No. 11-1450

IN THE

Supreme Court of the United States

THE STANDARD FIRE INSURANCE COMPANY,

Petitioner,

v.

GREG KNOWLES, individually and as class representative on behalf of all similarly situated persons within the State of Arkansas,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICUS CURIAE* SUGGESTING REVERSAL

Quentin Riegel
NATIONAL ASSOCIATION OF MANUFACTURERS
733 10th Street, N.W.
Suite 700
Washington. DC 20001

Gregory G. Katsas
Kenneth J. Nunnenkamp
Jeffrey A. Mandell
Counsel of Record
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
jmandell@jonesday.com

OCTOBER 29, 2012

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

Page(s)

TABLE OF AUTHORITIES

STATUTES

TABLE OF AUTHORITIES

BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICUS CURIAE* SUGGESTING REVERSAL

INTEREST OF THE *AMICUS CURIAE*[1]

The National Association of Manufacturers (the "NAM") is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards.

The NAM frequently participates as *amicus curiae* in cases involving significant questions related to class actions, which are of substantial concern to the NAM's members. In the past decade, those cases have included the following before this Court: *Whirlpool Corp. v. Glazer*, No. 12-322 (amicus brief in support of petition for writ of certiorari); *Pella Corp. v. Saltzman*, No. 10-355 (amicus brief in support of petition for certiorari); *Dow Chemical Co. v. Tanoh*, No. 08-1589 (amicus brief in support of petition for certio-

---

[1] No counsel for any party has authored this brief in whole or in part, and no person or entity other than the NAM or its counsel has made a monetary contribution intended to fund the preparation or submission of this brief. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

rari); *Hopeman Bros., Inc. v. Acker*, No. 02-520 (amicus brief in support of petition for certiorari); *Dow Chemical Co. v. Stephenson*, No. 02-271 (amicus brief in support of petitioners); *Ford Motor Co. v. McCauley*, No. 01-896 (amicus brief in support of petitioners); *General Electric Capital Corp. v. Thiessen*, No. 01-881 (amicus brief in support of petition for certiorari).

Cases in state courts during the same period have included the following: *Weinstat v. Dentsply International, Inc.* (amicus letter to California Supreme Court encouraging it to grant review); *Henry v. Dow Chemical Co.* (amicus briefs encouraging Michigan Supreme Court to grant review and supporting defendant-appellant); *Safale v. Jacuzzi Whirlpool Bath, Inc.* (amicus letter encouraging California Court of Appeals to publish its opinion); *Engle v. Liggett Group, Inc.* (amicus briefs urging Florida Supreme Court to reverse class certification and, when it did not do so, in support of petition for rehearing); *Coker v. DaimlerChrysler Corp.* (amicus brief urging North Carolina Supreme Court to affirm order dismissing amended class action complaint); *Aspinall v. Philip Morris Cos., Inc.* (amicus brief urging Massachusetts Supreme Judicial Court to affirm order decertifying class); *Pitts v. American Security Insurance Co.* (amicus brief urging North Carolina Supreme Court to reverse order certifying class).

STATEMENT

1. The parties dispute whether this lawsuit should proceed in state or federal court. Respondent filed a breach-of-contract suit against Petitioner on behalf of himself and a class of unnamed, similarly situated Arkansans. *See* Pet. App. 56, 71–73. Petitioner removed that suit from the Circuit Court of Miller County, Arkansas, to the United States District Court for the Western District of Arkansas. *See id.* at 36. The district court remanded the case to state court on Respondent's motion, and the Eighth Circuit declined to provide interlocutory review. *Knowles v. Standard Fire Ins. Co.*, No. 4:11-cv-04044, 2011 WL 6013024, at *1, *6 (W.D. Ark. Dec. 2, 2011) (Pet. App. 2, 15), *pet. for interlocutory appeal denied*, No. 11-8030, 2012 WL 3828891, at *1 (8th Cir. Jan. 4, 2012) (Pet. App. 1), *reh'g denied*, 2012 WL 3828845, at *1 (8th Cir. Mar. 1, 2012) (Pet. App. 16). The district court reasoned that Respondent, by stipulating that he, as putative class representative, would not "seek damages for the class … in excess of $5,000,000 in the aggregate (inclusive of costs and attorneys' fees)," Pet. App. 75, had "shown to a legal certainty that the aggregate damages claimed on behalf of the putative class shall in good faith not exceed the state [*sic*] court's jurisdictional limitation of $5,000,000." *Knowles*, 2011 WL 6013024, at *6 (Pet. App. 15).

The parties, like the district court, assume that the scope of a federal court's removal jurisdiction over a class-action suit is no broader than its original jurisdiction over similar suits. *See, e.g.*, Pet. for a Writ of Cert. at 3; Resp. Br. in Opp'n at 3; Br. for Pet'r at 19–20. That assumption is erroneous and conflicts with the plain text of the governing statute, the Class

Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.), which expressly allows class-action defendants to remove various suits to federal court even if the plaintiffs could not have filed those same suits in federal court initially.

2. In adopting CAFA, Congress found that "[o]ver the past decade, there have been abuses of the class action device" including instances of "State and local courts" "keeping cases of national importance out of Federal court" and "making judgments that impose their view of the law on other States and bind the rights of the residents of those States." Pub. L. No. 109-2, § 2(a)(2), (a)(4), 119 Stat. 4, 4–5 (codified at 28 U.S.C. § 1711 note). CAFA addresses these abuses by loosening the requirements for federal courts to exercise jurisdiction over class actions. An overview of the statutory architecture shows how CAFA expands federal jurisdiction over class actions.

a. Section 4 of CAFA, codified at 28 U.S.C. § 1332(d), amends the diversity jurisdiction statute to expand the original jurisdiction of federal courts over class-action suits.

(i). A "class action," for CAFA purposes, is "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This broad definition includes essentially any civil action filed by an individual plaintiff or a small group of plaintiffs in a representative capacity on behalf of a larger group of plaintiff class members.

(ii). The operative provision of Section 4 authorizes federal courts to exercise "original jurisdiction" over "any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which" the parties are minimally diverse. *Id.* § 1332(d)(2). The parties regard this provision of CAFA as the one controlling this case.

(iii). Section 4 also contains several reticulated exceptions to CAFA's expansion of original jurisdiction. Some of these exceptions limit original jurisdiction over class actions involving certain subject matter; others limit original jurisdiction based on the characteristics of the parties; and still others grant the district court discretion to decline to exercise original jurisdiction under CAFA based on the characteristics of the parties and the court's consideration of the subject matter and other factors. Under these exceptions:

- "[a] district court shall decline to exercise [original] jurisdiction [] over" some class actions in which a super-majority of the class members and at least one defendant are citizens of the state in which the action was filed, *id.* § 1332(d)(4);
- the federal courts' original jurisdiction does not apply to "any class action in which [] the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief," *id.* § 1332(d)(5)(A);
- the federal courts' original jurisdiction does not apply to "any class action in which [] the

number of members of all proposed plaintiff classes in the aggregate is less than 100," *id.* § 1332(d)(5)(B); and

- the federal courts "shall not" exercise original jurisdiction over some class actions "solely involv[ing]" securities or corporate governance issues, *id.* § 1332(d)(9).

Additionally, Section 4 of CAFA provides that a federal district court "may, in the interests of justice and looking at the totality of the circumstances, decline to exercise" original jurisdiction "over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of" several enumerated factors. *Id.* § 1332(d)(3).

Neither party asserts that any of § 1332(d)'s exceptions applies to this case.

(iv). The remaining provisions of Section 4:

- require that "the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs," *id.* § 1332(d)(6);
- fix the point in time at which the "[c]itizenship of the members of the proposed plaintiff classes shall be determined," *id.* § 1332(d)(7);
- establish that CAFA "appl[ies] to any class action before or after the entry of a class certification order," *id.* § 1332(d)(8);

- mandate that "an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized," *id.* § 1332(d)(10); and
- address federal jurisdiction over "mass action[s]," *id.* § 1332(d)(11).

(v). The parties here dispute Respondent's use of a stipulation as a prophylactic effort to ensure that § 1332(d)(2)'s amount-in-controversy threshold for original jurisdiction cannot be deemed satisfied.

b. Section 5 of CAFA, codified at 28 U.S.C. § 1453, creates a stand-alone removal provision for class actions.[2]

(i). That provision applies to any class action within "the meaning[] given such term[] under section 1332(d)(1)." *Id.* § 1453(a). It authorizes that such class actions

> may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section 1446(c)(1) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

---

[2] The general federal removal statute expressly contemplates the availability of removal jurisdiction under other, more specific provisions. *See* 28 U.S.C. § 1441(a) (governing removal jurisdiction "[e]xcept as otherwise expressly provided by Act of Congress").

Id. § 1453(b). Section 1446 delineates the procedures a defendant must follow to accomplish removal; it does not limit the types of cases subject to removal jurisdiction.

(ii). Section 5 of CAFA also authorizes and provides a procedure for discretionary interlocutory appeal of a district court's order remanding a class action removed to state court. *See id.* § 1453(c).

(iii). Finally, Section 5 excepts from removal jurisdiction under CAFA some class actions "solely involv[ing]" securities or corporate governance issues. *Id.* § 1453(d). The exceptions listed in § 1453(d) are identical to those set forth in § 1332(d)(9). None of the other reticulated exceptions of § 1332(d) appears in or is referenced by § 1453.

(iv). Taken as a whole, § 1453 authorizes broad removal of class actions to federal court.

SUMMARY OF ARGUMENT

CAFA's plain text establishes that Petitioner was entitled to remove this lawsuit to federal court and that the district court erred in ordering remand.

CAFA codifies two distinct expansions of federal jurisdiction over class actions. Section 4 enlarges the federal judiciary's original jurisdiction to include most class-action suits where the putative class includes at least 100 claimants and the aggregate amount in controversy exceeds $5,000,000, as long as the parties are minimally diverse. *See* 28 U.S.C. § 1332(d). Section 5 creates an independent basis of removal for most class-action suits filed in state courts. *See id.* § 1453. These provisions work in parallel, but they are not identical in scope. The difference between them controls this case.

CAFA's provision authorizing removal jurisdiction (Section 5) has a broader scope than its provision enlarging original jurisdiction (Section 4). Congress created this asymmetry by establishing prerequisites to a federal court's exercise of original jurisdiction—including the requirements that a class action must involve an aggregate of 100 claimants and more than $5,000,000—but omitting those requirements from the removal provision. *See id.* § 1332(d)(2), (d)(5)(B); *id.* § 1453(a)–(b). It follows that a class action need not have an aggregate of 100 claimants or $5,000,000 in controversy for a federal court to exercise removal jurisdiction over that suit. As long as a class action satisfies the bedrock constitutional requirements for federal jurisdiction, *see* U.S. CONST., art. III, § 2, cl. 1, and does not fall within any enumerated exception to CAFA's removal provision, *see* 28 U.S.C. § 1453(d), a federal court has subject-matter jurisdiction over the

case if it is removed in accordance with the congressionally prescribed procedures.

Nonetheless, as occurred in this case, *see Knowles*, 2011 WL 6013024, at *2 (Pet. App. 5), lower courts have consistently *assumed* that the criteria for original jurisdiction under § 1332(d) should be transposed onto discussions of removal jurisdiction under § 1453. They have done so without explaining the basis for that transposition or acknowledging that their actions are contrary to CAFA's text. The National Association of Manufacturers has not been able to locate even one instance in which a federal appellate court has offered a reasoned explanation for abandoning the statutory text to read § 1332(d)'s amount-in-controversy or numerosity requirements into § 1453. As suggested by the courts' apparent silence, there is no basis for transposing the requirements set out in § 1332(d)(2) and (d)(5) onto § 1453.

The best reading of § 1453 is as a broad authorization of federal removal jurisdiction over class-action suits in which the parties are minimally diverse. This is such a suit. It follows that removal was proper and the district court erred in ordering remand.

ARGUMENT

CONGRESS AUTHORIZED DEFENDANTS TO REMOVE CLASS-ACTION SUITS TO FEDERAL COURT WITHOUT REGARD TO THE AMOUNT IN CONTROVERSY.

A. There Is No Textual Basis for Reading CAFA To Limit Removal Jurisdiction in the Same Ways that It Limits Original Jurisdiction.

The court below, like most other federal courts considering a motion to remand a class action removed under CAFA, assumed that the prerequisites CAFA sets out for original jurisdiction apply with equal force to removal jurisdiction. *See Knowles*, 2011 WL 6013024, at *2 (Pet. App. 5).[3] There is no basis for that assumption, as prominent commentators have noted.[4]

---

[3] *See also, e.g.*, *Frederick v. Hartford Underwriters Ins. Co.*, 683 F.3d 1242, 1245 (10th Cir. 2012); *Hargis v. Access Capital Funding, LLC*, 674 F.3d 783, 789 (8th Cir. 2012); *Keeling v. Esurance Ins. Co.*, 660 F.3d 273, 274 (7th Cir. 2011); *Lewis v. Verizon Commc'ns, Inc.*, 627 F.3d 395, 396 (9th Cir. 2010); *Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co.*, 585 F.3d 33, 39 (1st Cir. 2009); *Strawn v. AT&T Mobility LLC*, 530 F.3d 293, 296–97 (4th Cir. 2008); *Smith v. Nationwide Prop. & Cas. Ins. Co.*, 505 F.3d 401, 404 (6th Cir. 2007); *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 804, 810 (5th Cir. 2007); *Blockbuster, Inc. v. Galeno*, 472 F.3d 53, 56–57 (2d Cir. 2006); *Morgan v. Gay*, 471 F.3d 469, 473 (3d Cir. 2006); *Miedema v. Maytag Corp.*, 450 F.3d 1322, 1327 (11th Cir. 2006).

[4] *See* 14B CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 3724 (4th ed. 2009) ("Section 1453 does not by its terms limit the class actions that benefit from [liberalized removal requirements] to the kinds of class actions as to which CAFA authorized [original] federal jurisdiction."); Adam N. Steinman, *Sausage-Making, Pigs' Ears, and Congressional*

1. As enacted by Section 5 of CAFA, the operative provision of 28 U.S.C. § 1453 contains four elements:

- first, it authorizes removal of "[a] class action";
- second, it instructs that removal should be accomplished in accord with the procedural requirements of section 1446, except that the case need not be removed within a year of its initial filing;
- third, it states that removal authority under CAFA is available even when a defendant in the suit is a citizen of the state where the case was filed; and
- fourth, it allows that removal under CAFA may be accomplished "by any defendant without the consent of all defendants."

28 U.S.C. § 1453(b). Section 5 of CAFA incorporates by reference the definition of a "class action" in Section 4 of CAFA, *see id.* § 1453(a), but contains no other reference to the extensive CAFA statutory scheme for original jurisdiction created by Section 4 and codified in 28 U.S.C. § 1332(d).

The absence of cross-references to the substantive provisions of § 1332(d) highlights what does not appear in § 1453. Section 1453 contains no mention

---

Expansions of Federal Jurisdiction: Exxon Mobil v. Allapattah *and Its Lessons for the Class Action Fairness Act*, 81 WASH. L. REV. 279, 292 (2006) ("[T]he plain language of CAFA's removal provision would create an independent basis for removing any class action to federal court (except for certain securities and corporate governance class actions).").

of the requirements that a case involve an aggregate amount in controversy of more than $5,000,000 (§ 1332(d)(2)) and 100 or more putative class members (§ 1332(d)(5)(B)). Nor does it limit removal to those class actions within the original jurisdiction of the federal courts, which would necessarily invoke the restrictions of § 1332(d)(2)–(10). When Congress wishes to limit removal jurisdiction to cases within original federal jurisdiction, it does so expressly. *See, e.g.*, *id.* § 1441(a) (specifying that removal jurisdiction applies only to a "civil action brought in a State court of which the district courts of the United States have original jurisdiction"). The absence of such an express limitation in § 1453 indicates that Congress did not wish to limit removal under CAFA to those cases within the federal courts' original jurisdiction.

2. The text of § 1453's other provisions similarly illustrates that Congress did not envision importing the substantive requirements of § 1332(d) into the removal provision. While § 1453(a) incorporates the definition of "class action" from § 1332(d)(1), there is no reference in § 1453 to any substantive provision of § 1332(d). Section 1453(d), which excepts certain disputes from removal, does not reference any of the reticulated exceptions from § 1332(d), but instead lists the *identical* categories of cases that § 1332(d)(9) excludes from original jurisdiction under CAFA. *Compare id.* § 1332(d)(9)(A)–(C) *with* § 1453(d)(1)–(3).

The absence from § 1453 of any reference to the substantive provisions of § 1332(d) informs interpretation of the removal provision, because "'the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Roberts v. Sea-Land Servs., Inc.*, 132 S. Ct. 1350,

1357 (2012) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989)). This Court has been "reluctant to tamper" with complex statutory schemes and instead has counseled that the detailed nature of such statutes "provides strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (emphasis in original; internal quotation marks omitted). Here, Congress's repetition in § 1453(d) of the exceptions contained in § 1332(d)(9)—contrasted to its omission of any repetition of or reference to the other substantive provisions of § 1332(d)—constitutes "strong evidence that Congress did *not* intend" to impose upon the exercise of CAFA's removal jurisdiction additional requirements "that it simply forgot to incorporate expressly." *Knudson*, 534 U.S. at 209.

Taking the opposite approach and importing wholesale the substantive requirements of § 1332(d) into § 1453—as many federal courts appear to have done *sub silentio*—would render § 1453(d) a pointless redundancy. Implicitly incorporating the full text of § 1332(d) into § 1453(b) means that the limited exclusions from removal jurisdiction contained in § 1453(d) would appear in § 1453 twice—once in § 1453(b) as a result of importing § 1332(d)(9) and again, identically, in § 1453(d); the other exceptions to original jurisdiction contained in § 1332(d) would appear only once, because Congress chose not to establish any of those as exceptions to removal jurisdiction under § 1453. Reading § 1453(b) in a way that renders § 1453(d) redundant contravenes "'a cardinal

principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)). *See also, e.g.*, *United States v. Menasche*, 348 U.S. 528, 538–39 (1955) (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883)) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'").

3. While this Court has not previously had occasion to construe § 1453, precedent counsels that CAFA be read in accordance with its plain language. Less than two weeks after CAFA became law, in *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546 (2005), the Court considered the scope of the federal supplemental jurisdiction statute, 28 U.S.C. § 1367. The Court instructed that federal courts "must not give jurisdictional statutes a more expansive interpretation than their text warrants." *Allapattah*, 545 U.S. at 558. But, at the same time, the Court cautioned, "it is just as important not to adopt an artificial construction that is narrower than what the text provides." *Id.*

Allapattah underscores that jurisdictional statutes get no special treatment under the rules of statutory construction and should be construed in accordance with the Court's consistent guidance that "[t]he plain meaning of legislation should be conclusive, except in the 'rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S.

564, 571 (1982)); *see also, e.g.*, *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)) ("The first step [in statutory interpretation] 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.' The inquiry ceases 'if the statutory language is unambiguous and the statutory scheme is coherent and consistent.'" (internal quotation marks omitted); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.").

The text of § 1453 authorizes broad removal jurisdiction, and there is no reason for federal courts "to adopt an artificial construction that is narrower than what the text provides." *Allapattah*, 545 U.S. at 558.

4. In authorizing the removal of cases not subject to the district courts' original jurisdiction, CAFA is consistent with several other federal removal statutes. Though the general removal statute applies only to a "civil action brought in a State court of which the district courts of the United States have original jurisdiction," 28 U.S.C. § 1441(a), several other removal statutes have broader application. Congress has enacted several specific removal provisions to supplement the general removal statute, and a number of them authorize removal to federal court of cases that could not have been filed there in the first instance. Interpreting § 1453 by its plain text is harmonious with these other specific removal provisions.

For example, Congress has provided a broad right of removal in suits against federal officers for actions taken under color of their office. *See id.* § 1442. The right of removal under that provision is "absolute" and may be exercised "regardless of whether the suit could originally have been brought in a federal court." *Willingham v. Morgan*, 395 U.S. 402, 406 (1969); *see also, e.g.*, *Am. Policyholders Ins. Co. v. Nyacol Prods., Inc.*, 989 F.2d 1256, 1259 (1st Cir. 1993) (§ 1442 "is designed to allow federal officers to remove actions to federal court that would otherwise be unremovable"); 14C CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 3726 (4th ed. 2009) ("[T]he special right of removal conferred on federal officers may be exercised even if the plaintiff could not have brought the action initially in a federal court.").

Similarly, under 28 U.S.C. § 1442a, which provides a parallel right of removal for members of the United States armed forces, "a district court has jurisdiction to hear an action removed … even if the initial action could not have been commenced by the plaintiff in a federal forum." *Mir v. Fosburg*, 646 F.3d 342, 344 (9th Cir. 1980). Likewise, 28 U.S.C. § 1443 authorizes removal to federal court of state civil or criminal proceedings that would deny the defendant civil rights guaranteed by law. *See, e.g.*, *Georgia v. Rachel*, 384 U.S. 780, 804–05 (1966) (holding that state trespass prosecution arising from activities allegedly protected by Civil Rights Act of 1964 could be removed to federal court under § 1443). So, too, 28 U.S.C. § 1444, allowing the United States to remove quiet title actions, "'confers a substantive right to remove, independent of any other jurisdictional limitations.'" *Hussain v. Boston Old Colony Ins. Co.*, 311

F.3d 623, 629 (5th Cir. 2002) (quoting *City of Miami Bch. v. Smith*, 551 F.2d 1370, 1373–74 n.5 (5th Cir. 1977)); *see also, e.g.*, 14C CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 3728 (4th ed. 2009) ("Unlike the practice under the general removal statute, removal under Section 1444 does not depend on a showing that the state court action originally could have been brought in a federal court.").

Section 1453's broad authorization of removal, including for class actions that the plaintiffs could not have filed in federal court initially, aligns with other stand-alone removal provisions that authorize removal of cases beyond the reach of the general removal statute and not subject to the district courts' original jurisdiction.

B. Objections to the Plain-Text Reading of CAFA Are Unavailing.

1. References to removal in the substantive provisions of § 1332(d) do not limit § 1453's breadth. While § 1453 contains no reference to the substantive provisions of § 1332(d), two of those provisions do mention removal. Those references, however, do not limit the scope of § 1453.

The first reference appears in § 1332(d)(10), which instructs courts on how to consider the citizenship of unincorporated associations for purposes of original jurisdiction under § 1332(d) and removal jurisdiction under § 1453. *See* 28 U.S.C. § 1332(d)(10) ("For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized."). This provision relates only to ensuring that

minimal diversity is satisfied for the exercise of either original jurisdiction or removal jurisdiction. There is no reason to read this mention of § 1453 in a focused, definitional provision as imposing § 1332(d)'s limits on original jurisdiction wholesale upon § 1453's authorization of removal jurisdiction.

The second reference appears in § 1332(d)(11), which extends federal jurisdiction under CAFA to "mass action[s]." *Id.* § 1332(d)(11)(A). Mass actions are distinct from class actions in that they do not proceed in a representative capacity; instead, they are cases "in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the grounds that the plaintiffs' claims involve common questions of law or fact." *Id.* § 1332(d)(11)(B)(i). Section 1332(d)(11)(A) states that, "[f]or purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs."

Section 1332(d)(11)(A) complements § 1453. It provides that a mass action satisfying the substantive requirements of § 1332(d)(2)–(10) "shall be deemed to be a class action" that is therefore "removable" under § 1453. In the absence of § 1332(d)(11), mass actions would not be removable under CAFA, because § 1453 makes no mention of mass actions. But the fact that Congress decreed that *mass* actions must satisfy § 1332(d)(2)–(10), as well as the requirements of § 1332(d)(11), to be eligible for removal under § 1453 in no way implies that *class* actions must do the same. In fact, the express requirement that mass actions meet the strictures of § 1332(d)(2)–(10) highlights the absence

of any parallel provision limiting removal of class actions under § 1453.

2. Constitutional avoidance considerations provide no reason for extending all of the § 1332(d) limits into § 1453. While § 1453 authorizes federal courts to exercise removal jurisdiction over class-action suits beyond the reach of their original jurisdiction, "Congress may not expand the jurisdiction of the federal courts beyond the bounds established by the Constitution," *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 491 (1983). Article III's fundamental limits on federal jurisdiction still apply. *See* U.S. CONST., art. III, § 2, cl. 1.

Under Article III's Diversity Clause, those fundamental limits require only minimal diversity. This Court has long held that the "complete diversity requirement is based on the diversity statute, not Article III of the Constitution," *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 829 n.1 (1989), and that "Article III poses no obstacle to the legislative extension of federal jurisdiction, founded on diversity, so long as any two adverse parties are not co-citizens," *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 531 (1967). Moreover, amount-in-controversy requirements for diversity jurisdiction have no constitutional roots; they are entirely statutory creations. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514–15 (2006) (noting that Congress "has made an amount-in-controversy threshold an ingredient of subject-matter jurisdiction in delineating diversity-of-citizenship jurisdiction"); *Allapattah*, 545 U.S. at 552; *Tashire*, 386 U.S. at 531.

Given these constitutional considerations, a requirement of minimal diversity should arguably be

read into § 1453 under the canon of constitutional avoidance. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 787 (2008) (quoting *INS v. St. Cyr*, 533 U.S. 289, 299–300 (2001)) ("'We are obligated to construe the statute to avoid constitutional problems' if it is 'fairly possible' to do so.").

Avoidance considerations, however, do not provide license to rewrite *other* parts of CAFA where no potential constitutional concern exists. Other than a requirement of minimal diversity, therefore, there is no avoidance-based justification for imposing upon § 1453 the substantive requirements of § 1332(d), including either the amount-in-controversy requirement or the numerosity requirement.[5]

3. Reading CAFA's removal provision according to its terms does not produce absurd results. "It is well established that 'when the statute's language is plain, the sole function of the court—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.'" *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*,

---

[5] If engrafting even a minimal-diversity requirement onto § 1453 were deemed inappropriate, despite avoidance considerations, that would hardly suggest that numerous additional provisions from § 1332(d) should be engrafted onto § 1453. To the contrary, this conclusion would simply reflect a judgment that § 1453 must be construed *in accordance with* its plain language and that even avoidance considerations would not justify deviating from that plain language. In that case, § 1453 would be unconstitutional as applied to the narrow category of cases where even minimal diversity was lacking, but otherwise enforceable according to its terms.

530 U.S. 1, 6, (2000)); *see also, e.g.*, *Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 470 (1989) (Kennedy, J., concurring) ("Where the language of a statute is clear in its application, the normal rule is that we are bound by it. … Where the plain language of the statute would lead to patently absurd consequences that Congress could not *possibly* have intended, we need not apply the language in such a fashion." (emphasis in original; internal quotation marks and citations omitted).

There is nothing inherently anomalous about CAFA extending removal jurisdiction to cases not subject to original jurisdiction. That merely makes some class actions triable in federal court at the sole option of the defendant. As explained above, several removal provisions reflect a policy of allowing only defendants to choose a federal forum for certain litigation.

Congress had particularly good reasons for making such a choice as to class actions. In crafting CAFA, Congress reacted to "abuses of the class action device," Pub. L. No. 109-2, § 2(a)(2), 119 Stat. 4, 4 (codified at 28 U.S.C. § 1711 note), and "sought to check what it considered to be the overreadiness of some state courts to certify class actions," *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1473 (2010) (Ginsburg, J., dissenting). It is neither surprising nor inexplicable that, in responding to widespread, systemic abuses that distorted the class action device in plaintiffs' favor, Congress chose to give defendants greater recourse than plaintiffs to the neutrality of a federal forum. Congress reasonably addressed complaints that some state courts treat class action defendants unfairly by

authorizing any defendant to remove any class action within the scope of Article III to federal court.

Congress's chosen solution may not be the only conceivable policy solution to this problem, but it is not so unreasonable as to allow the federal courts to override clear statutory text.

C. CAFA Authorizes Removal in this Case, and the District Court Erred by Remanding this Case to State Court.

Because § 1453 authorizes a defendant to remove a class action from state court to federal court without regard to § 1332(d)'s requirements for original jurisdiction, the district court erred in remanding this case to state court. Petitioner was entitled to remove this suit to federal court. Petitioner and Respondent are citizens of different States, thereby satisfying minimal diversity. *See* Pet. App. 58 (Compl. ¶¶ 6–7). Moreover, no amount-in-controversy requirement applies to a case removed under § 1453. Thus, Respondent's stipulation has no role to play in the jurisdictional analysis.

The district court erred by conflating removal jurisdiction under § 1453 with original jurisdiction under §1332(d). In setting forth the requirements for federal jurisdiction, the district court looked to § 1332(d)(2) and (d)(6) without ever recognizing that § 1453 does not incorporate either subsection:

> CAFA operates to grant federal district courts original jurisdiction over class actions where there is diversity of citizenship between the plaintiff and defendant and when "the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs."

> 28 U.S.C. § 1332(d)(2). The claims of the potential class members must be aggregated to determine whether the jurisdictional minimum has been met. 28 U.S.C. § 1332(d)(6). …
>
> To defeat remand, a defendant has the burden of showing by a preponderance of the evidence that the amount in controversy exceeds the federal court's minimum threshold for jurisdiction, which is $5 million in the aggregate.

Knowles, 2011 WL 6013024, at *2–*3 (Pet. App. 5–6). Indeed, the district court mentioned § 1453 only to explain that CAFA does not require class actions to be removed within a year of being filed. *See id.* at *5 (Pet. App. 13). The Eighth Circuit did not address the requirements of § 1453 because it denied, without explanation, Petitioner's request for leave to appeal the district court's remand order, *see Knowles*, 2012 WL 3828891, at *1 (Pet. App. 1), *reh'g denied*, 2012 WL 3828845, at *1 (Pet. App. 16).

The lower courts' failures to address the removal jurisdiction authorized by § 1453—jurisdiction that expands the reach of the federal judicial power to this case—requires reversal.

CONCLUSION

The Court should hold that 28 U.S.C. § 1453 means what it plainly says and conclude that the district court erred in remanding to state court this suit, which falls within the federal removal jurisdiction authorized by Congress in CAFA.

Respectfully submitted,

Quentin Riegel
NATIONAL ASSOCIATION
OF MANUFACTURERS
733 10th Street, N.W.
Suite 700
Washington, D.C. 20001

Gregory G. Katsas
Kenneth J. Nunnenkamp
Jeffrey A. Mandell
Counsel of Record
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
(202) 879-3939
jmandell@jonesday.com

OCTOBER 29, 2012

Counsel for Amicus Curiae