Property, Confidentiality, and Efficiency in the Courts strongly oppose S. 537, the “Sunshine in Litigation Act of 2009.”

In addition to the signatories listed below, a wide array of academics, judges, litigants, trial lawyers and organizations such as the American Bar Association and the U.S. Judicial Conference Committee on Rules of Practice and Procedure oppose this legislation. Our collective opposition stems from the fact that the bill would severely restrict existing judicial discretion to protect the privacy, property, and confidentiality of all litigants by requiring federal judges to make premature decisions about the masses of information produced in modern civil litigation. Ultimately, S. 537 would increase the costs and burdens associated with civil litigation while stifling the federal court system. Finally, the bill would confer unfair tactical advantages on certain litigants at the expense of others.

Protective and sealing orders are invaluable litigation tools which allow litigants to respond to extraordinarily broad discovery requests. These orders help ensure the confidentiality of valuable information produced in discovery. Severe restrictions on their availability would have a chilling effect not only on discovery and settlements but also on the commencement and defense of claims.

Although S. 537 purports to benefit the public interest and protect public health and safety, it is unnecessary and would be harmful to litigants’ rights and the U.S. judicial system. According to studies conducted and analyzed by the U.S. Judicial Conference Rules Committee, there is no need to make it more difficult to issue discovery protective or sealing orders. This is because there is no evidence that protective orders create any significant problem of inappropriately concealing information about public hazards or in impeding the efficient sharing of discovery information. Current law provides judges with the discretion to issue or deny protective and sealing orders, but does not impose upon them the mandatory, time consuming, and burdensome oversight role envisioned by S. 537. As a result, efforts to enact such legislation in the past have repeatedly failed.

The Coalition strongly believes that the “Sunshine in Litigation Act” would undermine the privacy and property rights of all litigants. The legislation would also have a profoundly

damaging impact on the United States civil justice system while burdening and delaying the just disposition of litigation. Accordingly the undersigned organizations urge you to oppose S. 537.

Sincerely,

ACE Group
American Insurance Association
American Tort Reform Association
Association of Corporate Counsel
Beckman Coulter
Boehringer Ingelheim USA Corporation
Caterpillar Inc.
Civil Justice Association of California
DRI
Eli Lilly and Company
Federation of Defense & Corporate Counsel
International Association of Defense Counsel
Lawyers for Civil Justice
LyondellBasell Industries, Inc.
Mazda North American Operations
National Association of Manufacturers
National Association of Mutual Insurance Companies
Nationwide Mutual Insurance Company
PhRMA
Property Casualty Insurers Association of America
The Chubb Corporation
The Travelers Companies, Inc.
U.S. Chamber Institute for Legal Reform
U.S. Chamber of Commerce

Cc: Committee on the Judiciary