INNOCENT PARTY PROTECTION ACT

SPEECH OF

HON. SHEILA JACKSON LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 2017

The House in Committee of the Whole House on the state of the Union had under consideration the bill (H.R. 725) to amend title 28, United States Code, to prevent fraudulent joinder:

Ms. JACKSON LEE. Mr. chair, I 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.

This bill would upend long established law in the area of federal court jurisicliction, specifically addressing the supposed overuse of fraudulent joinder to defeat complete diversity jurisdiction in a case.

It was previously known as the Fraudulent Joinder Prevention Act; however, this bill is not about fraud.

It is a corporate forum-shopping bill that would allow corporations to move cases properly brought in state courts into federal courts.

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.

Corporate defendants support this bill because they prefer to litigate in federal court, which usually results in less diverse jurors, more expensive proceedings, longer wait times for trials, and stricter limits on discovery.

For plaintiffs, who are supposed to be able to choose their forums, this legislation would result in additional time, expense, and inconvenience for the plaintiff and witnesses.

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.

There is no evidence that federal courts are not already properly handling allegations of so-called fraudulent joinder after removal under current laws.

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.

The bill would result in needless micromanagement of federal courts and a waste 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.

While it purports to fix a non-existent problem, it creates problems itself.

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 the underlying legislation, H.R. 725, the dubiously named, Innocent Party Protection Act of 2017.

HAPPY 100TH BIRTHDAY TO LTC JAMES MEGELLAS, U.S. ARMY (RET.)

HON. KENNY MARCHANT

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, March 10, 2017

Mr. MARCHANT. Mr. Speaker, I rise today with the great honor and privilege of recognizing a true American Hero, Lieutenant Colonel (LTC) James Megellas of Colleyville, Texas, in celebration of his 100th birthday.

Lieutenant Colonel James Megellas received his military commission on May 28th, 1942 as he walked the stage at his graduation from Ripon College in Ripon, Wisconsin. Simultaneously receiving his diploma and military orders, James became a newly commissioned officer in the United States Army. Since receiving his commission on that fateful day, LTC Megellas' incredible courage and selfless dedication to his country enabled him to become the most decorated officer in the history of the 82nd Airborne Division. His exemplary service to our nation and outstanding bravery during the Second World War helped to liberate a continent and defend the freedom of millions of civilians in the European Theater.

LTC Megellas reported for duty at Fort Knox, Kentucky on June 8, 1942 and began preparing to enter the war. Soon thereafter, he was selected to become a paratrooper within the 82nd Airborne Division where he served for the duration of the war on the front lines of the European Theater. His experiences during the war brought him to Anzio, Italy where he fought in the Battle of Anzio; The Netherlands for Operation Market Garden and the Battle of Nijmegen where he crossed the Waal River; and in Belgium where he fought in the Battle of the Bulge.

For his service during Operation Market Garden, LTC Megellas was the first American awarded the Military Order of Wilhelm, the oldest and highest honor awarded by the Kingdom of the Netherlands. Furthermore, LTC Megellas was awarded the Belgium Fouragere, by the Kingdom of Belgium for his bravery in defense of the Kingdom.

In addition to his foreign honors, LTC Megellas has received over 25 awards for service and valor while serving in the U.S. Army. These honors include: the Distinguished Service Cross, two Silver Stars, two Bronze Stars, two Purple Hearts, the Presidential Unit Citation with Oak Leaf Cluster, and six Campaign Stars, Combat Infantryman Badge, and Master Parachutist Badge to name but a few of his awards.

Selfless action in the face of unspeakable atrocity is one of the defining characteristics of the Greatest Generation. LTC Megellas and his outstanding service stands as a shining example of how truly great this generation is. This example has set a high bar for which we as patriots and defenders of freedom should strive to achieve.

After leaving active duty in 1946, LTC Megellas continued to serve in the U.S. Army Reserves for an additional 16 years where he reached the rank of Lieutenant Colonel. Following his retirement from the Army Reserves, in November 1961, LTC Megellas was appointed by President John F. Kennedy to serve as Mission Director within the U.S. Agency for International Development (USAID) where he served in Yemen, Panama, Columbia, and Vietnam.

LTC Megellas remains active in supporting veterans and service members across the globe. He regularly travels to speak with veterans, historians, and school children to share his experiences and to remind us all of the tremendous accomplishments of the Greatest Generation.

Mr. Speaker, it is my great honor to stand before you today to wish this living legend a very happy birthday. I ask my distinguished colleagues to join me in wishing Lieutenant Colonel James Megellas a happy 100th birthday.

IN CELEBRATION OF MRS. EMMA BROWN'S 100TH BIRTHDAY

HON. SANFORD D. BISHOP, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 10, 2017

Mr. BISHOP of Georgia. Mr. Speaker, I rise today to extend my sincerest congratulations and Happy Birthday wishes to Mrs. Emma Brown, who is celebrating her 100th birthday on Sunday, March 12, 2017. On this day, the Greater Beallwood Baptist Church in Columbus, Georgia will honor and celebrate Mrs. Brown during the Sunday Worship Experience.

In 1917, the United States entered World War I, women did not yet have the right to vote, and segregation was rampant in the South. This is the year Mrs. Emma Brown was born. Indeed, Mrs. Brown has seen much in her lifetime and through it all, she has relied on her faith in the Lord.

Mrs. Brown and her family have been longtime fixtures at Greater Beallwood Baptist Church. Mrs. Brown's mother, Lillie McGruder Morris, was very active within the church as a deaconess and choir member. Her engagement laid the foundation for the family's commitment to the church.

After Mrs. Brown accepted Jesus Christ as her Lord and Savior in 1942, she immediately became a servant of the church. She served as an usher for more than 50 years. She held the title of Church Mother for several years. In 2004, she was commended for her decades of service with a meritorious award from the Georgia Missionary Convention. She also received an achievement award from the Mount Calvary Women's Mission Christian Education Auxiliary in recognition of her lifetime commitment to modeling Christian values.

In 1947, Mrs. Brown and her late husband Sgt. Lonnie Brown purchased their East Wynnton home in Columbus, where she still resides. For many years, Mrs. Brown worked at Saint Francis Hospital and as a private duty nurse. In her retirement, she has enjoyed participating in the Victory Play Girls Bowling League.

In addition to serving her church, Mrs. Brown felt a great sense of duty to be involved in her local community. She worked diligently to protect, educate, and encourage the youth of Columbus, Georgia and organizations such as Carver Heights Against Drugs (CHAD) have honored Mrs. Brown for her years of devotion to this work.

George Washington Carver once said, ''How far you go in life depends on your being tender with the young, compassionate with the aged, sympathetic with the striving and tolerant of the weak and strong because someday in your life you will have been all of these.'' Mrs. Brown has advanced far in life because she never forgot these lessons and always kept God first.

Mr. Speaker, I ask my colleagues to join me in honoring an outstanding citizen and woman of faith, Mrs. Emma Brown, as she, her family, and the congregation of Greater Beallwood Baptist Church celebrate her 100th birthday.

HONORING MARJORIE J. McCONNELL

HON. LOIS FRANKEL

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 10, 2017

Ms. FRANKEL of Florida. Mr. Speaker, I rise today to celebrate Marjorie J. McConnell of Boca Raton, Florida who turns 100 years old today.

Marjorie J. McConnell was born just outside of St. Louis, Missouri on March 10, 1917 to Ethel Franklin and Benjamin Hughes Johnson. She was interested in art from an early age, and she obtained degrees in Art and Art Education at Washington University in St. Louis and later at Columbia Teacher's College in New York.

She dedicated herself to her students for over three decades in her career as an art teacher, which took her to Ossining, New York and Plainfield, New Jersey. Together with her husband, the late Robert K. McConnell, Jr., she raised a son and continued her creative pursuits through weaving, ceramics, and painting. Her work received recognition at art shows from New Jersey to Ohio. Marjorie has always been a staunch supporter of environmental initiatives and progressive causes and continues to create art in Boca Raton, Florida, where she resides today.

PERSONAL EXPLANATION

HON. DORIS O. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 10, 2017

Ms. MATSUI. Mr. Speaker, I was not present during evening votes on March 9, 2017. Had I been present, I would have voted YES on roll call votes 140, 141, 142, 143, 144, 145, 146, 147, 149, 150, and 151. I would have voted NO on roll call vote numbers 148 and 152.

HONORING THE LIFE AND SERVICE OF DEPUTY CURTIS ALLEN BARTLETT

HON. H. MORGAN GRIFFITH

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, March 10, 2017

Mr. GRIFFITH. Mr. Speaker, I submit these remarks in honor of the life and service of Carroll County Sheriff's Deputy Curtis Allen Bartlett, 32, who passed away while on duty in a tragic crash on March 9, 2017.

Deputy Bartlett was a graduate of Galax High School. From 2004 to 2007, he dutifully served as an infantry soldier with the U.S. Army. Deputy Bartlett spent time working in the private security field and graduated from the New River Criminal Justice Training Academy in 2013.

He joined the Carroll County Sheriff's Office in June of 2013 and since that time Deputy Bartlett was dedicated to serving the people of Carroll County. The Sheriff's Office will remember Deputy Bartlett for his commitment to public safety and said that his loss is being felt by everyone within his family at the Carroll County Sheriff's Office.

An accomplished public servant, Deputy Bartlett earned instructor certifications through the Federal Law Enforcement Training Centers (FLETC) for firearms, Taser, and fitness training. Furthermore, he was certified through the U.S. Department of Defense as a K9 handler.

Deputy Bartlett also achieved an FAA Airmen Certification as a successful pilot from the Federal Aviation Administration. He will be remembered for his dedication to health and fitness, as well as motivating others and promoting a healthy lifestyle as a CrossFit Level 1 Trainer.

I ask that you, and my fellow Members of Congress, join me in keeping his family and loved ones in your thoughts and prayers, including his parents, Sam and Linda Bartlett of Galax, and four siblings.

Deputy Bartlett dedicated himself to protecting the people of Southwest Virginia and I am honored to pay tribute to this great man.

PERSONAL EXPLANATION

HON. DONALD M. PAYNE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, March 10, 2017

Mr. PAYNE. Mr. Speaker, on March 8, 2017, I inadvertently recorded a vote of YEA