No. 13-719

IN THE
Supreme Court of the United States

DART CHEROKEE BASIN OPERATING COMPANY, LLC, *ET AL.*,
Petitioners,

v.

BRANDON W. OWENS,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONERS

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MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

The Chamber of Commerce of the United States of America ("Chamber") hereby moves this Court, pursuant to Rule 37.2, for leave to file the attached brief as *amicus curiae* in support of Petitioners in this case. No party opposes this motion. Petitioners have consented to the filing of the Chamber's *amicus* brief, and correspondence reflecting the consent of Petitioners has been lodged with the Clerk. Respondent does not consent to the filing of the brief but also has stated that he will not oppose this motion for leave to file the brief.

The Chamber is the world's largest business federation, representing 300,000 direct members and an underlying membership of more than three

million U.S. businesses and professional organizations. The Chamber is well positioned to assist the Court in its evaluation of the parties' arguments because the Chamber regularly advances the interests of its members in courts throughout the country on issues of critical concern to the business community, and has participated as *amicus curiae* in numerous cases addressing jurisdictional issues.

The Chamber's members are frequently defendants in individual cases and class actions in which the existence of federal diversity jurisdiction is at issue. In addition, the Chamber was involved – on behalf of its members – in organizing support for the much-needed class-action reforms reflected in the Class Action Fairness Act of 2005 ("CAFA"). As a result, the organization has a wealth of experience in interpreting the jurisdictional requirements set forth in CAFA and is uniquely suited to provide the Court with significant guidance in addressing the policy goals and intent of the legislation.

The Chamber has a strong interest in seeking review of the Tenth Circuit's June 20, 2013 order denying appellate review of the district court's remand order to ensure that the rules governing removal of class actions to federal court are applied fairly and consistently and in keeping with Congress's intent to establish federal courts as the forum of choice for class actions of national importance. The Court of Appeals' refusal to hear this case paves the way for a requirement that defendants sued in state court in the Tenth Circuit amass voluminous evidence to support the filing of a notice of removal in federal court – and do so within thirty days of receiving the complaint. This approach ignores the text and history of the general federal removal statute and the policy concerns animating CAFA's

adoption. The Court's intervention is necessary to restore proper removal practice in the Tenth Circuit and ensure appropriate access to federal courts.

For the foregoing reasons, the motion of the Chamber to file a brief as *amicus curiae* in support of Petitioners should be granted.

Respectfully submitted,

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

The Chamber of Commerce of the United States of America ("Chamber") respectfully submits this brief as *amicus curiae* in support of petitioners Dart Cherokee Basin Operating Company, LLC, *et al.*[1]

STATEMENT OF INTEREST

The Chamber is the world's largest business federation, representing 300,000 direct members and an underlying membership of more than three million U.S. businesses and professional organizations. The Chamber represents its members' interests by, among other activities, filing briefs in cases implicating issues of vital concern to the nation's business community.

The Chamber's members operate in nearly every industry and business sector in the United States. These members have an interest in ensuring that the rules governing removal of class actions to federal court are applied fairly and consistently and in keeping with Congress's intent to establish federal courts

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund its preparation or submission. Pursuant to Supreme Court Rule 37.2, *amicus curiae* states that petitioners, upon timely receipt of notice of the Chamber's intent to file this brief, have consented to its filing. Respondents, upon timely receipt of notice of the Chamber's intent to file this brief, have not consented to its filing.

as the forum of choice for class actions of national importance. The district court's ruling – and the Court of Appeals' refusal to grant review – establish a requirement that defendants sued in state court amass voluminous evidence *before* removing the case to federal court – and do so within thirty days of receiving the complaint. Such a ruling ignores the text and history of the general federal removal statute and the Class Action Fairness Act of 2005 ("CAFA"). This Court's intervention is necessary to restore proper removal practice in the Tenth Circuit and ensure appropriate access to federal courts.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court should grant review and reverse the decision below to clarify that a defendant removing a suit to federal court is not required to proffer evidence with the notice of removal in order to prove jurisdictional facts. No federal court of appeals outside of the Tenth Circuit has engrafted such a requirement onto the federal rules. Nonetheless, the district court, relying on Tenth Circuit precedent, expressly adopted such a requirement in this case, and by declining to grant discretionary review, the Tenth Circuit effectively condoned the district court's approach. These courts erred for several reasons.

First, the district court decision imposes a burden that was never intended by the removal statute and that might never be corrected absent immediate review. By its terms, 28 U.S.C. § 1446(a) requires that a notice of removal contain only a "short and plain statement of the grounds for removal" – language that Congress expressly borrowed "from the jurisdictional pleading requirement" of Rule 8. This Court

clarified decades ago that the allegations of a complaint need not be supported by evidence filed contemporaneously with the complaint to satisfy Rule 8; there is no reason to read a contrary requirement into the identical language of the removal statute. Indeed, noting this similarity, five circuit courts in recent years have concluded that a removing defendant is not required to supplement its notice of removal with evidence – just as a plaintiff need not come forward with evidence to resist a motion to dismiss.

The decision below to part ways with the consensus of other federal circuits will impose significant and needless costs on defendants seeking to remove cases to federal court in the Tenth Circuit. The requirement that a removing defendant submit thorough evidence supporting its notice of removal – combined with § 1446's thirty-day limit to seek removal – forces defendants to face difficult decisions. Diligent attorneys would likely feel compelled to seek discovery and amass appropriate evidence to attach to the notice of removal, but in doing so, they would risk missing the thirty-day limit. Alternatively, a defendant could remove within thirty days and hope for leave to conduct discovery in federal court, but it would risk remand for failure to submit sufficient factual support. And because removal issues rarely reach an appellate court, this appeal presents the Court with a rare – and potentially final – opportunity to set Tenth Circuit removal jurisprudence back on the right course.

Second, the result below contravenes Congress's intent in enacting CAFA. The purpose of CAFA was to provide for expansive federal jurisdiction over class actions – and to make it easier to remove such

cases to federal court. Congress erected a presumption in favor of federal jurisdiction over interstate class actions to eliminate plaintiffs' jurisdictional gamesmanship. If allowed to stand, the district court's decision would significantly undercut Congress's expansion of federal jurisdiction over interstate class actions as well as its overarching goal of eliminating abusive plaintiff practices that evade federal jurisdiction.

Amicus respectfully submits that this case is a good candidate for summary reversal since it does not involve any "new or unanswered question of law"; rather, review is needed to "correct[] [the] lower court[s'] demonstrably erroneous application of federal law," *Maryland v. Dyson*, 527 U.S. 465, 467 n.1 (1999), and restore proper removal practice in the Tenth Circuit.

ARGUMENT

I. THE REFUSAL TO GRANT REVIEW EFFECTIVELY IMPOSES A NOVEL, UNDULY HIGH PLEADING BURDEN ON NOTICES OF REMOVAL.

The Court should first grant review because the result below ignores the text and intent of the removal statute, will impose unfair burdens on removing defendants, and advances a rule that may escape correction in future cases because remand rulings are rarely appealable.

A. Requiring Defendants To Submit Evidence With Notices Of Removal Contravenes The Text And Intent Of § 1446.

The district court held that where a complaint fails to demand a specific dollar amount satisfying

the amount-in-controversy prerequisite to federal diversity jurisdiction, "the amount in controversy must be affirmatively established on the face of . . . [the] notice of removal." (Pet. App. 17a-18a.) In other words, the district court viewed removing defendants as "obligated to allege all necessary jurisdictional facts in the notice of removal" and attach evidence in support, "such as an economic analysis of the amount in controversy or settlement estimates." (*Id.* at 26a, 27a.)

But § 1446 enacts no such requirement. Instead, it mandates only that a removing defendant "file in the district court . . . a notice of removal . . . containing a short and plain statement of the grounds for removal." 28 U.S.C. § 1446(a).

Indeed, Congress amended § 1446 in 1988 to "simplify the 'pleading' requirements for removal" by changing the then-extant "requirement of a verified petition . . . to a requirement that a notice of removal be signed pursuant to [Federal Rule of Civil Procedure] 11." H.R. Rep. No. 100-889, at 71-72 (1988). In so doing, Congress expressly rejected the tendency of "some courts to require detailed pleading" based on the "requirement that the petition of removal state the facts supporting removal." *Id.* It also made clear that the grounds for removal need only "be stated in terms borrowed from the jurisdictional pleading requirement establish[ed] by [Federal Rule of Civil Procedure] 8(a)." *Id.* Thus, just as this Court has stated that a plaintiff need not plead "'detailed factual allegations'" to satisfy Rule 8(a), *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted), a removing defendant should not be required to include a comprehensive recitation

of facts and supporting evidence in its notice of removal.

This conclusion is fortified by more recent amendments to § 1446. Three years ago, Congress enacted the Federal Courts Jurisdiction and Venue Clarification Act of 2011 ("JVCA"), which added two paragraphs to subsection (c) of the statute "to address issues relating to uncertainty of the amount in controversy when removal is sought." H.R. Rep. No. 112-10, at 15 (2011). One of these paragraphs states:

> If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—
>
> (A) the notice of removal may assert the amount in controversy if the initial pleading seeks—
>
> (i) nonmonetary relief; or
>
> (ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and
>
> (B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds the amount specified in section 1332(a).

28 U.S.C. § 1446(c)(2).[2]

In describing these provisions, Congress expressly declared that removing defendants "do not need to prove to a legal certainty that the amount in controversy requirement has been met." H.R. Rep. No. 112-10, at 16. "Rather, defendants may simply allege or assert that the jurisdictional threshold has been met." *Id.* Congress further explained that only in the "case of a dispute" does the defendant need to come forward with evidence supporting the allegations in the notice of removal, *id.*, which aligns the procedure for alleging and disputing jurisdictional facts in a notice of removal with the pleading practices governing complaints as described by this Court decades ago in *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936) ("*If [the] allegations of jurisdictional facts are challenged* by [the] adversary [of the party asserting jurisdiction] in any appropriate manner, he must support them by competent proof.") (emphasis added).

Given Congress's pellucid intent, it is unsurprising that five other circuits have held that the requirements of § 1446(c) mirror those of Rule 8(a) and thus do not require the presentation of proof of jurisdictional facts with the notice of removal. *See Hartis v. Chi. Title Ins. Co.*, 694 F.3d 935, 944-45 (8th Cir. 2012); *Janis v. Health Net, Inc.*, 472 F. App'x 533, 534 (9th Cir. 2012); *Ellenburg v. Spartan*

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[2] Although the amendment applies only to § 1332(a), not CAFA's § 1332(d), "[t]here is no logical reason why [a court] should demand more from a CAFA defendant than other parties invoking federal jurisdiction," *Dart Cherokee Basin Operating Co. v. Owens*, 730 F.3d 1234, 1238 (10th Cir. 2013) (internal quotation marks and citation omitted) (Hartz, J., dissenting).

Motors Chassis, Inc., 519 F.3d 192, 199-200 (4th Cir. 2008); *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008); *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1217 n.73 (11th Cir. 2007). The Fourth Circuit cogently summarized the requirements of § 1446 as follows:

> [J]ust as a plaintiff's complaint sufficiently establishes diversity jurisdiction if it alleges that the parties are of diverse citizenship and that "[t]he matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332," so too does a removing party's notice of removal sufficiently establish jurisdictional grounds for removal by making jurisdictional allegations in the same manner.

Ellenburg, 519 F.3d at 200 (citations omitted).

For all of these reasons, the district court erred in holding that petitioner was obligated to submit proof of jurisdictional facts with the notice of removal, and the Court of Appeals should have granted review to correct that error and bring the Tenth Circuit into line with its fellow circuits. This Court should grant review, confirm that the prior consensus was correct, and reverse the remand decision.

B. The Tenth Circuit's Approach Imposes Severe, Far-Reaching Burdens on Defendants.

The wayward approach taken by the district court – and condoned by the Court of Appeals – also merits this Court's attention because of the considerable burden it will place on defendants that choose to exercise their right to remove cases to federal court.

If the district court's ruling is allowed to stand, a defendant may be unable to remove in any case where requisite jurisdictional facts are not alleged on the face of the complaint unless it can assemble proof of those facts in very short order.

Section 1446 mandates that a defendant file a notice of removal "within 30 days after the receipt . . . of a copy of the initial pleading" or, "if the case stated by the initial pleading is not removable, . . . within 30 days after receipt . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(1), (b)(3).

Interplay between the Tenth Circuit's demands and § 1446's time limits thus creates significant burdens on defendants. Because the district court held that a defendant must prove jurisdictional facts at the time of removal, defendants that lack proof of the facts of the plaintiff's case at the time the complaint is filed will feel compelled to conduct discovery in state court to develop the factual basis for their notice of removal.[3] Otherwise, they face a risk of remand for failure to buttress their notice of removal with adequate evidence. But under § 1446, they have only thirty days to do so. If they exceed the thirty-day limit in an effort to obtain support for their notice of removal, defendants face the specter of a federal court's remanding the action for untimely removal. *See, e.g.*, *Addo v. Globe Life & Accident Ins.*

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[3] The district court decision leaves open the possibility that a defendant could seek discovery in federal court after removal, but such an uncertain possibility will provide little comfort to a defendant deciding whether it should first attempt to seek such discovery within the thirty-day limit in state court.

Co., 230 F.3d 759, 762 (5th Cir. 2000) (vacating district court's grant of summary judgment and ordering case remanded to state court where defendant failed to timely remove action and citing "purpose of the removal statute to encourage prompt resort to federal court when a defendant first learns that the plaintiff's demand exceeds the federal jurisdictional limit"). These limitations would likely prove fatal to removal in many jurisdictions absent leave to significantly expedite the discovery process contemplated by state procedural rules. *See, e.g.*, Kan. R. Civ. P. 60-226(b)(6)(C) (absent court direction, expert disclosures do not need to be made until 90 days before trial date).

Even in states that would permit it, the lightning round of jurisdictional discovery that is likely to follow from the Tenth Circuit's approach will significantly increase early litigation costs. That result is contrary to public policy, both because class actions already impose significant litigation costs, *cf. Bartnikowski v. NVR, Inc.*, 307 F. App'x 730, 741 (4th Cir. 2009) (Wilkinson, J., dissenting) (observing that courts should avoid adopting heightened requirements of proof of jurisdictional facts in class actions because such requirements would promote unnecessary discovery and thus "add[] more litigiousness to already litigious class action undertakings"), and because this Court has stressed the importance of minimizing discovery burdens prior to ruling on motions to dismiss, *see, e.g.*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558-60 (2007).

The rule endorsed by the courts below also complicates the removal process by transforming a simple process of supplying notice of the grounds for removal into a potentially sprawling submission of

evidentiary proof on matters that may not even be contested. Such an outcome is contrary to this Court's prior teaching that simplicity "is a major virtue in a jurisdictional statute." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (also noting that "[s]imple jurisdictional rules . . . promote greater predictability," which "is valuable to corporations making business and investment decisions"). For these reasons, too, the Court should grant the petition and reverse.

C. Review Is Needed Because This Issue Is Unlikely to Arise Again on Appeal.

The Court should also grant review in this case because it may not have another opportunity to correct the lower courts' rulings.

As an initial matter, the Tenth Circuit's refusal to review the district court's decision will, in practice, make that decision the law of the Circuit, and defendants' efforts to comply with its onerous burdens will likely prevent the issue from arising again. As the dissent from denial of en banc review observed, "any diligent attorney" going forward will likely "submit to the evidentiary burden rather than take a chance on remand to state court." (Pet. App. 3a.) This is particularly so in light of the district courts' authority to impose sanctions for removals that lack an "objectively reasonable basis." *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005); *see also generally* 28 U.S.C. § 1447(c). Unless a future lawyer risks removing a case without evidentiary support, there will be no way to correct the district court's misinterpretation of the removal statute.

In addition, procedural hurdles stand as an independent obstacle to appellate review. Because a party generally may not appeal an order remanding a

case to state court, 28 U.S.C. § 1447(d), only a future class action would provide an opportunity to present the question for appellate review. *Id.* § 1453(c)(1); *see also Tmesys, Inc. v. Eufaula Drugs, Inc.*, 462 F.3d 1317, 1318-19 (11th Cir. 2006) ("Under 28 U.S.C. § 1447(d) we are generally deprived of appellate jurisdiction over remand orders. As to qualifying cases 'commenced' on the day of or after CAFA's enactment, however, CAFA provides us discretionary appellate jurisdiction to review such orders."). As some commentators have noted, the rarity of appellate review with respect to removal issues can lead to stultification of removal doctrine. *See, e.g.*, James M. Underwood, *From Proxy to Principle: Fraudulent Joinder Reconsidered*, 69 Alb. L. Rev. 1013, 1071 n.291 (2006) (observing that procedural roadblocks to appellate review of remand orders explains "why there is not a more clear resolution of the issue of the appropriate standards [of fraudulent joinder], at least from the appellate courts," even though fraudulent joinder has "relatively ancient origins").

In short, this appeal gives the Court a unique and important opportunity to clarify the burdens on a defendant filing a notice of removal. It should take that opportunity and reverse.

II. THE TENTH CIRCUIT'S APPROACH IGNORES CAFA'S SWEEPING REMEDIAL AIM.

The Court of Appeals' failure to grant review is particularly disturbing because the district court's ruling undermines CAFA's goals of creating expansive federal jurisdiction and making removal easier. It also promotes the sort of jurisdictional gamesman-

ship that Congress sought to eliminate when it enacted CAFA.

First, the approach below is at odds with Congress's intent that federal jurisdiction should be expanded over interstate class actions under CAFA. Congress enacted CAFA to curb "[a]buses in class actions," which "undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution." Pub. L. No. 109-2, § 2(a), 119 Stat. 4, 5 (Feb. 18, 2005). Congress found that a "key reason" for "the numerous problems with our current class action system" was that "most class actions are currently adjudicated in state courts, where the governing rules are applied inconsistently (frequently in a manner that contravenes basic fairness and due process considerations)." S. Rep. No. 109-14, at 4 (2005). Concluding that "the current diversity and removal standards as applied in interstate class actions . . . are thwarting the underlying purpose of the constitutional requirement of diversity jurisdiction," *id.* at 6, Congress declared that the "overall intent" of CAFA "is to strongly favor the exercise of federal diversity jurisdiction over class actions with interstate ramifications," *id.* at 35. As one of CAFA's leading sponsors squarely put it, if "a Federal court is uncertain . . . [that] court should err in favor of exercising jurisdiction over the case." 151 Cong. Rec. H726 (statement of Rep. Jim Sensenbrenner).

Many courts and commentators alike have recognized this strong presumption in favor of federal jurisdiction, grasping that CAFA brought about "wholesale changes in the law" with "broad ramifications." *See, e.g.*, H. Hunter Twiford, III *et al.*, *CAFA's*

New "Minimal Diversity" Standard for Interstate Class Actions Creates a Presumption that Jurisdiction Exists, With the Burden of Proof Assigned to the Party Opposing Jurisdiction, 25 Miss. C. L. Rev. 7, 7 (2005). As the Eighth Circuit has explained, "[t]he language and structure of CAFA indicate that Congress contemplated broad federal court jurisdiction with only narrow exceptions." *Westerfeld v. Indep. Processing, LLC*, 621 F.3d 819, 822 (8th Cir. 2010) (internal quotation marks, citation and alterations omitted); *see also* Sara S. Vance, *A Primer on the Class Action Fairness Act of 2005*, 80 Tul. L. Rev. 1617, 1641, 1643 (2006) ("CAFA expanded federal jurisdiction in a major way" and "represents the largest expansion of federal jurisdiction in recent memory"); Twiford, *supra* at 60 ("[CAFA's] fundamental changes greatly liberalize and invite . . . federal court jurisdiction over class actions . . . ."). It follows that CAFA "commensurately expands defendants' opportunities to remove class actions," making removal easier – not more difficult. Vance, *supra* at 1630; *see also Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013) (assessment of removal under CAFA requires careful attention to the statute's "primary objective: ensuring 'Federal court consideration of interstate cases of national importance.'") (citation omitted).

The lower courts ignored CAFA's goal of making removal easier, instead endorsing a "strong presumption against removal" of class actions. *See Owens v. Dart Cherokee Basin Operating Co., LLC*, No. 12-4157-JAR-JPO, 2013 WL 2237740, at *5 (D. Kan. May 21, 2013).[4] After all, there was no real dispute

[4] The district court's allusion to the need to "narrowly construe[] removal statutes" and resolve "all doubts . . . in favor

that the case met CAFA's $5 million amount-in-controversy requirement. (*See* Pl.'s Reply at Pet. App. 92a (challenging removal only on the ground that Petitioners' submission of evidence not attached to its notice of removal was a "belated attempt[] to bolster a deficient notice of removal").) Yet, while granting that Petitioners had potentially submitted sufficient evidence to prove by a preponderance of the evidence that the prerequisites to removal had been satisfied, the district court nevertheless held that petitioners "were obligated to allege all necessary jurisdictional facts in the notice of removal." *Owens*, 2013 WL 2237740, at *5. By imposing such a burden on de-

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of remand," *Owens*, 2013 WL 2237740, at *1, mistakenly imports inapposite precedent to the CAFA context. Whatever the general rule applicable to removal statutes, the removal provisions of CAFA should not be narrowly construed. To be sure, "[t]he burden of persuasion for establishing diversity jurisdiction . . . remains on the party asserting it." *Hertz*, 559 U.S. at 96. But congressional intent determines the appropriate mode of interpreting a removal statute. *See Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691, 697-98 (2003). Hence, while strictly construing a removal statute is appropriate when that restrained approach dovetails with the intent of the enacting Congress, *see, e.g.*, *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108 (1941) (relying on the "Congressional purpose to restrict the jurisdiction of the federal courts on removal" to justify strictly construing the general removal statute), "an expansive interpretation of the nature of the right to remove" should accompany a statute evincing an "unusually strong preference for adjudication of [certain claims] in the federal court system," *In re Tex. E. Transmission Corp. PCB Contamination Ins. Coverage Litig.*, 15 F.3d 1230, 1243 (3d Cir. 1994); *see also Acosta v. Master Maint. & Constr. Inc.*, 452 F.3d 373, 377 (5th Cir. 2006). Because Congress indicated an "unusually strong preference" for adjudicating class actions in federal court, CAFA's removal provisions should receive "an expansive interpretation." *See Tex. E. Transmission Corp.*, 15 F.3d at 1243.

fendants – one that is likely to prove quite onerous in light of the short time afforded to remove a case, as discussed above – the lower courts have undermined Congress's strong presumption in favor of federal jurisdiction over interstate class actions by making it more difficult for defendants to remove these cases to federal court.

If allowed to stand, the district court's ruling will also have the effect of encouraging gamesmanship in class-action litigation, in further contravention of congressional intent. Congress's expansion of federal jurisdiction over interstate class actions was directed in large part at reversing then-current law that "enable[d] plaintiffs' lawyers who prefer to litigate in state courts to easily 'game the system' and avoid removal of large interstate class actions to federal court." S. Rep. No. 109-14, at 10 (criticizing plaintiffs' jurisdictional gamesmanship). This Court recently recognized as much by rejecting one previously common strategic effort used by plaintiffs' lawyers to evade CAFA jurisdiction: waiving class claims in excess of $5 million through non-binding stipulations. *See Standard Fire*, 133 S. Ct. at 1350 (explaining that allowing plaintiffs' lawyers to subdivide "a $100 million action into 21 just-below-$5-million state-court actions simply by including nonbinding stipulations . . . would squarely conflict with the statute's objective"); *see also Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d 975, 977, 980-81 (9th Cir. 2013) (principle that plaintiff is the "master of her complaint" is "clearly irreconcilable with the Supreme Court's reasoning in *Standard Fire*" because that ruling rejects manipulative efforts to circumvent CAFA jurisdiction).

The Tenth Circuit's renegade approach invites another type of jurisdictional gamesmanship in the class action arena as well: the omission of key factual allegations from a state court class action complaint in order to evade CAFA jurisdiction. Under the holding reached below, a putative class action plaintiff seeking to evade federal jurisdiction could elect to include only vague information about damages in her state court complaint, placing the burden on the defendant to discover enough factual support to establish the requisite $5 million amount in controversy within thirty days. Such a result would complicate or prevent timely removal of interstate class actions, recreating precisely the sort of jurisdictional gamesmanship and artful pleading that Congress sought to extinguish when it enacted CAFA. Granting certiorari is therefore necessary to ensure that lower courts do not "sanction devices intended to prevent a removal to a Federal court where one has that right." *Wecker v. Nat'l Enameling & Stamping Co.*, 204 U.S. 176, 186 (1907).

CONCLUSION

For the foregoing reasons, and those stated by Petitioners, the Court should grant the petition for a writ of certiorari and summarily reverse.

Respectfully submitted,

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