

**FOR IMMEDIATE RELEASE****November 18, 2005**

WLF TESTIFIES IN SUPPORT OF INCREASED REMOVAL JURISDICTION RIGHTS

The Washington Legal Foundation (WLF) this week urged Congress to protect the rights of out-of-state defendants to move their cases from State courts to federal courts. In testimony before a subcommittee of the House Judiciary Committee, WLF Chief Counsel Richard Samp argued that such "removal jurisdiction" is important to protect out-of-state defendants from the local bias they sometimes face in State courts. Samp argued that plaintiffs' lawyers often seek to manipulate existing rules in order to prevent defendants from exercising their rights to remove cases to federal court, and urged Congress to take steps to end such manipulation.

WLF's Samp testified at the invitation of the Subcommittee on Courts, the Internet, and Intellectual Property and its Chairman, U.S. Representative Lamar Smith of Texas. Congress is considering a series of revisions to laws governing the jurisdiction of the federal courts, proposed by the Judicial Conference of the United States, the administrative arm of the federal judiciary. Samp testified as part of a panel that included the Honorable Janet C. Hall, a federal district judge from Connecticut; and Arthur Heller, a law professor at the University of Pittsburgh.

Federal law grants federal courts jurisdiction over "diversity" cases; that is, cases between parties who are citizens of different States where the amount in controversy is at least \$75,000. Since the founding of the federal courts in 1789, that diversity jurisdiction has included "removal jurisdiction" -- out-of-state defendants are permitted to remove a case from State court to federal court if the case is one that could have been filed initially in federal court as a diversity-jurisdiction case.

In recent years, plaintiffs' lawyers have come to realize that they are much more likely to win large verdicts over out-of-state corporate defendants in product liability suits and similar suits if they can keep the cases in State court and play to the sympathy of local juries. Accordingly, plaintiffs' lawyers have devised a number of strategies to defeat efforts of out-of-state corporations to exercise their removal rights.

One such strategy involves the rule that a defendant forfeits its removal rights if the right is not exercised within one year of the date on which the suit was filed. The law prohibits defendants from removing a case to federal court until they can establish the prerequisites for removal (primarily, that no plaintiff is a citizen of the same State as any of the defendants, and that the amount in controversy is greater than \$75,000). WLF's Samp charged that many

plaintiffs' lawyers take steps to prevent defendants from establishing those prerequisites within the first year (such as by adding in-state defendants against whom the plaintiffs know they have no legitimate claim), thereby causing the one-year removal period to lapse. Samp called on Congress to abolish the one-year rule, which was first adopted by Congress in 1988. Samp testified that there is no evidence that prior to 1988 defendants were abusing their removal privileges by moving cases to federal court years after they were filed, and that eliminating the one-year rule would eliminate the incentive that plaintiffs' lawyers now have to delay proceedings until after the one-year period has expired.

WLF also urged that defendants be permitted to remove diversity cases to federal court based on a good-faith belief that the amount in controversy exceeds \$75,000. WLF's Samp noted in his testimony that plaintiffs, in an effort to prevent removal, often fail to state in their complaints how much they are seeking in damages, or deliberately specify a "low ball" figure, knowing that State courts will not limit plaintiffs to the figure listed. Samp argued that, given the widespread availability of punitive damages, the "amount in controversy" exceeds \$75,000 in virtually every tort case, and that plaintiffs ought not to be permitted to prevent removal by arguing otherwise -- unless they are willing to enter into binding stipulations that they will not accept damages in excess of \$75,000.

WLF is a public interest law and policy center with supporters in all 50 States. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared in numerous U.S. Supreme Court cases involving the rights of out-of-state defendants to remove cases to federal court in order to avoid the prejudice they often face in State courts. *See, e.g., Lincoln Property Co. v. Roche*, No. 04-712 (U.S., dec. pending).

* * *

For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's testimony is posted in the Litigation section of its web site, www.wlf.org, under the category "Civil Justice Reform."