PUBLICCITIZEN

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March 9, 2017

U.S. House of Representatives
Washington, DC 20515

Re: Oppose the assault on civil justice

Dear Honorable House Members:

On behalf of Public Citizen, a non-profit membership organization with more than 400,000 members and supporters nationwide, we express extreme opposition the Innocent Party Protection Party Act of 2017 (H.R. 725) and the Lawsuit Abuse Reduction Act of 2017 (H.R. 720), bills expected to be voted on today and tomorrow. Seen separately, these bills attempt to make technical changes to the way that courts operate; taken together, they are a concerted effort chip away at Americans' ability to seek justice and, therefore, must be opposed.

Innocent Party Protection Party Act of 2017 (H.R. 725)

H.R. 725, the Innocent Party Protection Act (called the Fraudulent Joinder Protection Act in previous Congresses) is a supposed fix for an imagined problem. It 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 is to assist defendants in keeping cases in federal court after removal. The bill purports to achieve 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 instance, there is no evidence to support the assumption that the district courts are not denying motions to remand in appropriate cases. Congress has no basis to revise the courts' procedures when the current standards are not producing unjust results. The Committee 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 there are only the flimsiest of arguments in favor of changing it.

Lawsuit Abuse Reduction Act of 2017 (H.R. 720)

The proposed Rule 11 changes in H.R. 720 will make federal litigation more complicated, costly, and inaccessible to consumers and employees. We urge you to reject this legislation.

Currently, judges have discretion to impose sanctions on a lawyer or a party in litigation to deter sanctionable conduct in pleadings, motions, and other court papers. The so-called Lawsuit Abuse Reduction Act, or LARA, would revise Rule 11 of the Federal Rules of Civil Procedure to require sanctions, rather than leaving the decision whether to impose sanctions to the discretion of federal judges. This proposal would make litigation longer and more expensive.

The problems with this bill are not theoretical, but proven. In 1983, changes to Federal Rule 11 removed judicial discretion for issuing sanctions. Those changes were overturned a decade later, because the 1983 Rule caused a marked increase in business-to-business litigation and abusive Rule 11 motion practice by lawyers arguing more about sanctions than about the merits of the cases. Because 1983 changes proved to discourage lawyers from cooperating with each other, the changes prolonged litigation, rather than advancing the goal of coming to a just conclusion. We must not repeat this failed experiment.

Additionally, LARA would obstruct Americans' access to justice, especially in cases such as those alleging civil rights violations, as those types of cases can be based on novel legal theories. In those cases, LARA would chill the filing of meritorious suits, and justice for some will go unserved.

Not only are these three bills unnecessary intrusions into the province of the federal courts, they are part of a larger push to limit Americans' ability to seek justice in a court of law. Their innocent-sounding names aside, these bills pose a grave threat to our court system—the nation's stronghold for protecting our democracy. In the current political climate, where the justice system is the last line of defense for our nation's values, we urge you not to cede that ground.

Sincerely,

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