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June 21, 1995

The Honorable John F. Kerry  
United States Senate  
Washington, DC 20510

Dear Senator Kerry:

As you know from my earlier letter, I am deeply concerned about S.240 (Dodd-Domenici), the Private Securities Litigation Reform Act bill now before the Senate. I appreciate your attempts to improve the bill during the deliberations of the Senate Banking Committee and I urge you to vote against this legislation which penalizes victims of securities fraud and protects those who impose this fraud on an unsuspecting public.

As noted in my letter of May 22, I oppose S. 240, as do many other state government officials and law enforcement agencies as well as AARP, because it unfairly and adversely affects the legitimate interests of small investors, workers, consumers, veterans, and seniors.

S.240 imposes new and blatantly unfair requirements on victims of securities fraud that would effectively prevent them from seeking redress through the courts. Under the "loser pays" provision, investors risk paying defense costs if they decline to participate in an alternative dispute resolution (ADR) --even if that process is biased against defrauded investors.

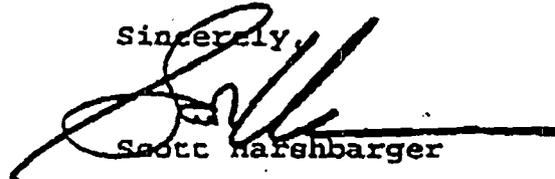
Provisions in S. 240 eliminating joint and several liability are, in essence, legal loopholes for corporate wrong-doers. Limiting recovery when the primary wrongdoer is bankrupt or has fled will penalize consumers. Coupled with provisions in S. 240 immunizing from liability "aiders and abettors" (including accountants, lawyers, and brokers) who help carry out the fraud, this represents a step backwards in accountability and responsibility.

S. 240 would require fraud victims to "specifically allege facts giving rise to a strong inference that the defendant acted with the required state of mind." This would establish a new, almost impenetrable threshold for bringing suit in securities fraud cases.

The legislation limits the rights of small investors by restricting the "most adequate plaintiff" (who could select lead counsel and control the case) to the investor with the largest financial interest in the case. Denying control of a case to an injured plaintiff because of his/her wealth (or lack of same) is a new and alarming concept for American law.

Finally, S. 240 fails to lengthen the statute of limitations which is presently inadequate. Given the numerous and severe problems with S.240, I urge you to oppose it. Thank you for your kind attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Harshbarger", is written over a horizontal line. The signature is stylized and cursive.

Scott Harshbarger

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