

February 23, 2016

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

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

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