

STATEMENT OF REPRESENTATIVE EDWARD J. MARKEY (D-MA)
RANKING DEMOCRAT, TELECOMMUNICATIONS AND FINANCE SUBCOMMITTEE
LEGISLATIVE HEARING ON H.R. 10
THURSDAY, JANUARY 19, 1995

I want to thank the Chairman for calling today's hearing on this very important topic.

Although this Subcommittee held two oversight hearings on the issue of securities fraud litigation during the last Congress, today's hearing represents the first legislative hearing on Title II of H.R. 10, the GOP's "Common Sense Legal Reform Act of 1995." While we are limited under the rules of the House to consideration of the securities litigation provisions in H.R. 10, we should not forget that these provisions are part of a much broader piece of legislation that would significantly change our civil justice system and tort law. By tilting the scales of justice sharply in favor of powerful, well-heeled corporate interests, H.R. 10 threatens to erode the rights of the individual to obtain equal justice under the law. People who are harmed when a corporation dumps hazardous waste into the Love Canal, sells Thalidomide to pregnant mothers, or markets the Dalkon shield to millions of American women may no longer face the prospect that those they have harmed will be able to use the legal system to fight back. This is a debate over whether individuals within our society will have any rights against large corporations if they have been harmed by those corporations.

Let's make no mistake about it: H.R. 10 is dangerous to both the financial and physical health and well-being of ordinary Americans. The securities provisions of this legislation are a special interest smorgasbord that would place nearly insurmountable new procedural and substantive hurdles in the way of defrauded investors who seek their day in court.

I am particularly disturbed by H.R. 10's provisions which would adopt an "English Rule" that would require losing litigants to pick up their opponents legal fees. Apparently the same ideology that offers up bleak orphanages for poor children views Dicken's Bleak House as an appropriate model for reforming our judicial system. Another interesting part of H.R. 10 is what I call the Sergeant Schultz provision that eliminates recklessness as a cause of action in securities fraud cases. You all remember Sergeant Schultz from the old Hogan's Heros TV show, who used to walk through the barracks witnessing violations of every conceivable rule, repeating the words, "I see nothing, I hear nothing." Under H.R. 10, lawyers and accountants will have a powerful incentive to mimic Sergeant Schultz, since they will no longer be subject to lawsuits for recklessly ignoring evidence of fraud. I'm also fascinated by the enhanced pleading requirements in H.R. 10 which require plaintiffs to allege "specific facts demonstrating the state of mind of each defendant" at the very outset of the case -- a feat of mental mindreading that would confound even Karnac. Finally, I am quite curious as to how an

ideological worldview that endorses the efficient market theory simultaneously rejects the notion that the efficient transmission of false or misleading data about a company can result in a fraud on the market and steer capital away from efficient companies and towards deceptive ones.

While these and other provisions of H.R. 10 are quite troublesome, I want to note that there are several concepts in the legislation that are constructive. I would also note that both the gentleman from Louisiana (Mr. Tauzin) and our distinguished Senate colleagues (Mr. Dodd and Mr. Domenici) have introduced legislation which contain some very useful reforms, though I continue to have very serious reservations other proposals contained in their legislation -- including proposals to totally eliminate joint and several liability.

I have attempted to pull together the best ideas contained in these three bills, along with some additional proposals, in the securities litigation reform legislation I introduced yesterday. My bill, H.R. 555, would curb frivolous lawsuits and abusive litigation practices while preserving and strengthening the ability of defrauded investors to go to court to recover their losses. I look forward to working with the Chairman and other Members of the Subcommittee to assure that the ideas contained in H.R. 555 are fully aired and considered before as we consider legislating in this area.

Again, I commend the Chairman for calling this hearing and I look forward to the testimony of our witnesses.