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## WLF Urges Supreme Court to Recognize Defendants' Right to Remove Class Actions to Federal Court

*(Home Depot U.S.A., Inc. v. Jackson)*

**“The plaintiffs’ bar should not be permitted to frustrate Congress’s will that large class actions be removable to federal court. Out-of-state defendants are entitled to have their cases heard in an impartial forum.”**

**—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—The Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to overturn a Fourth Circuit ruling that undermines reform legislation designed to ensure that defendants in state-court class actions are permitted to remove the cases to federal court. In a brief filed in *Home Depot U.S.A., Inc. v. Jackson*, WLF argues that plaintiffs’ lawyers are “gaming the system” in order to avoid the removal rights guaranteed by the Class Action Fairness Act of 2005 (CAFA). WLF’s brief was joined by the Allied Educational Foundation.

Congress concluded in 2005 that plaintiffs’ lawyers were gaining an unfair advantage over defendants by filing their class actions before friendly state-court judges. To correct that problem, it adopted CAFA, which greatly liberalized removal rights and ensured that virtually all large class actions could be removed by the defendants to federal court. But the plaintiffs’ bar has devised new schemes to defeat removal, including finding existing lawsuits to which they can attach their class actions as counterclaims. In the case before the Court, Citibank filed a credit-card collection action against a consumer. The consumer’s lawyer then filed a counterclaim that included class claims against Home Depot—which had not previously been a party to the suit—and soon thereafter dropped its claims against Citibank.

The Fourth Circuit held that only “defendants” are entitled to remove class actions under CAFA and that Home Depot (as the target of a counterclaim filed by the defendant) did not fit within that category. In its brief urging reversal, WLF argues that the target of a counterclaim meets the commonly understood definition of a “defendant”—that is, a person defending against claims asserted in a lawsuit. WLF notes that, unlike plaintiffs in state-court lawsuits, Home Depot never came voluntarily to state court. WLF argues that when Congress adopted CAFA, it intended to ensure a federal-court forum for any party defending against class-wide claims, so long as the party did not come to state court voluntarily by filing its own lawsuit.

*Celebrating its 41st year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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