for those who oppose the Republican majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. NEWHOUSE. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

FRAUDULENT JOINDER PREVENTION ACT OF 2016

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. 3624.

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

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 618 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. 3624.

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

□ 1254

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. 3624) to amend title 28, United States Code, to prevent fraudulent joinder, with Mr. GRAVES of Louisiana 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 Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

□ 1300

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

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 they have no substantive connection to, as a means of forum shopping on the part of the lawyers filing the case. These lawsuits impose a tremendous burden on small businesses and their employees. The Fraudulent Joinder Prevention Act, introduced by Judiciary Committee Member KEN BUCK from 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 couple of examples, in Bendy v. C.B. Fleet Company, the plaintiff brought product liability claims 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 how hard it is to demonstrate 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 lawyer's tactical purpose of keeping the case in their preferred State court. 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.''

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 successfully used 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 that 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's no possibility of ever recovering . . . That's very hard to do. 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 some 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, representing America's small businesses, and the U.S. Chamber of Commerce, among other legal reform groups.

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.

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

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

Members of the House, H.R. 3624, the so-called Fraudulent Joinder Prevention Act, is not really about fraud. Rather, this measure is just the latest attempt to tilt the civil justice system in favor of corporate defendants by making it more difficult for plaintiffs to pursue State law claims in State courts.

Here is why I say that. To begin with, H.R. 3624 addresses a nonexistent problem. Under current law, a defendant may remove a case alleging solely State law claims to a Federal court only if there is complete diversity of citizenship between all plaintiffs and all defendants, with an exception. If the plaintiff adds an instate defendant to the case to defeat diversity jurisdiction, this constitutes fraudulent joinder and, in such circumstance, the case may be removed to Federal court.

In determining whether a joinder was fraudulent, the court must consider only whether there was any basis for a claim against the nondiverse defendant. For the case to remain in Federal Court, the defendant must show that there was no possibility of recovery or no reasonable basis for adding the nondiverse defendant.

This very high standard has ignited our Federal Courts for more than a century, and it has functioned well. H.R. 3624 would replace this time-honored standard with a thoroughly ambiguous one. The measure would require a remand motion to be denied unless the court finds, among other things, that it is ''plausible to conclude that the applicable State law would impose liability'' on an instate defendant; that the plaintiff had a ''good faith intention to prosecute the action against each'' instate defendant or to seek a joint judgment; and that there was no ''actual fraud in the pleading of jurisdictional facts.''

Additionally, H.R. 3624 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 true purpose of this 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. 3624 would sharply increase the cost of litigation for plaintiffs and further burden the Federal court system. For example, terms like ''plausible'' and ''good faith intention'' are not defined in the bill. This ambiguity will lead to greater uncertainty for both courts and litigants and will spawn substantial litigation over their meaning and application, further delaying many decisions in many cases.

Additionally, these standards require a court to engage in a minitrial during an early procedural stage of a case, without an opportunity for the full development of evidence. Thus, the bill would sharply increase the burdens and costs of litigation for plaintiffs and make it more likely that they would be prevented from choosing the forum for their claims.

□ 1315

Finally, the amendments made by this bill raise fundamental federalism concerns. Subject to certain exceptions as set forth in our Constitution, matters of State law should be decided by State courts. The removal of a State court case to Federal court always implicates federalism concerns, which is why the Federal courts generally disfavor Federal jurisdiction and read removal statutes narrowly.

H.R. 3624, however, ignores these federalism concerns. By applying sweeping and vaguely worded new standards to the determination of when a State case must be remanded to a State court, the bill denies State courts the ability to decide and ultimately to shape State law. H.R. 3624 not only violates State sovereignty, but it also violates our fundamental constitutional structure.

Accordingly, I sincerely urge my colleagues to join me in opposing this problematic legislation.

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

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume to respond to some of the points raised by the gentleman from Michigan (Mr. CONYERS), the ranking member.

First of all, it is not this bill that removes cases from State courts to Federal courts. It is the United States Constitution and the Federal laws that have been passed by this Congress for over 200 years that recognize the importance of the principle of diversity jurisdiction and of having parties from different States in cases in controversy able to remove those cases to the Federal system, which represents all citizens, not just the citizens of one State, as State courts are sometimes perceived as doing.

Secondly, it is not this legislation that creates the kind of circumstance that the gentleman from Michigan claims it does of denying access to the courts. Rather, it is the purpose of this legislation to treat people fairly who have been treated unfairly in the process. If you have no liability in a case, you should not be sued in the first place.

If you are sued by a lawyer who is trying to manipulate the rules in order to keep a case in a court that he has forum-shopped—in other words, he has picked the court that he prefers it to be in—that individual or business, as quickly as possible, should be able to seek redress from the Federal court so as to have a determination made about whether or not it is indeed a party that is ''plausibly liable,'' which is a Supreme Court standard to be held in the case.

If it is not a party, then the rules of Federal procedure would allow for the removal of that case to Federal court. So we should not be blaming innocent parties for spoiling the plans of trial lawyers to try to forum-shop into a favorable jurisdiction.

Let me make a few other quick points about federalism.

Some of the rhetoric on the other side suggests that it is somehow strange for Federal courts to be deciding State law claims, but as a matter of history, that is totally inaccurate. State law claims are heard by Federal courts whenever the Federal courts have the diversity jurisdiction that is outlined in the Constitution.

That has been a major part of the Federal trial court's work for far longer than Federal claims have existed, and out-of-State defendants have been able to remove civil cases from State courts since the beginning of the Federal judicial system created by the very first Congress of which James Madison and many other Founders were members.

All the bill before us today does is protect the right of removal from being subverted by blatant gamesmanship on the part of trial lawyers. H.R. 3624 also protects in-State individuals and small businesses from being dragged into litigation just so the plaintiff can keep the case in State court when the plaintiff's primary target is an out-of-State corporation.

Is it really unfair to say to the trial lawyer, ''when your real target is an out-of-State corporation but you want to keep the case in State court, you have to come up with a claim against the local in-State individual or small business that is at least plausible''?

That is the simple, fair, and modest demand that this bill makes on trial lawyers.

Is it fair to the local individual or small business that it is required to bear the costs and other burdens of litigation when the claim against it isn't even plausible?

No, it is not, but that is what is allowed under current law, and that is what H.R. 3624 will correct.

I reserve the balance of my time.

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

Somehow the gentleman from Virginia has misunderstood what I said or has mischaracterized what I said.

This bill makes it too difficult to remand cases back to State courts to the point at which federalism concerns are raised and plaintiffs are frequently harmed.

Mr. Chairman, I yield 3 minutes to the gentleman from Tennessee (Mr. COHEN), a distinguished member of the Judiciary Committee.

Mr. COHEN. I thank the ranking member.

Mr. Chairman, this bill which has come before our committee is one that the President has said he will veto because the President says that it is a ''solution that is looking for a problem'' or something to that effect.

This bill will make it more difficult for plaintiffs—people who have been harmed—to get relief because their cases in State courts can more easily be removed to Federal courts.

Now, the gentleman from Virginia is exactly right in that it has always been permitted. You can remove a case to Federal court if you can show that the plaintiff in the State court is not a proper plaintiff, if you can show that there is diversity of citizenship and not complete diversity.

The problem is that this has always been the rule, and it is the way the rule is now; but the courts have not come to us and said this is a problem and have asked us to correct it. We are correcting this because the corporate defendants want to make it easier for them to remove these cases to courts at which they will get better results. It will make it more difficult for plaintiffs to get judgments in State courts, which have historically been a bit healthier. This makes it almost impossible.

It increases litigation. It makes you, on the front end, have to show your case. It increases the cost to the courts and the burden on the courts. It will make the government larger because there will be more activity in Federal court if this becomes law. It will take from the States the right to determine their own State laws, which is generally the position of my friends on the other side—being for states' rights. In certain parts of our country, including in my part of the country, they have been known to sometimes talk poorly about the Federal courts. This gives the Federal courts more power.

It is an aberrant position that this side has taken, kind of like they took when we had reciprocity on gun permits. Rather than having States' laws be paramount, they thought the Federal law should superimpose it. We have got a situation by which the idea of States' laws being sovereign and States having more authority and giving more power to the States falls second to being for things that corporations and the NRA desire. In those cases, states' rights come second, and that is an unusual aberration.

This bill will probably not pass the Senate, but if it does, it will be vetoed, and it won't be overridden.

The CHAIR. The time of the gentleman has expired.

Mr. CONYERS. I yield the gentleman an additional 1 minute.

Mr. COHEN. Yesterday we had a program at which we honored the foot soldiers of the civil rights movement. One of the Republican Senators confessed: ''I should have done more.'' I hear that from a lot of folks from the South. They go to Selma and they march and they say they should have done more.

Meanwhile, one can do something today because there is a Voting Rights Act that needs to be extended or amended and approved to give people the ultimate thing that America is most well-known for, which is the right to vote in a democracy.

Voting rights are in peril in our country, income inequality continues, and millions of Americans of both parties are voting for candidates who appeal to those folks. Race relations between police and minority communities are fraught, young people have tremendous burdens of student loan debt, and our infrastructure is in danger.

Let's deal with those issues and let's make Congress great again.

Mr. GOODLATTE. Mr. Chairman, I yield such time as he may consume to the gentleman from Colorado (Mr. BUCK), the chief sponsor of this legislation and a member of the House Judiciary Committee.

Mr. BUCK. I thank the gentleman.

Mr. Chairman, in many cases a trial lawyer's main target is a national business, but if the only defendant in the case is an out-of-State business, the case can be heard in Federal court rather than in a local State court, which trial lawyers often prefer.

By also suing a local defendant in addition to the national defendant, who are the true targets of the lawsuits, trial lawyers can keep their cases in the preferred State courts.

Trial lawyers who sue innocent local people and small businesses simply to keep the lawsuits in their preferred State courts usually drop their cases against these innocent local parties but only after their cases are safely back in State courts and only after the innocent local parties have had to spend time and money in dealing with the lawsuits. That is not right. Trial lawyers shouldn't be able to subject innocent local people and small businesses to costly and time-consuming lawsuits just to rig the places in which their lawsuits will be heard.

This unfairness led respected Federal appeals court Judge J. Harvie Wilkinson of the Fourth Circuit Court of Appeals to publicly support congressional action to change the standards for joinder to allow judges greater flexibility in making the right decisions on questions of removal to Federal court and to give Federal judges greater discretion to determine earlier in the case whether a local party joined to the lawsuit is there for a good reason or for fraudulent reasons.

H.R. 3624 is precisely the kind of remedy urged by Judge Wilkinson, who has said:

> That is exactly the kind of approach . . . that I like because it is targeted; and there is a problem with fraudulent jurisdiction laws as it exists today, I think, and that is that you have to establish that the joinder of a non-diverse local defendant is totally ridiculous and that there is no possibility of ever recovering. . . . That is very hard to do. 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 some real problems.

H.R. 3624 would protect innocent local defendants in two main ways.

First, the bill allows Federal judges greater discretion to release local defendants from a case where it is not plausible to conclude, as a legal matter, that applicable State law would impose liability on the local defendant. The term ''plausible'' is taken from the Supreme Court's jurisprudence that interprets rule 8 of the Federal Rules of Civil Procedure, and the Court's decisions provide substantial guidance as to the meaning of the term.

Initially, in Bell Atlantic Corp. v. Twombly, the Court distinguished between plausible claims and claims that are speculative:

> Factual allegations must be enough to raise a right to relief above the speculative level.

Later, in Ashcroft v. Iqbal, the Court stated:

> The plausibility standard . . . asks for more than a sheer possibility that a defendant has acted unlawfully. This standard demands more than an unadorned, 'the defendant unlawfully harmed me' accusation or threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.

Professor Martin H. Redish, one of the Nation's foremost scholars of Federal court jurisdiction, has written:

> The Twombly/Iqbal plausibility standard represents the fairest and most efficient resolution of the conflicting interests in the context of pleading.

It will similarly provide a fair and efficient approach in the context of fraudulent joinder.

Second, the bill codifies a proposition that the Supreme Court has long recognized: that in deciding whether joinder is fraudulent, courts may consider whether the plaintiff has a good faith intention of seeking a judgment against the local defendant.

Consistent with Supreme Court precedent, courts continue to find fraudulent joinder when objective evidence clearly demonstrates there is no good faith intention to prosecute the action against all defendants.

As the Federal court in Faulk v. Husqvarna Consumer Outdoor Products N.A., Inc., said:

> Where the plaintiff's collective litigation actions, viewed objectively, clearly demonstrate a lack of good faith intention to

pursue a claim to judgment against a nondiverse local defendant, the court should dismiss the nondiverse defendant and retain jurisdiction over the case.

□ 1330

The language of this provision is taken almost verbatim from an oftencited decision in the Third Circuit, In re Briscoe: ''The court said that joinder is fraudulent if 'there is . . . no real intention in good faith to prosecute the action against the defendant or seek a joint judgment.' ''

I urge all my colleagues to support this simple, commonsense bill that will protect innocent local parties from being dragged into expensive and time-consuming lawsuits for the sole reason of furthering a trial lawyer's forum shopping strategy.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. NADLER), a veteran member of the House Judiciary Committee.

Mr. NADLER. Mr. Chairman, I rise in opposition to the so-called Fraudulent Joinder Prevention Act.

The main purpose of the bill is to make it easier to remove State cases to Federal courts where large corporate defendants have numerous advantages over consumers, patients, and injured workers.

This bill is yet another attempt by the Republicans to tilt the legal playing field in favor of large corporations. It will clog the Federal courts, drain judicial resources, upset well-established law, and delay justice for plaintiffs seeking to hold corporations accountable for harming consumers or injuring workers.

This bill is part of a general effort by the Republicans to close off access to the courts to ordinary Americans. With every step the Republicans take, whether it be to put forward bills to make class action suits more difficult, to remove more local cases to Federal courts, to reclassify more lawsuits as frivolous and subject to mandatory sanctions, or to oppose legislative attempts to limit mandatory arbitration clauses, they are transforming our system of justice.

Our courts are being turned into a forum where only very rich people can get justice, where corporations can easily escape liability, and where consumers and the injured can get no relief, and it is all tilted one way.

There is nothing in this bill or in any other bill put forward by the other side that will help ordinary consumers hold big corporations responsible for actions that harm the little guy.

Under this so-called Fraudulent Joinder Prevention Act, anytime there is a case with at least one instate, nondiverse, and out-of-state, diverse, defendant, the defendants will use this forum shopping bill law to delay justice.

These attempted removals will result in contentious disputes over whether the court has jurisdiction. It will drain court time, as the courts will have to engage in almost a minitrial, reviewing pleadings, affidavits, and other evidence submitted by the parties since this bill turns a simple procedural determination into a merits determination.

At a minimum, the bill will allow corporate defendants to successfully force the plaintiff to expend their limited resources on what should be a simple procedural matter.

Under this bill, this preliminary decision would become a baseless, time-consuming merits inquiry of the case before a second time-consuming merits inquiry on the substance. While large corporations can easily accommodate such cost, injured workers, consumers, and patients cannot.

I am amazed by some of my colleagues who, with this bill, will bring even more cases to our Federal courts. I don't need to remind you that our Federal courts are facing an enormous number of judicial vacancies with no end in sight due to delays in confirmations in the other body.

Yet, this bill would increase the workload of the Federal courts with cases based on the flimsiest of Federal jurisdiction. It makes no sense. This bill will take up valuable Federal court time with State claims based on State law, preventing the Federal courts from hearing and managing cases that are properly before them.

Finally, despite its name, this bill is not about fraud. Indeed, the proponents cite no example that alleges actual fraud.

I would say this is a bill in search of a problem. I would say that, if I didn't understand, the true purpose of the bill is not to stop fraud, but to further tilt the scales of justice in favor of big corporations over the needs of ordinary Americans.

For these reasons, I oppose it. I urge all of my colleagues to oppose this bill as well.

We should defeat this bill and start making Congress great again.

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

Mr. CONYERS. Mr. Chairman, I yield 3½ minutes to the distinguished gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Chairman, just a few minutes ago the Judiciary Committee ranking and chairman were in a hearing that exuded bipartisan expressions for fixing the challenges that we have, with the location of data and international requests for data being held by America's technology companies. It was an interesting and open discussion, which I want to evidence on the RECORD.

The Judiciary Committee is continuing and has had over the years bipartisan approaches to a number of difficult questions, which we have solved, including our approach to criminal justice reform. I thank the chairman and ranking member for that.

I also want to acknowledge that we have some challenges, as was evidenced by comments from the gentleman from Tennessee, on the restoration of the Voting Rights Act. We find ourselves again in a challenge that I hope can be fixed.

First, I want to make it very clear that I practiced law for a number of years and served as an associate municipal court judge and as well was a quasi-prosecutor on the Select Committee on Assassinations which, I allow, this body did research when that select committee was in place the issues of the investigations of Dr. Martin Luther King's assassination and John F. Kennedy.

So I know the importance of lawyers, of which I have the greatest respect and of which I am one. I understand that trial lawyers are representing both defendants and plaintiffs and corporations come into the court with trial lawyers. So I am a little taken aback by any suggestion that the words ''trial lawyers'' have a negative connotation.

Anyone who wants to win a case in a courtroom must have a lawyer, and you would want to make sure that they are a trial lawyer. As well, you want to make sure that you have the rights of due process.

So I would make the argument that trial lawyers go into court, whether they are representing corporations or plaintiffs. Corporations in many instances may be defendants.

In that case, I will tell you you are making it far more difficult by pushing cases into the Federal court under H.R. 3624. It is more expensive and they take longer, making it difficult for workers, consumers, and patients generally to have their cases closer to home in State courts.

However, there may be an instance where a corporation is a plaintiff and you will have the same blocking of that corporation by this bill.

If this bill was enacted, it would tip the scales of justice in favor of corporate defendants or others that make it more difficult for injured plaintiffs. It would effectively eliminate the local defendant exception by diversity jurisdiction. I heard someone say—and it bears repeating—it is a solution looking for a problem.

The current standard used by the courts to determine whether the joinder of a nondiverse defendant is improper, however, has been in place for a century. We have no evidence that this has put anyone in a position of not getting due process. That is our goal in the court system.

The fraudulent joinder doctrine is well established and, in fact, will only be found if the defendant establishes that the joinder of the diversity-destroying party in the State court was made without a reasonable basis. We have a system, but this particular bill reverses this longstanding policy by imposing new requirements.

Finally, Mr. Chairman, if I might, further taking away a defendant's responsibility to prove that Federal jurisdiction over State cases is improper

alters the fundamental precept of a party seeking removal.

I ask my colleagues to recognize that we have bipartisanship on this committee.

I oppose this legislation and ask my colleagues to oppose it.

I thank the gentleman for yielding and rise in strong opposition to H.R. 3624, the ''Fraudulent Joinder Prevention Act of 2016.''

H.R. 3624 is the latest effort to deny plaintiffs access to the forum of their choice and, possibly, to their day in court.

H.R. 3624 seeks to overturn longstanding precedent in favor of a vague and unnecessary test that forces state cases into federal court when they don't belong there, and gives large corporate defendants an unfair advantage to pick and choose their forum without the normal burden of proving proper jurisdiction.

If enacted this bill would tip the scales of justice in favor of corporate defendants and make it more difficult for injured plaintiffs to bring their state claims in state court.

H.R. 3624 would effectively eliminate the local defendant exception to diversity jurisdiction under 28 U.S.C. 1441(b)(2), which currently prohibits removal to federal court even when there is complete diversity when a defendant is a citizen of the state in which the action is brought.

The current standard used by courts to determine whether the joinder of a non-diverse defendant is improper, however, has been in place for a century, and no evidence has been put forth demonstrating that this standard is not working.

Rather, the ''Fraudulent Joinder Doctrine,'' is a well-established legal doctrine providing that: fraudulent joinder will only be found if the defendant establishes that the joinder of the diversity-destroying party in the state court action was made without a reasonable basis of proving any liability against that party.

H.R. 3624 reverses this longstanding policy by imposing new requirements on federal courts considering remand motions where a case is before the court solely on diversity grounds.

Specifically, it changes the test for showing improper joinder from a one-part test (''no possibility of a claim against a nondiverse defendant'') to a complicated four-part test, requiring the court to find fraudulent joinder if: There is not a ''plausible'' claim for relief against each nondiverse defendant; There is ''objective evidence'' that ''clearly demonstrates'' no good faith intention to prosecute the action against each defendant or intention to seek a joint judgment; There is federal or state law that clearly bars claims against the nondiverse defendants; or There is actual fraud in the pleading of jurisdictional facts.

What should be a simple procedural question for the courts, now becomes a protracted mini-trial, giving an unfair advantage to the defendants (not available under current law) by allowing defendants to engage the court on the merits of their position.

By requiring litigation on the merits at a nascent jurisdictional stage of litigation based on vague, undefined, and subjective standards like ''plausibility'' and ''good faith intention,'' and by potentially placing the burden of proof on the plaintiff, this bill will increase the complexity and costs surrounding litigation of state law claims in federal court and potentially dissuade plaintiffs from pursuing otherwise meritorious claims.

Further, taking away a defendant's responsibility to prove that federal jurisdiction over a state case is indeed proper alters the fundamental precept that a party seeking removal should bear the heavy burden of establishing federal court jurisdiction.

The bill is a win-win for corporate defendants.

At its most harmful, it will cause non-diverse defendants to be improperly dismissed from the lawsuit.

At its least harmful, it will cause an expensive, time-consuming detour through federal courts for plaintiffs.

Wrongdoers would not be held accountable for the harm they cause, while the taxpayers ultimately foot the bill.

For example: large corporate defendants (i.e. typically the diverse defendants) would be favored by the bill because, if the nondiverse defendant is dismissed, they can blame the now-absent in-state defendant for the plaintiff's injuries.

Smaller, nondiverse defendants would also be favored because the diverse defendant does all the work for them.

The diverse defendant removes the case to federal court and then argues that the nondiverse defendant is improperly joined.

If the federal court retains jurisdiction, the nondiverse defendant must be dismissed from the case.

If one or more defendants are dismissed from the case, it is easy for the remaining defendant to finger point and blame the absent defendant for the plaintiff's injuries.

Even if a federal court remands the case to state court under the bill, the defendants have successfully forced the plaintiff to expend their limited resources on a baseless, time-consuming motion on a preliminary matter.

While large corporate defendants can easily accommodate such costs, plaintiffs (i.e. injured consumers, patients and workers) cannot.

Regardless of whether the case is remanded to state court or stays in federal court, this new, mandated inquiry will be a drain on the limited resources of federal courts.

By mandating a full merits-inquiry on a procedural motion, H.R. 3624 is expensive, time-consuming, and wasteful use of judicial resources.

Lastly, by seeking to favor federal courts over state courts as forums for deciding state law claims, this bill offends principles of federalism.

The ability of state courts to function independently of federal courts' procedural analysis is a necessary function of the success of the American judiciary branch.

For these, reasons I urge my colleagues to join me in opposing H.R. 3624, the Fraudulent Joinder Prevention Act.

Mr. GOODLATTE. Mr. Chairman, I continue to reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. JOHNSON), another distinguished member of the House Judiciary Committee.

Mr. JOHNSON of Georgia. Mr. Chairman, I return to the floor today for the second time in as many months to speak against another crony-capitalist, Republican-led bill to benefit big business.

H.R. 3624, the Fraudulent Joinder Protection Act, as it is so called, is a solution in search of a problem.

Current Federal law already provides Federal courts with ample tools to address possible forum shopping. This crony-capitalist legislation would add needless complications for civil litigants seeking redress for violent claims in the State courts.

Two, it further stretches the already limited resources Federal courts are experiencing due to Republican-passed, budget-cutting sequestration measures.

Currently America is burdened with a Republican Party-caused judicial vacancy crisis in this Nation's Federal courts, where there are over 81 Federal court judicial vacancies around the country, including the one left vacant by the passing of Justice Scalia.

Republicans—who control the Senate and who, in the press conferences and meetings they have held this week, have fully exposed their plot to add to this judicial crisis—are refusing to fill that vacancy on the country's highest Court, and they have an ulterior purpose for doing so.

That purpose, ladies and gentlemen, is because they know that justice delayed is justice denied. They want to gum up the works of the Federal courts by defunding the Federal courts while at the same time bogging them down with State court matters that should be left to the States, and then what it results in is crony capitalists being able to avoid being held accountable in the State or Federal courts.

So this Congress should not further burden the Federal courts, which are already strapped for time and resources, when State courts are more suited and capable of hearing State—not Federal, but State—law claims as State courts have been empowered to do since this country was formed.

The Acting CHAIR (Mr. WALKER). The time of the gentleman has expired.

Mr. CONYERS. Mr. Chairman, I yield an additional 1 minute to the gentleman from Georgia.

Mr. JOHNSON of Georgia. The 10th Amendment in this country means something. It means something to Republicans, and it means something to Democrats. Sometimes we disagree on what it means and what impacts it should have.

But there is no doubt that the Federal court system has its body of law and the citizens should be able to bring their claim into their State courts, as they have been doing since this country's foundation.

They use the 10th Amendment when it is convenient to them, and then they violate it when it is not convenient. That is not the way that conscientious Republicans should operate. I challenge them to stop this encroachment on states' rights.

This legislation presumes that Federal courts are not currently preventing forum shopping in civil suits,

but there is absolutely no credible evidence that Federal courts are failing to do their duty.

I ask my colleagues to oppose this crony-capitalist legislation.

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

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute.

I thought you might be interested in knowing that 21 different organizations strongly oppose H.R. 3624, the Fraudulent Joinder Prevention Act, including: the American Association for Justice, the Center for Effective Government, the Center for Justice and Democracy, the Consumer Federation of America, the D.C. Consumer Rights Coalition, Main Street Alliance, the National Association of Consumer Advocates, the National Disability Rights Network's lawyers, the National Employment Lawyers Association.

I include in the RECORD the letter containing the list of groups that strongly oppose H.R. 3624.

FEBRUARY 23, 2016.

Re Groups Strongly Oppose H.R. 3624, ''The Fraudulent Joinder Prevention Act''.

Hon. PAUL RYAN,
Speaker, House of Representatives, Washington, DC.

Hon. NANCY PELOSI,
Minority Leader, House of Representatives, Washington, DC.

DEAR SPEAKER RYAN AND LEADER PELOSI: The House will soon be voting on H.R. 3624, the ''Fraudulent Joinder Prevention Act.'' This bill would upend long established law in the area of federal court jurisdiction, place unreasonable burdens on the federal judiciary, and make it more difficult for Americans to enforce their rights in state courts. The undersigned organizations strongly oppose the bill as harmful and unnecessary.

Under our system of government, federal court jurisdiction is supposed to be very limited. State courts should not be deprived of jurisdiction over a claim they should properly hear, so the burden is always on the party trying to get into federal court to show why it should be there. When a case is properly in state court, only complete ''diversity'' can support removing it to federal court, meaning that no plaintiff in a case may come from the same state as any defendant.

H.R. 3624 would undermine this fundamental precept and force state cases into federal court when they don't belong there. The bill would do this by transforming the centuries-old concept called ''fraudulent joinder,'' which is a way to defeat complete diversity; i.e., when non-diverse defendants are in case. Despite its name, joining such defendants is rarely ''fraudulent'' and has been accepted practice for over a century. As Lonny Hoffman, Law Foundation Professor of Law at the University of Houston Law Center, explained in testimony to this committee, under current, ''well-settled law, fraudulent joinder will only be found if the defendant establishes that the joinder of the diversity-destroying party in the state court action was made without a reasonable basis of proving any liability against that party.'' Current law ''strikes an appropriate balance among competing policies in how it evaluates the joinder of non-diverse defendants.''

However, H.R. 3624 would dramatically change this longstanding, efficient and well-functioning law. The bill alters the fundamental precept that a party seeking removal has a very heavy burden to establish federal court jurisdiction. At a preliminary stage, the court is required to engage in exhaustive fact finding on the merits even before summary judgment. The bill instructs the court to use subjective and vague criteria, like ''objective evidence clearly demonstrates that there is no good faith intention'' or ''based on the complaint . . . it is not plausible to conclude,'' creating uncertainty as courts struggle with how to interpret and apply this new standard. The bill provides no evidentiary standards to help courts make such a complex decision. And requiring the court to engage in extensive factual adjudication at this early stage raises significant 7th Amendment ''right to jury trial'' constitutional concerns. As Professor Hoffman put it in testimony to this committee, although the bill is short in length, its provisions are ''anything but modest; if enacted, they would dramatically alter existing jurisdictional law.''

The process contemplated by this bill would be not only unfair to and incredibly expensive for the plaintiff, but also an enormous waste of judicial resources. There is no reason for these state based claims to be heard in federal court other than corporations' desire to engage in forum shopping. Yet, there is no evidence whatsoever that national corporations, who choose to avail themselves of the marketplaces in states across the country, complying with multiple state laws in the process, should then have a problem appearing in state court.

H.R. 3624 will have a destructive impact on our state and federal judiciary. Professor Hoffman said in his testimony, ''Finally, by divesting state courts of jurisdiction and deciding merits questions that state courts now routinely resolve, proponents appear deaf to the serious federalism concerns that the bill raises.'' We urge you to oppose this legislation.

Thank you.

Very sincerely,

Alliance for Justice, American Association of Justice, Americans for Financial Reform, Asbestos Disease Awareness Organization, Center for Effective Government, Center for Justice & Democracy, Consumer Federation of America, Consumer Action, Consumer Watchdog, Consumers for Auto Reliability and Safety, D.C. Consumer Rights Coalition, Essential Information, Homeowners Against Deficient Dwellings.

Main Street Alliance, National Association of Consumer Advocates, National Consumer Law Center (on behalf of its low income clients), National Consumer Voice for Quality Long-Term Care, National Consumers League, National Disability Rights Network, National Employment Lawyers Association, Protect All Children's Environment, SC Appleseed Legal Justice Center, Texas Watch, The Impact Fund, Woodstock Institute, Workplace Fairness.

PUBLIC CITIZEN,
Washington, DC, February 18, 2016.

Re Opposition to H.R. 3624, The Fraudulent Joinder Prevention Act of 2015.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR REPRESENTATIVE: I am writing on behalf of Public Citizen, a non-profit membership organization with more than 400,000 members and supporters nationwide, to express opposition to H.R. 3624, the Fraudulent Joinder Prevention Act of 2015. This bill is an unnecessary intrusion into the province of the federal courts.

H.R. 3624 addresses a federal district court's consideration of a plaintiff's motion to remand a case to state court, after a defendant has removed the case from the state court in which it was filed to federal district court on the theory that the plaintiff had fraudulently joined a non-diverse defendant for the purpose of defeating federal-court jurisdiction. The purpose of the bill, as made clear in the September 29, 2015, hearing, is to assist defendants in keeping cases in federal court after removal. The bill purports to effectuate this purpose by specifying that the federal court consider evidence, such as affidavits, and by specifying four findings that would require a federal district court to deny a plaintiff's motion to remand.

Congress should not get into the business of micro-managing the motion practice of the federal courts without strong evidence that current court procedures are not serving their purpose: facilitating justice. In this case, however, the hearing provided no support for the assumption that the district courts are not denying motions to remand in appropriate cases. Witness testimony that different courts state different standards for reviewing such motions does not support a call for congressional action, unless the existence of different standards is leading to unjust results. The testimony, however, did not demonstrate that the courts' current approach results in injustice, and it did not explain how results would differ under the standard proposed in the bill and why any difference would be an improvement. Simply put, the bill is a supposed fix for an imagined problem. The House should hesitate before taking the step into micromanagement of the federal courts' consideration of one specific type of motion, where that motion has existed for more than a century and evidence of a problem is so flimsy.

Thank you for consideration of our views.

Sincerely,

ROBERT WEISSMAN,
President, Public Citizen.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, February 24, 2016.

STATEMENT OF ADMINISTRATION POLICY

H.R. 3624—FRAUDULENT JOINDER PREVENTION ACT OF 2016 (REP. BUCK, R–CO)

The Administration strongly opposes H.R. 3624 because it is a solution in search of a problem and makes it more difficult for individuals to vindicate their rights in State courts.

Federal law currently permits defendants to remove to Federal court a civil case initially filed in State court where the plaintiffs and defendants are citizens of different States and the case's value exceeds a certain monetary threshold. H.R. 3624 purports to address a problem called fraudulent joinder, where plaintiffs fraudulently raise claims against a same-state defendant in order to defeat the Federal court's ability to hear the case.

Existing Federal law already provides Federal courts with ample tools to address this problem, and the proponents of H.R. 3624 have offered no credible evidence that the Federal courts are failing to carry out their responsibility to prevent fraudulent joinder. The bill would therefore add needless complexity to civil litigation and potentially prevent plaintiffs from raising valid claims in State court.

If the President were presented with H.R. 3624, his senior advisors would recommend that he veto the bill.

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

□ 1345

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

Mr. Chairman, it is not often that the House has the opportunity to protect innocent local people and businesses from costly and meritless lawsuits and holding them to a good faith standard in litigation all by passing a bill that is just a few pages long, but that is the opportunity the House has today.

I thank the gentleman from Colorado (Mr. BUCK), a member of the Committee on the Judiciary, for introducing this vital measure, and I urge all my colleagues to join me in supporting it.

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

The Acting CHAIR. All time for general debate has expired.

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

It shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary printed in the bill. The committee amendment in the nature of a substitute shall be considered as read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 3624

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 ''Fraudulent Joinder Prevention Act of 2016''.

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 the defendant or defendants described in paragraph (1) (B) is fraudulent if the court finds that—

''(A) there is actual fraud in the pleading of jurisdictional facts;

''(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 each defendant described in paragraph (1)(B);

''(C) State or Federal law clearly bars all claims in the complaint against all defendants described in paragraph (1)(B); or

''(D) objective evidence clearly demonstrates that there is no good faith intention to prosecute the action against all defendants described in paragraph (1)(B) or to seek a joint judgment.

''(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 fraudulent joinder under paragraph (2), it shall dismiss without prejudice the claims against the defendant or defendants found to have been fraudulently joined and shall deny the motion described in paragraph (1)(B).''.

The Acting CHAIR. No amendment to the committee amendment in the nature of a substitute shall be in order except those printed in House Report 114–428. 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. BUCK

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in House Report 114–428.

Mr. BUCK. 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 4, line 1, strike ''the defendant or defendants'' and insert ''a defendant''.

Page 4, line 5, after ''facts'' insert ''with respect to that defendant''.

Page 4 beginning in line 9 and ending in line 10, strike ''each defendant described in paragraph (1)(B)'' and insert ''that defendant''.

Page 4, beginning in line 12 and ending in line 13, strike ''all defendants described in paragraph (1)(B)'' and insert ''that defendant''.

Page 4, beginning in line 16 and ending in line 17, strike ''all defendants described in paragraph (1)(B)'' and insert ''that defendant''.

Page 4, line 17, after ''joint judgment'' insert ''including that defendant''.

Page 4, line 23, strike ''fraudulent joinder'' and insert ''that all defendants described in paragraph (1)(B) have been fraudulently joined''.

Page 4, beginning in line 25 and ending in line 1 of page 5 strike ''the defendant or defendants found to have been fraudulently joined'' and insert ''those defendants''.

The Acting CHAIR. Pursuant to House Resolution 618, the gentleman from Colorado (Mr. BUCK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Colorado.

Mr. BUCK. Mr. Chairman, this manager's amendment simply makes a few technical changes to the bill; namely, striking references to multiple defendants and replacing them with references to single defendants to make clear that even if one instate defendant has a legitimate connection to the case, the case can remain in State court.

I urge my colleagues to support this technical and clarifying amendment.

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

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment.

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

Mr. CONYERS. Members of the House, I oppose the manager's amendment, something I rarely ever do. While I don't take issue with the changes to the bill that the manager's amendment makes, this amendment fails to address any of the concerns that I raised about the underlying bill because the bill is flawed in its very conception.

There is no real problem that this bill addresses. Existing fraudulent joinder law adequately addresses the improper joinder of instate defendants, and the bill's proponents have offered no evidence to the contrary.

This unnecessary bill instead creates great uncertainty and delay in the consideration of State law claims with its ambiguous new requirements. It will also spawn much litigation, leading to increased costs that will be borne disproportionately by plaintiffs.

This bill, in addition, violates State sovereignty by significantly diminishing the ability of State courts to decide and shape State law matters.

Those are my objections to the manager's amendment. I hope it will be voted down.

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

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

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. CARTWRIGHT

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 114–428.

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 2, strike the close quotation mark and the period which follows.

Page 5, after line 2, 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 618, the gentleman from Pennsylvania (Mr. CARTWRIGHT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

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

Mr. Chairman, I also oppose the underlying bill, which I call the wrongdoers 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 the 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 there. It is not because they think the Federal judges are better looking or that

the Federal judges are more polite or that the decor is nicer in Federal court. No. They want to go there because they are more likely to beat consumers in Federal court cases.

After a generation of bad decisions by the Supreme Court of the United States, Federal court has become candy land for corporate wrongdoers, generations of bad decisions that invite and exhort district judges to forget about the 7th Amendment in the Bill of Rights. You remember what that says. 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 says this: ''In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.''

There is nothing ambiguous about that. But since the 1980s, there has been this steady drumbeat of Supreme Court of the United States decisions encouraging and emboldening Federal court judges to decide and dismiss cases without the trouble of a jury trial.

Their toolkit is enormous: 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 without the trouble of jury trials, and the Seventh Amendment right to jury trial is not preserved. That is why wrongdoer corporations prefer to be in Federal court. So that is the backdrop, Mr. Chairman.

On top of that, I want to give you some very strong reasons why this underlying bill is 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, you get no help. If you are a small-business owner only doing work in your State, you are out of luck. This doesn't provide you any help. Only multistate, multinational corporations get help, and that is why I call this the wrongdoers protection act for multistate and multinational corporations.

Number two, it is burdensome. Representative JOHNSON from Georgia already made this point. The Federal courts are already overworked and understaffed. The civil caseload already is growing at 12 percent a year—much of that, by the way, contract cases filed by corporations. There are currently 81 vacancies in the Federal judiciary. There is no reason to add to this burden.

Number three, this bill is ironic. We have a crowd in this House that constantly preaches about states' rights and the need to cut back on the Federal Government. But a bill like this comes along, and they drop that states' rights banner like it is a hot potato and pick up the coat of arms of the multistate, multinational corporations.

Number four, and maybe most importantly, the underlying bill is wrongheaded because these cases, called diversity cases, are filed in State court under State law; and ever since the 1930s in the Erie Railroad case, if you take these cases and handle them in Federal court, the Federal judges have to follow State law, not Federal law. Mr. Chairman, there is nobody better at interpreting State law than State court judges. It stands to reason.

I offer this amendment that is on 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, this enormous gift to the multistate and multinational corporate wrongdoers, at least include this amendment and give a couple of crumbs to the average American consumer trying to defend himself or herself in court.

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

Mr. BUCK. Mr. Chairman, I rise in opposition to the amendment.

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

Mr. BUCK. I yield myself such time as I may consume.

Mr. Chairman, this amendment should be roundly opposed for the simple reason that not only does it not protect any victims, but it also victimizes innocent local parties in the types of cases covered by the amendment.

The purpose of this 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 for no other reason than to further a trial lawyer's forum-shopping strategy.

These innocent local parties have, at most, an attenuated connection to the claims by the trial lawyer against some national company a thousand miles away, and these innocent local parties shouldn't have to suffer the time, expense, and emotional drain of a lawsuit when the plaintiff cannot even come up with a plausible claim against it. The base bill protects those innocent local parties from being dragged into a lawsuit brought against some other party for no other reason than to keep the case in a State court the trial lawyer prefers.

Now, enter this amendment, which denies the bill's protections to innocent local parties joined to a lawsuit simply because the legal allegations in the case fall into one arbitrary category rather than another. That is terribly unfair.

If this were any other kind of bill designed to protect innocent people, no one would argue that it shouldn't apply when the lawsuit relates to a bad faith suit against an insurance company. Innocent people are innocent people, and they should be protected from being dragged into lawsuits, regardless of the nature of the case.

Now, let me say a little something about this amendment based on my career as a prosecutor.

As a prosecutor, I deeply respected all the rules we have developed in this country to protect the innocent. These are rules of general application, such as rules protecting people's rights to have their side of the story told and rules protecting people from biased or inaccurate testimony. I would have been appalled if anyone ever suggested that these general protections designed to protect innocent people from criminal liability should be suspended because the case was one of assault or battery or murder or somehow related to insurance.

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

Further, courts could read this amendment as not even allowing them to consider the fraudulent joinder argument for cases within its coverage, no matter how clear it was that there was no valid claim against the local defendant under State law.

This bill defines and limits fraudulent joinder. It does not license courts to make up their own fraudulent joinder doctrines for cases not within its coverage. Under that reading, claims could be made against local insurance agents with no factual basis supporting the lawsuit.

The amendment would also allow a plaintiff's lawyer to drag an individual insurance adjuster into a lawsuit even when the applicable State law makes absolutely clear that only insurers, not individual people, are subject to bad faith claims.

How does a sponsor explain 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 insurance claim.

A Federal district court in Oklahoma found he was fraudulently joined and dismissed the claim against him. But under this amendment, this innocent person could be struck back into the lawsuit.

How does the sponsor explain to a person like Douglas Bradley why a 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 referred to as defendant, singular, not defendants throughout, and did not even mention Mr. Bradley in the body of the complaint.

A Federal district court in Indiana dismissed the claim against him as fraudulently joined, but under this amendment, this innocent person could be sucked back into the lawsuit, and that is not fair.

For all these reasons, this amendment should be soundly rejected.

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

□ 1400

Mr. CARTWRIGHT. Mr. Chairman, to respond to my colleague from Colorado who has just cited two cases where, under existing law and procedure, fraudulent joinder of bad faith insurance claims was claimed and actually succeeded, the proof is right there.

The statute does not need to be amended. It is working already. That is why we don't need to include bad faith insurance cases in the Wrongdoers Protection Act for multistate and multinational corporations.

I yield back the balance of my time.

Mr. BUCK. Mr. Chairman, I urge my colleagues to oppose this amendment.

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. BUCK. 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. LATTA) having assumed the chair, Mr. WALKER, 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. 3624) to amend title 28, United States Code, to prevent fraudulent joinder, had come to no resolution thereon.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 1 minute p.m.), the House stood in recess.

□ 1515

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HARRIS) at 3 o'clock and 15 minutes p.m.

FRAUDULENT JOINDER PREVENTION ACT OF 2016

The SPEAKER pro tempore. Pursuant to House Resolution 618 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the further consideration of the bill, H.R. 3624.

Will the gentleman from Illinois (Mr. HULTGREN) kindly take the chair.

□ 1515

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 further consideration of the bill (H.R. 3624) to amend title 28, United States Code, to prevent fraudulent joinder, with Mr. HULTGREN (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose earlier today, a request for a recorded vote on amendment No. 2 printed in House Report 114–428 offered by the gentleman from Pennsylvania (Mr. CARTWRIGHT) had been postponed.

AMENDMENT NO. 2 OFFERED BY MR. CARTWRIGHT

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, the unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. CARTWRIGHT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 237, not voting 18, as follows:

[Roll No. 87]

AYES—178

Adams
Aguilar
Ashford
Bass
Beatty
Becerra
Bera
Beyer
Bishop (GA)
Blumenauer
Bonamici
Boyle, Brendan F.
Brady (PA)
Brown (FL)
Brownley (CA)
Bustos
Capps
Capuano
Cárdenas
Carney
Carson (IN)
Cartwright
Castor (FL)
Castro (TX)
Chu, Judy
Cicilline
Clark (MA)
Clarke (NY)
Clay
Cleaver
Clyburn
Cohen
Connolly
Conyers
Costa
Courtney
Crowley
Cuellar
Cummings
Curbelo (FL)
Davis (CA)
Davis, Danny
DeFazio
DeGette
DeLauro
DelBene
DeSaulnier
Deutch
Dingell
Doggett
Doyle, Michael F.
Duckworth
Edwards
Ellison
Engel
Eshoo
Esty
Farr
Fattah
Foster
Frankel (FL)
Fudge
Gabbard
Gallego
Garamendi
Graham
Grayson
Green, Al
Griffith
Grijalva
Gutiérrez
Hahn
Heck (WA)
Higgins
Himes
Hinojosa
Honda
Huffman
Israel
Jackson Lee
Jeffries
Johnson (GA)
Johnson, E. B.
Jones
Keating
Kennedy
Kildee
Kilmer
Kind
Kirkpatrick
Kuster
Langevin
Larsen (WA)
Larson (CT)
Lawrence
Lee
Levin
Lieu, Ted
Lipinski
Loebsack
Lofgren
Lowenthal
Lowey
Lujan Grisham (NM)
Lynch
Maloney, Carolyn
Maloney, Sean
Matsui
McCollum
McDermott
McGovern
McNerney
Meeks
Meng
Moore
Moulton
Murphy (FL)
Nadler
Neal
Nolan
Norcross
O'Rourke
Pallone
Pascrell
Payne
Pelosi
Perlmutter
Peters
Peterson
Pingree
Pocan
Polis
Posey
Price (NC)
Quigley
Rangel
Rice (NY)
Richmond
Ros-Lehtinen
Roybal-Allard
Ruiz
Ruppersberger
Ryan (OH)
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Schrader
Scott (VA)
Scott, David
Serrano
Sewell (AL)
Sherman
Sinema
Sires
Slaughter
Speier
Swalwell (CA)
Takai
Takano
Thompson (CA)
Thompson (MS)
Titus
Tonko
Torres
Tsongas
Van Hollen
Vargas
Veasey
Vela
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters, Maxine
Watson Coleman
Welch
Yarmuth

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Abraham
Aderholt
Allen
Amash
Amodei
Babin
Barletta
Barr
Barton
Benishek
Bilirakis
Bishop (MI)
Bishop (UT)
Black
Blackburn
Blum
Bost
Boustany
Brady (TX)
Brat
Bridenstine
Brooks (AL)
Brooks (IN)
Buchanan
Buck
Bucshon
Burgess
Byrne
Calvert
Carter (GA)
Carter (TX)
Chabot
Chaffetz
Clawson (FL)
Coffman
Cole
Collins (GA)
Collins (NY)
Comstock
Conaway
Costello (PA)
Cramer
Crawford
Crenshaw
Culberson
Davis, Rodney
Denham
Dent
DeSantis
DesJarlais
Diaz-Balart
Dold
Donovan
Duffy
Duncan (SC)
Duncan (TN)
Ellmers (NC)
Emmer (MN)
Farenthold
Fincher
Fitzpatrick
Fleischmann
Fleming
Flores
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Garrett
Gibbs
Gibson
Gohmert
Goodlatte
Gosar
Gowdy
Granger
Graves (GA)
Graves (LA)
Graves (MO)
Grothman
Guinta
Guthrie
Hanna
Hardy
Harper
Harris
Hartzler
Heck (NV)
Hensarling
Hice, Jody B.
Hill
Holding
Hudson
Huelskamp
Huizenga (MI)
Hultgren
Hunter
Hurd (TX)
Hurt (VA)
Issa
Jenkins (KS)
Jenkins (WV)
Johnson (OH)
Johnson, Sam
Jolly
Jordan
Joyce
Kaptur
Katko
Kelly (MS)
Kelly (PA)
King (IA)
King (NY)
Kinzinger (IL)
Kline
Knight
Labrador
LaHood
LaMalfa
Lamborn
Lance
Latta
LoBiondo
Long
Loudermilk
Love
Lucas
Luetkemeyer
Lummis
MacArthur
Marchant
Marino
Massie
McCarthy
McCaul
McClintock
McHenry
McKinley
McMorris Rodgers
McSally
Meadows
Meehan
Messer
Mica
Miller (FL)
Miller (MI)
Moolenaar
Mooney (WV)
Mullin
Mulvaney
Murphy (PA)
Neugebauer
Newhouse
Noem
Nugent
Nunes
Olson
Palazzo
Palmer
Paulsen
Pearce
Perry
Pittenger
Pitts
Poe (TX)
Poliquin
Pompeo
Price, Tom
Ratcliffe
Reed
Reichert
Renacci
Ribble
Rice (SC)
Rigell
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rokita
Rooney (FL)
Roskam
Ross
Rothfus
Rouzer
Royce
Russell
Salmon
Sanford
Scalise
Schweikert
Scott, Austin
Sensenbrenner
Sessions
Shimkus
Shuster