

May 24, 1995

Honorable John Kerry  
United States Senate  
Washington, DC 20510

Dear Senator Kerry:

We are writing to urge you not to cosponsor or support S. 240, the Dodd-Domenici bill now before the Senate. This measure penalizes victims of securities fraud and protects the swindlers who impose this fraud on an unsuspecting public.

This legislation is anti-small investor, anti-worker, anti-consumer and anti-senior. First -- and most outrageous -- the legislation limits the rights of small investors by restricting initiation of a class action lawsuit to those investors who own either one percent of the total shares of a security or whose investment is worth at least \$10,000. Basing one's rights on the extent of one's wealth is a new and alarming concept for American law, and one we cannot accept.

S. 240 also imposes new and blatantly unfair requirements on victims of securities fraud that would make it effectively impossible for those victims to seek redress through the federal courts. Under the "loser pays" provision, investors risk paying defense costs if they decline to participate in an alternative dispute resolution -- *even if that process is biased against defrauded investors*. And, of course, the prospect of paying one's opponents legal fees is always more intimidating to victims (*faced with the multi-million dollar defense teams large corporations deploy in such cases*) than it is for defendants.

The bill establishes a new, almost impenetrable threshold for bringing suit in securities fraud cases. The measure would require fraud victims to cite in their complaints "specific facts demonstrating the state of mind of each defendant at the time the violation occurred." In virtually all cases, the true extent of the fraud and evidence pertaining to the state of mind of the defendant(s) are uncovered only as part of the discovery process. Requiring such allegations *as a condition* for filing suit will effectively eliminate the ability to sue in even the most egregious circumstances.

Provisions in S. 240 that eliminate joint and several liability in many cases are, in essence, legal loopholes for corporate criminals. Limiting recovery when the primary wrongdoer is bankrupt or has fled will penalize consumers. Had this language been the law during the S&L crisis, the 20,000 Lincoln bondholders would not have been able to recover their \$240 million losses from the accountants and lawyers who helped Charles Keating carry out his fraud.

Finally, the measure would result in a dramatic increase in the incidence of securities fraud as the likelihood and level of punishment declined. This would hurt our entire economy as small investors lost confidence in the integrity of our markets.

Given the numerous and severe problems with S. 240, we urge you to stand up for the constituents you are elected to represent and oppose this ill-conceived measure.

Sincerely,

Janet Domenitz, Executive Director  
Massachusetts Public Interest Research Group (MASSPIRG)

Joseph M. Vonavita, Executive Director  
AFSCME Council 93

Edward Kelly, Director  
Citizen Action of Massachusetts

Michael Giannetti, President  
Fraternal Order of Police, Greater Boston Lodge

Melanie Kasperian, Vice President  
Massachusetts Teachers Association

James Megson, Director  
ICA Group (Industrial Cooperative Association)

Rand Wilson, Director  
Massachusetts Jobs with Justice

Jim Braude, Director  
Tax Equity Alliance for Massachusetts (TEAM)

John Murphy, Sec./Treas.  
Teamsters Local 122

Dave Robbins, Sec./Treas.  
Teamsters Local 504

Richard Reardon, Recording Secretary/Field Representative  
Teamsters Local 25