Ferguson
Fitzpatrick
Fleischmann
Flores
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gaetz
Gallagher
Garrett
Gibbs
Gohmert
Goodlatte
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Griffith
Grothman
Guthrie
Harper
Harris
Hartzler
Hensarling
Herrera Beutler
Hice, Jody B.
Higgins (LA)
Hill
Holding
Hollingsworth
Hudson
Huizenga
Hultgren
Hunter
Hurd
Issa
Jenkins (KS)
Jenkins (WV)
Johnson (LA)
Johnson (OH)
Johnson, Sam
Jones
Joyce (OH)
Katko
Kelly (MS)
Kelly (PA)
King (IA)
King (NY)
Kinzinger
Knight
Kustoff (TN)
Labrador
LaHood
LaMalfa
Lamborn
Lance
Latta
Lewis (MN)
LoBiondo
Long
Loudermilk
Love
Lucas
Luetkemeyer
MacArthur
Marchant
Marino
Marshall
Massie
Mast
McCarthy
McCaul
McClintock
McHenry
McKinley
McMorris Rodgers
McSally
Meehan
Messer
Mitchell
Moolenaar
Mooney (WV)
Mullin
Murphy (PA)
Newhouse
Noem
Nunes
Olson
Palazzo
Palmer
Paulsen
Pearce
Perry
Pittenger
Poe (TX)
Poliquin
Posey
Ratcliffe
Reed
Reichert
Renacci
Rice (SC)
Roby
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney, Francis
Rooney, Thomas J.
Ros-Lehtinen
Roskam
Ross
Rothfus
Rouzer
Royce (CA)
Russell
Rutherford
Sanford
Scalise
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster
Simpson
Smith (MO)
Smith (NE)
Smith (NJ)
Smith (TX)
Smucker
Stefanik
Stewart
Stivers
Taylor
Tenney
Thompson (PA)
Thornberry
Tiberi
Tipton
Trott
Turner
Upton
Valadao
Wagner
Walberg
Walden
Walker
Walorski
Walters, Mimi
Weber (TX)
Webster (FL)
Wenstrup
Westerman
Williams
Wilson (SC)
Wittman
Womack
Woodall
Yoder
Yoho
Young (AK)
Young (IA)
Zeldin

NAYS—184

Adams
Aguilar
Barragán
Bass
Beatty
Bera
Beyer
Bishop (GA)
Blumenauer
Blunt Rochester
Bonamici
Brady (PA)
Brown (MD)
Brownley (CA)
Bustos
Butterfield
Capuano
Carbajal
Cárdenas
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly
Cooper
Correa
Costa
Courtney
Crist
Crowley
Cuellar
Cummings
Davis, Danny
DeFazio
DeGette
Delaney
DeLauro
DelBene
Demings
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Ellison
Engel
Eshoo
Espaillat
Esty
Evans
Foster
Fudge
Gabbard
Gallego
Garamendi
Gonzalez (TX)
Gottheimer
Green, Al
Green, Gene
Grijalva
Gutiérrez
Hanabusa
Hastings
Heck
Higgins (NY)
Himes
Hoyer
Huffman
Jackson Lee
Jayapal
Jeffries
Johnson (GA)
Johnson, E. B.
Kaptur
Keating
Kelly (IL)
Kennedy
Khanna
Kihuen
Kildee
Kilmer
Kind
Krishnamoorthi
Kuster (NH)
Langevin
Larsen (WA)
Lawrence
Lawson (FL)
Lee
Levin
Lewis (GA)
Lieu, Ted
Lipinski
Loebsack
Lowenthal
Lowey
Lujan Grisham, M.
Luján, Ben Ray
Lynch
Maloney, Carolyn B.
Maloney, Sean
Matsui
McCollum
McEachin
McGovern
McNerney
Meeks
Meng
Moore
Moulton
Murphy (FL)
Nadler
Napolitano
Neal
Nolan
Norcross
O'Halleran
O'Rourke
Pallone
Panetta
Pascrell
Payne
Pelosi
Perlmutter
Peters
Peterson
Pingree
Pocan
Polis
Price (NC)
Quigley
Raskin
Rice (NY)
Richmond
Rosen
Roybal-Allard
Ruiz
Ruppersberger
Ryan (OH)
Sánchez
Sarbanes
Schakowsky
Schiff
Schneider
Schrader
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Shea-Porter
Sherman
Sires
Slaughter
Smith (WA)
Soto
Speier
Suozzi
Swalwell (CA)
Takano
Thompson (CA)
Thompson (MS)
Tonko
Torres
Tsongas
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Welch
Wilson (FL)
Yarmuth

NOT VOTING—12

Boyle, Brendan F.
Conyers
Davis (CA)
Frankel (FL)
Gosar
Jordan
Larson (CT)
Lofgren
Meadows
Rush
Sinema
Titus

□ 1451

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. LARSON of Connecticut. Mr. Speaker, on Thursday, March 9th, 2017, I was not present for roll call votes 138 and 139. If I had been present for this vote, I would have voted: "Nay" on roll call vote 138, "Nay" on roll call vote 139.

PERSONAL EXPLANATION

Ms. FRANKEL of Florida. Mr. Speaker, on roll call votes 138 and 139, I was not present because I was unavoidably detained. Had I been present, I would have voted "Nay" on both votes.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Byrd, one of its clerks, announced that the Senate has agreed to without amendment a joint resolution of the House of the following title:

H.J. Res. 57. Joint Resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Department of Education relating to accountability and State plans under the Elementary and Secondary Education Act of 1965.

INNOCENT PARTY PROTECTION ACT

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 725.

The SPEAKER pro tempore (Mr. EMMER). Is there objection to the request of the gentleman from Virginia?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 175 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 725.

The Chair appoints the gentleman from Georgia (Mr. JODY B. HICE) to preside over the Committee of the Whole.

□ 1455

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 725) to amend title 28, United States Code, to prevent fraudulent joinder, with Mr. JODY B. HICE of Georgia in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read the first time.

The gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Maryland (Mr. RASKIN) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, hardworking Americans are some of the leading victims of frivolous lawsuits and the extraordinary costs that our legal system imposes.

Every day, local businessowners routinely have lawsuits filed against them based on claims that have no substantive connection to them as a means of forum shopping on the part of the lawyers filing the case. These lawsuits present a tremendous burden on small businesses and their employees.

The Innocent Party Protection Act, introduced by Judiciary Committee member Mr. BUCK of Colorado, will help reduce the litigation abuse that regularly drags small businesses into court for no other reason than as part of a lawyer's forum shopping strategy.

In order to avoid the jurisdiction of the Federal courts, plaintiffs' attorneys regularly join instate defendants to the lawsuits they file in State court even if the instate defendants' connections to the controversy are minimal or nonexistent.

Typically the innocent but fraudulently joined instate defendant is a small business or the owner or employee of a small business. Even though these innocent instate defendants ultimately don't face any liability as a result of being named as a defendant, they, nevertheless, have to spend money to hire a lawyer and take valuable time away from running their businesses or spending time with their families to deal with matters related to a lawsuit to which they have no real connection.

To take just a few examples, in Bendy v. C.B. Fleet Company, the plaintiff brought a product liability claim against a national company for its allegedly defective medicinal drink. The plaintiff also joined a resident local defendant health clinic alleging it negligently instructed the plaintiff to ingest the drink.

The national company removed the case to Federal court and argued that

the small, local defendant was fraudulently joined because the plaintiff's claims against the clinic were time barred by the statute of limitations, showing no possibility of recovery.

Despite finding the possibility of relief against the local defendant ''remote,'' the court remanded the case after emphasizing the draconian burden on the national company to show fraudulent joinder under the current rules.

The court practically apologized publicly to the joined party stating: ''The fact that Maryland courts are likely to dismiss Bendy's claims against the local defendant is not sufficient for jurisdiction, given the Fourth Circuit's strict standard for fraudulent joinder.''

Shortly after remand, all claims against the local defendant were dismissed, of course, after its presence in the lawsuit served the trial lawyers' tactical purpose of forum shopping. When courts themselves complain about the unfairness of current court rules, Congress should take notice.

In Baumeister v. Home Depot, Home Depot removed a slip-and-fall case to Federal court. The day after removal and before conducting any discovery, the plaintiff amended the complaint to name a local business, which it alleged failed to maintain the store's parking lot.

The court found the timing of the amended complaint was ''suspect,'' noting the possibility that the sole reason for amending the complaint to add the local defendant as a defendant could have been to defeat diversity jurisdiction.

□ 1500

Nevertheless, the court held Home Depot had not met its ''heavy burden'' of showing fraudulent joinder under current law because the court found it was possible, even if it were just a tenth of a percent possible, that the newly added defendant could potentially be held liable and remanded the case back to State court. Once back in State court, the plaintiff stipulated to dismiss the innocent local defendant from the lawsuit, but only after it had been used successfully as a forum-shopping pawn.

Trial lawyers join these unconnected instate defendants to their lawsuits because today a case can be kept in State court by simply joining as a defendant a local party that shares the same local residence as the person bringing the lawsuit. When the primary defendant moves to remove the case to Federal court, the addition of that local defendant will generally defeat removal under a variety of approaches judges currently take to determine whether the joined defendant prevents removal to Federal court.

One approach judges take is to require a showing that there is ''no possibility of recovery'' against the local defendant before a case can be removed to Federal court or some practically equivalent standard. Others require the judge to resolve any doubts regarding removal in favor of the person bringing the lawsuit. Still others require the judge to find that the local defendant was added in bad faith before they allow the case to be removed to Federal court.

The current law is so unfairly heavy-handed against innocent local parties joined to lawsuits that Federal Appeals Court Judge J. Harvie Wilkinson of the Fourth Circuit Court of Appeals has publicly supported congressional action to change the standards for joinder, saying: ''That's exactly the kind of approach to Federal jurisdiction reform I like because it's targeted. And there is a problem with fraudulent jurisdiction law as it exists today, I think, and that is that you have to establish that the joinder of a nondiverse defendant is totally ridiculous and that there is no possibility of ever recovering . . . that's very hard to do,'' he says. ''So I think making the fraudulent joinder law a little bit more realistic . . . appeals to me because it seems to me the kind of intermediate step that addresses real problems.''

The bill before us today addresses those real problems in two main ways:

First, the bill allows judges greater discretion to free an innocent local party from a case where the judge finds there is no plausible case against that party. That plausibility standard is the same standard the Supreme Court has said should be used to dismiss pleadings for failing to state a valid legal claim, and the same standard should apply to release innocent parties from lawsuits.

Second, the bill allows judges to look at evidence that the trial lawyers aren't acting in good faith in adding local defendants. This is a standard some lower courts already use to determine whether a trial lawyer really intends to pursue claims against the local defendant or is just using them as part of their forum-shopping strategy.

This bill is strongly supported by the National Federation of Independent Business and the U.S. Chamber of Commerce, among other legal reform advocates. Please join me in supporting this vital legislation to reduce litigation abuse and forum shopping and to protect innocent parties from costly, extended, and unnecessary litigation.

I reserve the balance of my time.

Mr. RASKIN. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, we have seen a number of bills this session which are designed to shut the door on victims of corporate misfeasance and negligence and to nail the door shut. H.R. 725 is part of this wave of legislation.

Like most other bills we have seen this session with brazenly Orwellian titles, the so-called Innocent Party Protection Act of 2017 has nothing to do with protecting innocent parties. Rather, it is just the latest attempt to tilt the civil justice system dramatically in favor of big corporate defendants by making it much more difficult for plaintiffs to pursue State law claims in State courts under the system of federalism designed by our Founders.

Again, this is a familiar experience because the bill addresses a completely nonexistent problem. If there had been a real problem, the Judiciary Committee might have held a hearing in which we could have invited groups to come forward who support tort victims. They could have come and testified about why it was so important for the interests of civil justice for us to pass this legislation.

But there was no hearing at all. We didn't hear any witnesses, much less the testimony of those groups that represent victims of mass toxic torts, asbestos poisoning, lead poisoning, sex discrimination lawsuits—none of it.

In fact, the groups that we would have called, if we were interested in the testimony of victims and people seeking civil justice, oppose this legislation overwhelmingly: the Alliance for Justice opposes it; the Center for Justice and Democracy opposes it; the Consumer Federation of America opposes it; the National Association of Consumer Advocates opposes it; the National Consumer Law Center opposes it; the Natural Resources Defense Council opposes it; Public Citizen opposes it; the Sierra Club opposes it.

Under current law, a defendant may remove a case, alleging State law claims, to a Federal court only if there is complete diversity of citizenship between all plaintiffs and all defendants. If the plaintiff adds an instate defendant to the case solely for the purpose of defeating jurisdiction, this constitutes fraudulent joinder today; and in such circumstances, the case may be removed directly to Federal court.

In determining whether a joinder was fraudulent, the court considers only whether there was any basis for a claim against the nondiverse defendant. The defendant must show that there was no possibility of recovery or no reasonable basis for adding the nondiverse defendant to the suit.

This very high standard has guided our Federal courts for more than a century and it has functioned well, and the bill's proponents offer no objective evidence to the contrary. And again, we have had no hearing. For a new Member of Congress like me, who comes from the Maryland State Senate, I am absolutely astonished and amazed that we would think of overturning a standard fixture in our civil justice system without so much as a hearing as to what the problem is.

H.R. 725 would replace a time-honored standard with an ambiguous one that would dramatically increase the costs and burdens of litigation on plaintiffs in Federal courts. It would try to strip our State courts of their basic powers to hear cases relating to their citizens. This is an assault on federalism.

The measure would require a court to deny a motion remanding to the State

courts unless the court finds, one, that it is ''plausible to conclude that applicable State law would impose liability'' on an instate defendant; two, that the plaintiff had a ''good faith intention to prosecute the action against each'' instate defendant or to seek a joint judgment; and three, that there was no ''actual fraud in the pleading of jurisdictional facts.''

This gauntlet of hurdles suddenly shifts the burden and creates a presumption that a Federal court should hear the case, making it far more expensive and difficult for plaintiffs to have their cases heard in State court.

H.R. 725 would effectively overturn the local defendant exception, which prohibits removal to Federal court even if complete diversity of citizenship exists when the defendant is a citizen of the State where the suit was filed.

The bill's radical changes to longstanding jurisdictional practice reveal the authentic purpose behind the measure. It is simply intended to stifle the ability of plaintiffs to have their choice of forum and, possibly, even their day in court.

In addition, H.R. 725 would sharply increase the cost of litigation for plaintiffs and further burden the Federal court system. For example, the meanings of terms like ''plausible'' and ''good faith intention'' are ambiguous and will spawn substantial litigation over their proper interpretation and application, further postponing decisions and justice.

Additionally, these standards would require a court to engage in a minitrial during the early procedural stages of the case without any opportunity for the full development of evidence. Again, this would sharply increase the burdens and costs of litigation for ordinary citizens, for plaintiffs, which appears to be, to my mind, the only possible contemplated result of this legislation.

Finally, we need to focus on the fact that this bill offered by the majority raises profound federalism concerns, which I would have hoped they would be attentive to. Matters of State law should be decided by State courts, subject to certain exceptions as set forth in the Constitution.

It was our constitutional design that matters of civil dispute and conflict go to State courts, State judges, and State juries, all of them closer to the people themselves, unless you have a Federal question, a matter of Federal statutory law, a matter of Federal constitutional law, or you have got diversity jurisdiction.

H.R. 725 bulldozes this key federalism constraint and casts a shadow, unnecessarily and improperly, over State courts, the courts of the people. By applying sweeping and vaguely worded new standards to the determination of when a State case must be remanded to State court, the bill denies State courts the ability to decide and, ultimately, to shape the unfolding of State law. This is completely contrary to the design of the Founders, many of them Virginians, like Thomas Jefferson and James Madison and George Mason, who wanted the State courts to be the central arena for the resolution of civil conflicts and tort disputes.

Simply put, H.R. 725 tramples State sovereignty and our basic constitutional structure. For these reasons and for the fact that nobody has demonstrated there is a real problem, I urge the House to resist this unnecessary and flawed legislation, and I reserve the balance of my time.

Mr. FARENTHOLD. Mr. Chairman, I yield myself such time as I may consume.

Since this bill was marked up in the last Congress, the very same plausibility standard used in this bill was adopted by the Federal Circuit Court of Appeals in which fraudulent joinder cases arise with the greatest frequency.

Last Congress, Ranking Member CONYERS said of the bill, it should simply pick one of the existing articulations in the fraudulent joinder standard and codify that into law. At the time, the plausibility approach was applied by some district courts, but just last year, the Fifth Circuit Court of Appeals adopted the same plausibility standard this bill contains in a case called International Energy.

The Fifth Circuit stated: We must consider whether the plaintiff pleaded ''enough facts to state a claim to relieve that is plausible on its face.'' The plaintiff in that case petitioned for rehearing en banc, but the rehearing was denied, with not a single judge on the Fifth Circuit requesting a vote.

In just the last year, district courts in the Fifth Circuit have issued more than 40 fraudulent joinder decisions without much difficulty and with the results that indicate just the sort of reasonable reform that would occur nationwide when we get this bill passed into law.

So this is about making the system work and opening the door to the Federal courts so companies from foreign states are not unfairly, potentially disadvantaged.

The other piece of this that is easy to neglect is the local defendant. I don't know if the gentleman across the aisle has ever been sued. I have friends who have been sued. It is an emotionally and financially devastating procedure. You have got to take time off from your life and business to defend it. You have got to hire a lawyer, which is incredibly expensive. This is to protect the innocent third parties and open the doors to the Federal courts and just make it fairer and easier.

Mr. Chairman, I reserve the balance of my time.

Mr. RASKIN. Mr. Chairman, I yield myself such time as I may consume.

I very much appreciate my colleague's remarks there. I want to make one point before I yield to my distinguished colleague from New York.

Mr. Chairman, my colleague asked us to reckon with the fact that it is emotionally devastating for people to be sued, and, undoubtedly, it is in certain cases. But compare whatever it might feel like to be sued in whatever case he might have in mind with the outrageous emotional devastation caused by asbestos poisoning, by lead poisoning, by mass sexual harassment, sex discrimination, race discrimination, all of the torts that come to dominate what takes place in our courts. So if we are going to have a new emotional devastation standard, I would put the plaintiffs up against the large corporate defendants any day.

Mr. Chairman, I yield 3 minutes to my distinguished colleague from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I rise in opposition to H.R. 725, the misnamed Innocent Party Protection Act. The main purpose of this bill is to make it easier to remove State cases to Federal courts, where large corporate defendants have numerous advantages over consumers and injured workers.

□ 1515

Let's not talk about the emotional devastation. We are talking about large, corporate defendants. We are not worried about their emotions. Their litigation departments are quite capable of handling the emotions.

This bill will clog the Federal courts, drain judicial resources, upset well-established law, and delay justice for plaintiffs seeking to hold businesses accountable for the injuries they cause. It is yet another attempt by the Republican majority to stack the deck in favor of large corporations.

This bill is the opening salvo of this week's series of bills by the Republicans to close off access to the courts to ordinary Americans. With every step they take, whether it be to remove more State cases to Federal courts, to make class action suits more difficult to bring, or to reclassify more lawsuits as frivolous and subject to mandatory sanctions, they are limiting access to court help for ordinary Americans.

The so-called Innocent Party Protection Act would upend the century-old doctrine of fraudulent joinder, in which a defendant from the same State as the plaintiff is improperly added to a case in order to defeat diversity jurisdiction in Federal court, and, therefore, keep the case in a State court. Under current law, a defendant claiming fraudulent rejoinder has the burden of showing that there is ''no reasonable basis'' for a claim against the instate defendant, and, therefore, the case should remain in Federal court.

This bill would turn that process on its head by placing the burden on the plaintiff to show that there is a ''plausible'' claim against the instate defendant and that the plaintiff has a ''good faith intention'' to pursue a claim against that defendant. Both standards are undefined in the bill, but it is likely that many plaintiffs would find these hurdles impossible to overcome at the initial stages of litigation before discovery.

Furthermore, defendants will use this forum shopping bill to delay justice by routinely challenging jurisdiction. It will drain court time and allow corporate defendants to force plaintiffs to expend their limited resources on what should be a simple procedural matter. Under this bill, the preliminary determination of jurisdiction would become a baseless, time-consuming mini-trial before a second time-consuming trial on the merits. While large corporations could easily accommodate such costs, injured workers, consumers, and patients cannot.

The practical effect of this bill is to force cases based on State law, which should properly be heard in State courts, to be considered in our overburdened Federal courts instead. Large corporations generally believe that Federal courts are a friendlier forum, especially since they are overburdened and they can afford to wait whereas the plaintiffs cannot, and they believe that they have a better chance of escaping liability for their actions in the Federal court.

There is no evidence of a systemic crisis of fraudulent joinder, nor is there evidence that the courts cannot properly handle whatever issues may arise under current law. There is certainly no evidence that what wealthy corporations need are greater advantages in the courts. Yet, this bill hands them yet another gift from the Republican majority, and it is ordinary consumers and injured workers who will suffer.

Mr. Chairman, I urge a ''no'' vote on this legislation.

Mr. FARENTHOLD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bill is not about protecting big corporations. This bill is about protecting the small-business owner or the employee who is fraudulently joined into a case who has to go out and hire his or her own lawyer.

I remember something my law school professor once told me back in the day at St. Mary's University School of Law in San Antonio, Texas, and it stuck in my mind ever since: When you get sued, you may be able to beat the rap, but you can't beat the ride.

It is expensive, it is emotionally draining, and it is time consuming.

I have no problem at all, and this bill is not designed to protect corporations. It is designed to protect, just as its name states, innocent parties. These are people who are joined solely to defeat diversity jurisdiction. We are just changing the standard slightly to one adopted by the Fifth Circuit Court of Appeals to make it much more fair to these innocent parties.

Mr. Chairman, I reserve the balance of my time.

Mr. RASKIN. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Georgia (Mr. JOHNSON).

Mr. JOHNSON of Georgia. Mr. Chairman, I thank the gentleman from Maryland for yielding me the time.

Mr. Chairman, I rise in opposition to H.R. 725, the so-called Innocent Party Protection Act of 2017. This cynically misnamed bill is a Republican Party effort to coddle and protect their corporate wrongdoing supporters by making it harder for injured victims to sue the corporation in State court. A more accurate name for the Innocent Party Protection Act actually would be the Corporate Wrongdoer Protection Act.

Make no mistake about it, Mr. Chairman, this bill is my Republican friends' attempt to—it is clear whom they are working for. They refer to corporate wrongdoers as innocent parties. If some day you or your loved one are injured or harmed due to the negligence or intentional act of others, you have the option to sue in State or Federal court based on the residence of the wrongdoers. However, if your case should be removed to Federal court upon a motion by one of the defendants, as a plaintiff, there are grounds upon which you could have the case remanded back to the State court.

Republicans want to call this fraudulent joinder. However, a decision to sue all of the wrongdoers in your State court is not fraud. Instead, it is a legal practice dating back over 100 years which provides balance and prevents more powerful interests from choosing which court the case can be heard. They want to stack the deck.

For example, if it was your grandmother who was physically neglected or sexually assaulted at a nursing home, you would not only seek criminal charges against the wrongdoer, but you would want to file a lawsuit against both the individual attacker and the company that negligently hired, trained, or failed to adequately supervise the perpetrator under their employ.

By the way, it is becoming increasingly common for nursing homes to be owned by large conglomerates or out-of-State hedge funds. Under current law, you have the right to sue in State court, but rather than going all the way to Federal court in the State the corporation is based, you have the option to stay near your home in State court. H.R. 725 would do away with that option by giving the corporate wrongdoer the ability to keep the case in Federal court, thus unfairly increasing the burden on innocent victims and making it less likely for the smaller party to sue in the first place.

Mr. Chairman, I ask my colleagues to oppose this bill.

Mr. FARENTHOLD. Mr. Chairman, in the gentleman from Georgia's example, this bill wouldn't apply at all. If my grandmother were assaulted in a nursing home, I would certainly sue the nursing home company. I would also join the person who actually did it who most likely definitely will be a resident of the State that the lawsuit was going in. There would clearly be a plausible cause of action against that tortfeasor.

Mr. Chairman, I didn't practice personal injury law. I was an agriculture lawyer. But this would be an easy case for me to prove in his example. We are not trying to protect anybody who has done something wrong. We are trying to protect people who are joined into a lawsuit solely for the purpose of forum shopping.

Mr. Chairman, I reserve the balance of my time.

Mr. RASKIN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think that we are actually progressing in our discussion of the issue because we presently have a law against fraudulent joinder. They simply want to make it far more difficult for plaintiffs to get justice in State courts. The law already makes it impossible to fraudulently join someone.

So in the case offered by the distinguished gentleman from Georgia, I could very much see an out-of-State corporate behemoth that owns nursing homes across the country saying that all of this should be in Federal court because the person who actually committed the sexual assault instate is judgment-proof because they don't have any money and that is not really a plausible opportunity to recover, and, therefore, it should stay in Federal court.

The grand irony here, Mr. Chairman, is that the party which sings lullabies about federalism and states' rights is in the business of stripping our State courts and our people of the opportunity to get into State court. All of this is about forcing everybody into Federal court. I remember a President who recently said in his inaugural address that the whole sum and substance of his administration is to give power back to the States and back to the people, but this legislation is designed to wreck federalism and to force everybody into Federal court where the big corporate defendants and the fancy lawyers have every conceivable advantage over people who are just trying to get justice when they have been injured in their State.

Mr. Chairman, the substantive issues at stake here are obviously complex, and I would invite all Americans to try to research what is going on. But if you don't have the time to actually study the more than a century in which we have had current fraudulent joinder rules and you don't have time to go and examine the bill as submitted by the majority, then just consider the procedure that has gotten us to this point.

There has been no hearing on this bill, there has been no call for this bill by anybody who has been injured in a civil tort case, and all of the groups that try to stand up for citizens against the largest corporations who are bankrolled by billions of dollars and are trying to force everybody these days into arbitration and to shut the courthouse door, all of those groups are opposed to the legislation because they understand what it is going to do.

It is going to make it far more difficult for people to prosecute civil

claims when they have been injured in something like a sexual harassment case, a sexual violence case, a discrimination case, an asbestos poisoning case, or a mass toxic tort. It is going to be far more difficult for people to get justice in their State courts.

Apparently, the interests of the large corporate polluters and inflictors of injuries—tortfeasors—are so important that we are willing to trample the basic principles of our constitutional design which is that these kinds of cases go into State court for State resolution, we reserve the Federal courts for complicated questions of Federal law and real cases of diversity jurisdiction, not phony cases of diversity jurisdiction where they try to eliminate the instate defendant, but real cases of diversity jurisdiction where nobody else is involved.

Mr. Chairman, I yield back the balance of my time.

Mr. FARENTHOLD. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this really is about trying to stop bringing phony cases in. You are bringing phony defendants in, and that is what we are trying to stop. We have got to be fair about this.

It is not often that we have the opportunity to protect innocent local folks and businesses from costly and meritless lawsuits. This is an opportunity to rein in forum shopping and abuses by trial lawyers and hold them to a good faith standard in litigation. We can do that by passing a bill that is just a few pages long. That is the opportunity we have today.

All this bill does—all this bill does—is say that innocent, local parties—mostly small businesses—can't be added to a lawsuit for forum shopping purposes, and it only prohibits this when there is no plausible case against these small businesses or the case against them isn't brought in good faith.

Who could argue with that?

Mr. Chairman, for that reason, I urge all my colleagues to support this legislation, and I yield back the balance of my time.

The Acting CHAIR (Mr. SIMPSON). All time for general debate has expired.

Pursuant to the rule, the bill shall be considered for amendment under the 5-minute rule, and shall be considered as read.

The text of the bill is as follow:

H.R. 725

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Innocent Party Protection Act''.

SEC. 2. PREVENTION OF FRAUDULENT JOINDER.

Section 1447 of title 28, United States Code, is amended by adding at the end the following:

''(f) FRAUDULENT JOINDER.—

''(1) This subsection shall apply to any case in which—

''(A) a civil action is removed solely on the basis of the jurisdiction conferred by section 1332(a);

''(B) a motion to remand is made on the ground that—

''(i) one or more defendants are citizens of the same State as one or more plaintiffs; or

''(ii) one or more defendants properly joined and served are citizens of the State in which the action was brought; and

''(C) the motion is opposed on the ground that the joinder of the defendant or defendants described in subparagraph (B) is fraudulent.

''(2) The joinder of a defendant described in paragraph (1)(B) is fraudulent if the court finds that—

''(A) there is actual fraud in the pleading of jurisdictional facts with respect to that defendant;

''(B) based on the complaint and the materials submitted under paragraph (3), it is not plausible to conclude that applicable State law would impose liability on that defendant;

''(C) State or Federal law clearly bars all claims in the complaint against that defendant; or

''(D) objective evidence clearly demonstrates that there is no good faith intention to prosecute the action against that defendant or to seek a joint judgment including that defendant.

''(3) In determining whether to grant or deny a motion under paragraph (1)(B), the court may permit the pleadings to be amended, and shall consider the pleadings, affidavits, and other evidence submitted by the parties.

''(4) If the court finds that all defendants described in paragraph (1)(B) have been fraudulently joined under paragraph (2), it shall dismiss without prejudice the claims against those defendants and shall deny the motion described in paragraph (1)(B).''.

The Acting CHAIR. No amendment to the bill shall be in order except those printed in House Report 115–27. Each such amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. SOTO

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in House Report 115–27.

Mr. SOTO. Mr. Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 3, line 10, strike ''This'' and insert ''Except as otherwise provided in this subsection, this''.

Page 5, line 4, strike the close quotation mark and the period which follows.

Page 5, after line 4, insert the following:

''(5) This subsection does not apply with respect to a case in which the plaintiff seeks compensation for public health risks, including byproducts of hydraulic fracturing, well stimulation, or any water contamination.''.

The Acting CHAIR. Pursuant to House Resolution 175, the gentleman from Florida (Mr. SOTO) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida.

Mr. SOTO. Mr. Chairman, my amendment would create an exception to this bill for instances of public health risks, including byproducts of hydraulic fracturing, well stimulation, or any water contamination. Fracking, especially in my home State of Florida, is dangerous, and its effects can be far-reaching. Just last week, a State senate committee voted unanimously to ban the practice in our State, and the bill continues to move through.

Pollution can reach our aquifers that provide drinking water to millions. Sometimes concerned citizens must go to court to stop this. Access to justice is a fundamental American right, and we must protect it. Sometimes in Washington, up is down and right is wrong. This, unfortunately, is the case with the so-called Innocent Party Protection Act.

□ 1530

This bill is incredibly harmful to those injured by corporate wrongdoers. If someone drinks poisoned water as a result of fracking, well stimulation, or general water contamination, this bill will make it harder for them to get justice for their injuries. By restricting access to State courts, the courts that are closest to the people, this bill would deny justice.

The bill will deny plaintiffs their right to choose a State court forum for their claims and will instead allow defendant companies that negligently pollute water to drag a case out, which will drive up costs and increase burdens for plaintiffs by removing it to Federal court.

Then, once a case is in Federal court, instead of litigating over the merits of the case, the courts will argue over the various requirements that this bill establishes. Placing a higher threshold that a plaintiff must satisfy to get the case sent back to State court is unnecessary and unduly burdensome.

The amendment I am offering would restore access to justice. It would allow people whose water has been contaminated by fracking and related activities to seek damages from corporate wrongdoers.

This amendment isn't just a hypothetical exercise. Here in my hand I hold 18 cases involving fracking. They are 18 cases where fracking led to injury. In 10 of these cases, plaintiffs sued in State court, raising State claims, yet defendants removed the case to Federal court, only to have the Federal court remand the cases back to the State due to lack of diversity jurisdiction.

Thus, I hold here 10 cases where a remand back to State court would be denied under this bill. If this bill had been enacted, I hold here 10 cases that would have been denied justice. Four of these 18 hydraulic fracturing cases are still pending. Will we deny justice for these four cases?

For these plaintiffs and for future plaintiffs, I ask my colleagues to vote in favor of this amendment and safeguard justice to all who drink water.

Mr. Chair, I urge support of my amendment, and I reserve the balance of my time.

Mr. FARENTHOLD. Mr. Chairman, I claim the time in opposition.

The Acting CHAIR. The gentleman from Texas is recognized for 5 minutes.

Mr. FARENTHOLD. Mr. Chairman, this amendment should be roundly opposed for the simple reason it doesn't protect any victims, but it also victimizes local parties in the types of cases covered by the amendment.

The purpose of the underlying bill is to allow judges greater discretion to free innocent local parties—that is, innocent people and innocent small businesses—from lawsuits when those innocent local parties are dragged into a case solely because a plaintiff's attorney wants to do some forum shopping.

These innocent local parties have, at most, an attenuated connection to the claims made by the trial lawyer against some national company a thousand miles away. These innocent local parties shouldn't have to suffer the time, expense, and emotional drain of a lawsuit when the plaintiff can't even come up with a plausible claim. The base bill protects these innocent local parties from being dragged into a lawsuit as a party just to keep the case in State court.

Now, let's bring in this amendment, which denies the bill's protection to innocent local parties adjoined to a lawsuit simply because the legal allegations in the case fall into one arbitrary category and that one is in another. It is terribly unfair.

This amendment would allow these things to happen to innocent people in the name of allowing trial lawyers to scuttle the hydraulic fracking industry through lawsuits. Innocent people are innocent people, and they should be protected against being dragged into lawsuits regardless of the nature of the case.

This doesn't deny anybody access to the courts. It protects innocent parties from being dragged into a case for forum shopping.

Every single one of the gentleman's cases will be heard in court. They will have their day in court and they will have justice based on the facts.

This bill does not protect wrongdoing corporations. This bill protects people who are dragged into a lawsuit strictly for procedural purposes.

Mr. Chairman, I reserve the balance of my time.

Mr. SOTO. Mr. Chairman, water is not arbitrary. The right to clean water is not arbitrary. It is essential. Just ask the plaintiffs in these cases. Just ask the people of Flint. Just ask victims of fracking across our Nation, which is why we in Florida are looking to ban the practice.

So this isn't just some arbitrary area. This is an essential area that is affecting issues right now throughout the Nation.

Mr. Chairman, I yield to the gentleman from Maryland (Mr. RASKIN).

Mr. RASKIN. Mr. Chairman, the Soto amendment is an excellent amendment and I can't see why anybody would oppose it. I can't see, in the first instance, why anyone would want to keep the people's cases out of the people's courts in their own States.

It seems as if there is a move somewhere in this Congress that is so intent on protecting polluters and the manufacturers of auto defects that they are willing to trample our basic principles of federalism and invade the proper province of the courts.

The Soto amendment would exempt from this bill all cases in which the plaintiff seeks compensation for public health risks like fracking or any other kind of water contamination. Water contamination is devastating to our communities regardless of the source, as demonstrated by the ongoing Flint water crisis in Michigan.

This bill makes it easier for large corporations to remove State law claims to Federal court, where they think they have got a better chance of beating the claims of the small guy. The Soto amendment at least would carve out cases where there are public health risks at stake, such as those caused by fracking, which has been proven to generate earthquakes, well contamination, and the poisoning of local water supplies.

Mr. SOTO. Mr. Chairman, I yield back the balance of my time.

Mr. FARENTHOLD. Mr. Chairman, I am not going to get sucked into a debate of hydraulic fracking. Being from Texas, we might have a whole difference of opinion on that.

But I do want to point out, with respect to this bill, it doesn't deny anyone access to courts, it doesn't deny anyone access to justice regardless of what claim. I don't think it is fair we take out one particular claim or not one particular claim. That seems to go against fundamental fairness as well.

This bill is all about fairness. It is about fairness to keep people from being dragged into court solely because a plaintiff's attorney needs a local defendant to avoid diversity jurisdiction.

I oppose this amendment. I urge my colleagues to support this amendment and support the underlying bill.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Florida (Mr. SOTO).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. RASKIN. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Florida will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. CARTWRIGHT

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 115–27.

Mr. CARTWRIGHT. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 5, line 4, strike the close quotation mark and the period which follows.

Page 5, after line 4, insert the following:

''(5) This subsection shall not apply to a case in which the plaintiff seeks compensation resulting from the bad faith of an insurer.''.

The Acting CHAIR. Pursuant to House Resolution 175, the gentleman from Pennsylvania (Mr. CARTWRIGHT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. CARTWRIGHT. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I also oppose this underlying bill, which is why I call it, as others have, the wrongdoer protection act for multistate and multinational corporations, and for that purpose, I add this amendment.

It is no coincidence that these corporate wrongdoers want to force consumers to fight them in Federal court. That is the effect of this bill, to enlarge Federal court diversity jurisdiction.

It is no coincidence that the corporate wrongdoers want to fight in Federal court. It is not because they think the Federal judges are better looking or the Federal judges are more polite or the decor in the Federal courtrooms is nicer to look at. That is not it all. They want to go there because they are more likely to prevail and to beat consumers in Federal court. They know that.

They know that, after a generation of regrettable decisions across the street by the Supreme Court of the United States, Federal court has become very favorable turf for corporate wrongdoers—generations of bad decisions that invite and exhort Federal judges to forget about the Seventh Amendment in our Bill of Rights.

You remember the Seventh Amendment. It was written by James Madison. It was announced as approved by Secretary of State Thomas Jefferson, whose statue stands right outside this Chamber. It was an amendment that says very simply: '' . . . in suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved. . . . ''

There is nothing ambiguous about that statement. It is not hard to understand. It is about how important the right to trial by jury is to us here in these United States.

But since the 1980s, there has been this steady drumbeat of decisions from the United States Supreme Court encouraging and emboldening Federal court judges to decide and dismiss cases without the trouble of a jury trial. Their toolkit is enormous for doing that: motions to dismiss, motions for judgment on the pleadings, motions for summary judgment, motions for directed verdict, motions for judgment as a matter of law.

Cases do get thrown out every day in this country without the trouble of a jury trial, and the Seventh Amendment right to a jury trial is not preserved. That is why wrongdoer corporations prefer to be in the Federal court.

Federal court has become candy land for corporate wrongdoers in this country, and this bill helps them stay there and fight consumers in Federal court. It changes the law to allow corporate wrongdoers to do that.

I want to give you some very strong reasons, Mr. Chairman, why this bill is so bad.

Number one, it is discriminatory. Unless you are a multistate or multinational corporation, this bill doesn't help you. If you are an individual sued in State court, this bill does not help you. If you are a small-business owner only doing work in your State, this bill does not help you. Only multistate, multinational corporations get help from this bill, and that is why I call it the wrongdoers protection act for multistate and multinational corporations.

Number two, it is burdensome. The Federal courts are already overworked and understaffed. The civil caseload is growing at 12 percent a year. There are currently 123 vacancies in our Federal judiciary. There is no reason to add to this burden by changing the law.

Number three, this bill forces State court cases into Federal court. We have a crowd in this House that consistently preaches about states' rights and the need to cut back on the Federal Government's reach, but a bill like this comes along and they drop that state's rights banner like it is a hot potato and pick up the coat of arms of the multistate, multinational corporations.

If you really do care about states' rights, you should be voting ''no'' on this bill.

You see, these cases called diversity cases are filed in State court under State law. Ever since the 1930s, in the Erie Railroad case, if you take these cases and handle them in Federal court, the Federal judges are bound by law to follow State law, not Federal law.

Mr. Chairman, there is nobody better at interpreting and following State law than State court judges. It stands to reason.

I offer this amendment that is at the desk to exempt consumer cases against insurance companies for bad faith in insurance practices. If the majority is going to persist and present this gift to multistate and multinational corporations, at least include this amendment and protect consumers trying to fight insurance companies.

Mr. Chairman, I yield back the balance of my time.

Mr. FARENTHOLD. Mr. Chair, I claim the time in opposition.

The Acting CHAIR. The gentleman from Texas is recognized for 5 minutes.

Mr. FARENTHOLD. Mr. Chairman, this amendment continues to victimize innocent local parties just because they happen to be in an insurance case.

The underlying bill is designed to protect folks from being dragged into a lawsuit just to facilitate forum shopping by plaintiffs' attorneys.

The purpose of this bill is to allow judges greater discretion to free these innocent local parties. They are the ones that are suffering as a result of this.

This amendment denies the bill's protection to innocent local parties joined to a lawsuit simply because the legal allegations in the case fall into one arbitrary category rather than another, just like the previous amendment. It is terribly unfair. Innocent people are innocent people, and they should be protected from being dragged into a lawsuit regardless of the nature of the case.

The rules we have developed in this great country to protect the innocent are rules of general application, such as the rules protecting people's rights to have their side of the story told and the rules protecting people from biased or inaccurate testimony.

We should all be appalled by the suggestion that these general protections designed to protect innocent people from criminal liability should be suspended because the case is one of assault and battery or murder or somehow relates to insurance. It is the same kind of logic.

□ 1545

Our country is rightfully proud of its principles providing due process and equal protection, but these concepts are meaningless if they are only selectively applied to some type of cases and not others. And for the same reason, we should all be outraged at the suggestion that the rules of fairness, designed to protect the innocent, should be suspended in civil law cases because a case involves one particular subject matter or another. But that is exactly what this misguided amendment does.

This amendment would allow a plaintiff's lawyer to drag an individual insurance adjuster into a lawsuit even when the applicable State law makes it absolutely clear that only insurers, not individual people, are subject to bad faith claims. How does the sponsor explain this to a person like Jack Stout, why a lawyer pulled him into a bad faith lawsuit targeting State Farm? Mr. Stout was a local insurance agent who merely sold a policy to the plaintiff, met and spoke with the plaintiff once, and had nothing to do with processing the plaintiff's homeowner's insurance claim. A Federal District Court in Oklahoma found he was fraudulently joined and dismissed the claim against him, but under this amendment, the innocent person would have been stuck back in the lawsuit.

What about a person like Douglas Bradley, where the plaintiff's lawyer named him as a defendant in a bad faith lawsuit against an insurer? In that case, the complaint included Mr. Bradley, an insurance agent, as a defendant in the caption of the case. It referred to defendant, singular, not defendants. Throughout the entire pleadings, it didn't even mention his name. A Federal District Court in Indiana dismissed this claim against him as fraudulently joined, but under this amendment, this innocent person would have been stuck back in the lawsuit. It is not fair, it is expensive, and it is emotionally draining to these innocent parties.

For that reason, I urge opposition to the amendment and support of the underlying bill.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. CARTWRIGHT).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. CARTWRIGHT. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Pennsylvania will be postponed.

Mr. FARENTHOLD. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. NUNES) having assumed the chair, Mr. SIMPSON, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 725) to amend title 28, United States Code, to prevent fraudulent joinder, had come to no resolution thereon.

FAIRNESS IN CLASS ACTION LITIGATION ACT OF 2017

GENERAL LEAVE

Mr. FARENTHOLD. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous materials to H.R. 985.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 180 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 985.

The Chair appoints the gentleman from Idaho (Mr. SIMPSON) to preside over the Committee of the Whole.

□ 1549

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 985) to