Press Release

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WLF Asks *En Banc* Appeals Court to Uphold Right of Defendants to Remove Lawsuits to Federal Court

(Flagg v. Stryker Corp.)

"Courts must not permit the plaintiffs' bar to frustrate the right of out-of-state defendants to have cases heard in federal court. The Constitution's Framers viewed the right to remove cases to federal court as an important safeguard against the bias that state courts sometimes exhibit toward local plaintiffs."
—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation late yesterday called on the U.S. Court of Appeals for the Fifth Circuit sitting *en banc* to bar plaintiffs from fraudulently joining extraneous parties for the purpose of eliminating federal jurisdiction. WLF has long supported the right of out-of-state defendants to remove cases from state to federal court—and opposed plaintiffs' bar efforts to subvert this constitutional protection. In an *amicus* brief filed in *Flagg v. Stryker Corp.*, WLF argues the fraudulent-joinder doctrine serves important federalism interests by ensuring defendants receive the access to federal courts that the Constitution's Framers afforded them.

Where diversity of citizenship exists in a state-court lawsuit (that is, where the plaintiff and defendant are citizens of different States), federal law generally permits the defendant to remove the case to federal district court. Because plaintiffs' attorneys prefer to keep their suits in state court, they often seek to prevent removal by joining claims against a defendant who shares the plaintiff's citizenship—thereby eliminating complete diversity. The fraudulent-joinder doctrine prevents such maneuvers by still permitting removal when the claims against the non-diverse defendant are patently invalid.

In a product liability case arising under Louisiana law, a three-judge panel of the Fifth Circuit eviscerated the fraudulent-joinder doctrine by severely restricting the circumstances under which courts may discount the presence of non-diverse defendants. The entire Fifth Circuit later agreed to rehear the case *en banc*. WLF's brief calls on the court to overturn the panel decision. It argues that throughout our Nation's history, Congress has granted federal courts broad removal jurisdiction and has repeatedly adopted measures designed to counteract plaintiffs' attorneys' gambits to frustrate the exercise of removal rights.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: "Courts must not permit the plaintiffs' bar to frustrate the right of out-of-state defendants to have cases heard in federal court. The Constitution's Framers viewed the right to remove cases to federal court as an important safeguard against the bias that state courts sometimes exhibit toward local plaintiffs. Without the fraudulent-joinder doctrine, a plaintiff could always avoid removal by adding random non-diverse defendants to a lawsuit."

WLF is a free-market, public-interest law firm and policy center that seeks to ensure that excessive litigation and the plaintiffs' bar's gamesmanship do not impede economic liberty.

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