SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

WASHINGTON OFFICE:
2252 Rayburn Office Building
Washington, DC 20515
(202) 225-3816

DISTRICT OFFICE:
1919 Smith Street, Suite 1180
Houston, TX 77002
(713) 655-0050

ACRES HOME OFFICE:
6719 West Montgomery, Suite 204
Houston, TX 77091
(713) 691-4882

HEIGHTS OFFICE:
420 West 19th Street
Houston, TX 77008
(713) 861-4070

FIFTH WARD OFFICE:
4300 Lyons Ave., Suite 200
Houston, TX 77020
(713) 227-7740

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEES:
JUDICIARY
SUBCOMMITTEES:
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Crime, Terrorism, Homeland Security and Investigations

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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

MARK UP STATEMENT
IN OPPOSITION TO
H.R. 725
"INNOCENT PARTY PROTECTION ACT OF 2017"

FEBRUARY 2, 2017

- I thank the gentleman for yielding and rise in strong opposition to H.R. 725, the "Innocent Party Protection Act of 2017."

- H.R. 725 is the latest Republican effort to deny plaintiffs access to the forum of their choice and, possibly, to their day in court.

- H.R. 725 seeks to overturn longstanding precedent in favor of a vague and unnecessary test that forces state cases into federal

court when they do not belong there, and gives large corporate defendants an unfair advantage to cherry-pick 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. 725 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. 725 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:

1) There is not a "plausible" claim for relief against each nondiverse defendant;

2) 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;

3) There is federal or state law that clearly bars claims against the nondiverse defendants; or

4) 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 from the case, 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. 725 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 the 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. 725, the dubiously named, "Innocent Party Protection Act of 2017."

- Thank you, I yield back my time.