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Supreme Court Considers Whether to Preserve Defendants' Right to Remove Cases to Federal Court

(Dart Cherokee Basin Operating Co. v. Owens)

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WASHINGTON, DC—The Supreme Court today heard oral arguments addressing the right of an out-of-state defendant to remove a lawsuit from state to federal court. The Washington Legal Foundation (WLF) is supporting broad removal rights in the case. In a brief filed in conjunction with the International Association of Defense Counsel and the Federation of Defense & Corporate Counsel, WLF argued the defendant company’s statutorily mandated “short and plain statement of the grounds for removal” should have sufficed and that the district court erred when it remanded the case due to a failure to include supporting evidence in the notice of removal.

WLF devoted most of its brief to urging the Supreme Court to disavow the pervasive “presumption against removal” that nearly all federal appeals courts have adopted. WLF noted that the district judge below stated explicitly that “the strong presumption against removal” guided her decision to remand the case to state court. WLF argued that the supposed presumption has no basis in Supreme Court precedent and contradicts normal rules of statutory construction. WLF also said that permitting lawsuits to be removed to federal court does not disrespect state courts. Rather, the Constitution’s Framers endorsed federal-court removal jurisdiction as a bulwark for out-of-state defendants against state judicial forums biased toward in-state litigants.

WLF further observed that Congress has repeatedly expressed its support for expansive federal court removal jurisdiction, most recently when it adopted the Class Action Fairness Act in 2005. CAFA, which authorizes removal of virtually all large class actions, included findings that some state courts have “demonstrate[d] bias against out-of-State defendants.” WLF argued that CAFA’s explicit statutory support for removal rights is inconsistent with a judicially created presumption construing removal jurisdiction strictly.

Following oral argument, WLF issued the following statement by Chief Counsel Richard Samp: “Courts must not abet the plaintiffs’ bar’s efforts to frustrate Congress’s policy choice. Large class actions are removable to federal court to ensure that out-of-state defendants can have their cases heard in an impartial forum. Courts err when they adopt a ‘presumption’ against removal. Congress has never endorsed such a presumption, and this case presents an opportunity for the Supreme Court to call a halt to this trend.”

WLF is a public interest law firm and policy center with supporters nationwide. WLF devotes a substantial portion of its resources to civil justice reform and ending class action lawsuit abuse.