

**Statement of the Honorable John Conyers, Jr. for the Markup of  
H.R. 725, the “Innocent Party Protection Act of 2017”**

**Thursday, February 2, 2017 at 10:00 a.m.  
2141 Rayburn House Office Building**

H.R. 725, the so-called “Innocent Party Protection Act of 2017,” is not really about protecting innocent parties. 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.

**To begin with, this bill 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.

If the plaintiff adds an in-state defendant to the case solely 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 non-diverse defendant. The *defendant* must show that there was *no possibility of recovery or no reasonable basis* for adding the non-diverse defendant.

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.

**H.R. 725, however, would replace this time-honored standard with an ambiguous one that would substantially increase the costs and burdens of litigation on plaintiffs and federal courts.**

The measure would require a court to deny a remand motion unless the court finds --

- that it is “plausible to conclude that applicable State law would impose liability” on an in-state defendant,
- that the plaintiff had a “good faith intention to prosecute the action against each” in-state defendant or to seek a joint judgment, and
- that there was no “actual fraud in the pleading of jurisdictional facts.”

Additionally, 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 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. 725 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 very ambiguous and will undoubtedly spawn substantial litigation over their meaning and application, further delaying decisions.

Additionally, these standards would require a court to engage in a mini-trial during the early procedural stage of a case, without any opportunity for the full development of evidence, thereby sharply increasing the burdens and costs of litigation for plaintiffs.

**Finally, this bill raises fundamental federalism concerns.**

Matters of state law should be decided by state courts, subject to certain exceptions as set forth in the Constitution.

H.R. 725 ignores this key federalism principle. 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 state law.

Simply put, H.R. 725 violates state sovereignty and our fundamental constitutional structure.

For these reasons, I urge my colleagues to join me in opposing this unnecessary and flawed legislation.