On the WLF Legal Pulse

Timely commentary from WLF's blog May 4, 2026

Washington Legal Foundation
Keeping Free Enterprise Free

Defendants Are Unanimously Winning (and Losing) in Removal Cases This SCOTUS Term—What Gives?

by Zac Morgan

This Term, the Supreme Court took a significant number of cases involving defendants trying to keep a case out of state court and before a federal judge. WLF filed in four of them where we have a decision: *Chevron v. Plaquemines Parish*, *Hain Celestial v. Palmquist*, *Enbridge Energy v. Nessel*, and *First Choice v. Davenport*. In each case, WLF supported the party seeking judgment in an Article III court.

All four cases were decided unanimously. But WLF batted .500—filing with the prevailing party in *Chevron* and *First Choice* but backing the state-court-bound losers in *Hain Celestial* and *Enbridge Energy*.

That's kind of weird. What's going on?

For a long time, it was relatively difficult for a defendant in a state case to remove to federal court, as many courts parsimoniously read the various federal statutes governing removal. In 2003, in *Breuer v. Jim's Concrete of Brevard, Inc.*, the Supreme Court expressly rejected the theory that there's a presumption against removal. By removing that doctrinal barrier, the *Breuer* decision generally made removal easier—no panacea, but easier.

With so many removal or removal-adjacent grants by the Court, we at WLF figured that we would understand the post-*Breuer* boundaries of removal more by the end of this Term than the beginning. And even with the Court's seemingly Janus-like outcomes in *Chevron, Hain Celestial*, *Enbridge*, and *First Choice*, we still think that's true.

Consider the facts of each case.

Chevron concerns the so-called federal-officer removal statute, which permits removal from state to federal court when a suit is brought "for or relating to any act under color of law." Plaquemines Parish in Louisiana filed 42 state suits against Chevron and "made clear that it intended to challenge certain defendants' crude-oil production during the Second World War." But Chevron's wartime oil production was done at the behest of the federal government, which badly needed aviation fuel to fight the Axis.

Hain Celestial involved a tort suit brought by a Texas family in Texas state court. The Palmquists alleged that baby food manufactured by Hain and sold by Whole Foods gave their child autism. After obtaining a ruling kicking Whole Foods out of the case, Hain successfully removed

---

Zac Morgan is a Senior Litigation Counsel at Washington Legal Foundation. He was Counsel of Record on WLF amicus briefs in *First Choice*, *Hain Celestial*, and *Enbridge Energy*.

the case to federal court. Whole Foods is a Texas company, and its inclusion as a defendant meant that Texans were on both sides of the case. And so, under *Strawbridge v. Curtiss*, the case had to be heard in state court. But without Whole Foods, the case would be between a Texas plaintiff and a non-Texas defendant, and that's the stuff federal jurisdiction is made of.

The case was tried to verdict in federal court and Hain won. But on appeal, the Fifth Circuit decided Whole Foods *was* properly joined, deleted the federal-court verdict, and shipped the entire case back to Texas state court for a new trial. Hain sought a ruling restoring its federal verdict.

Enbridge came about because the attorney general of Michigan sued in state court to shut down a pipeline between the United States and Canada. Enbridge appears to have accidentally shot past the 30-day clock to remove the case to federal court. But the company asked that its failure be forgiven under the doctrine of "equitable tolling"—which allows non-jurisdictional time-bars to be set aside for good cause.

And finally, *First Choice*. Strictly speaking, this one wasn't a classic removal case—but it functioned as one. First Choice is a New Jersey crisis pregnancy center that drew a subpoena for its donor list from that State's attorney general. Donor privacy is protected by the First Amendment, so First Choice filed a federal case challenging the subpoena on constitutional grounds. The attorney general responded by filing a state case to compel First Choice to produce its donor list and also moved to crush the federal litigation on the theory that any First Amendment objections to the subpoena belonged in the state proceeding.

To recap: *Chevron* and *First Choice* won. *Hain Celestial* and *Enbridge*, not so much.

So what's driving these unanimous outcomes? One throughline ties *Chevron* and *First Choice* together. In both instances, the Court safeguarded a properly asserted federal right. The federal-officer removal statute provides access to an Article III court to prevent the States from harassing federal officials and federal contractors. And First Choice's claim was sourced in the text of the federal Constitution itself.

By contrast, Hain and Enbridge were seeking access to the federal courthouse on a prudential argument. Hain argued judicial efficiency—why should we waste a perfectly good and sound trial over a technicality? Enbridge missed a filing deadline—but argued that time-bar could be softened. Enbridge even had good reason to ask for an exception. As WLF's brief in the case argued, the Michigan state-court case violated a U.S. treaty commitment to Canada to keep that pipeline free from interference by local officials.

A preliminary takeaway follows: the Court is going to give you a federal tribunal to vindicate a plainly federal right, but not simply because it would be efficient or even normatively preferable to do so. (Had Chevron not timely sought removal, for instance, it's quite likely that Plaquemines Parish would have prevailed—unanimously.)

In short, if you'd like to get your state action heard in a federal forum: show up, remove on time, and be able to point to a concrete federal interest.

