# *PROVIDENT SAVINGS LIFE ASSURANCE SOCIETY V. FORD*: 120 YEARS OF SHENANIGANS DESIGNED TO DESTROY DIVERSITY JURISDICTION

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## INTRODUCTION

It seems wrong that, with a mildly clever sham transaction, plaintiffs' lawyers may destroy one of the few grants of jurisdiction to U.S. District Courts authorized by the Constitution and enabled with the Judiciary Act of 1789.[1] Nevertheless, due to the lingering effects of a series of Supreme Court rulings, led by the 1885 decision in *P. / S / L. A. / S. F.*, that may be the law.[2] Those hopeful of avoiding federal court may undermine the venerated work of the First Congress by assigning rights before filing suit. With a few hundred dollars and about an hour of work, plaintiffs can force out-of-state defendants to litigate in potentially biased state courts at the time a federal forum may be most needed, when plaintiffs so strongly believe in the advantages of a state court forum that they are willing to transfer legal rights in a manner some would

for the manipulation of federal jurisdiction with inexpensive shenanigans. The mistakes of Congress are easy to spot. Congress prohibited the creation of diversity jurisdiction through sham transactions, but never enacted a statute prohibiting the destruction of diversity jurisdiction.[4] Even after a century of criticism from defendants and federal court judges for this oversight, there has been no legislative cure. There is little hope Congress will make changes any time soon.

The Supreme Court is also responsible for the current state of the law. Not only did the High Court fail to protect diversity jurisdiction from scheming manipulations when given the opportunities to do so, the Court did the exact opposite. With *P , / S / ,* and other cases in the mid 1880s, the Supreme Court instructed federal courts to ignore last minute transfers of rights across state lines, whether or not they were affected substantially or even solely to destroy diversity jurisdiction.[5] *P , / S /* s gave spurious plaintiffs the green light to destroy diversity jurisdiction at will.[6]

Since *P , / S / ,* became law in 1885, the High Court has weakened its holding but has never expressly overruled the decision. Instead, the Court has only made references to its ability and duty to protect its jurisdiction and implied the old rule is antiquated and