Nos. 24-141(L); 24-142; 24-1250; 24-1251

In the

United States Court of Appeals

For the Fourth Circuit

SKYLINE TOWER PAINTING, INC.; TELEVISION TOWER, INC.,
Defendants-Appellants,

v.

ELIZABETH L. GOLDBERG; MYRIAM RALSTON; BENJAMIN ROBERTS; JOSHUA C. TOHN; MARIA HAGEN; CHRISTINE SAJECKI; JOHN RALSTON; HANNAH ROHER,
Plaintiffs-Appellees.

On Defendants' Consolidated Appeals Under 28 U.S.C. § 1291 and Petitions for Permission to Appeal from the United States District Court for the District of Maryland at Baltimore
Case No. 1:23-cv-01708-JRR

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 24-141(L) Caption: Skyline Tower Painting, Inc., et al. v. Elizabeth Goldberg, et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Chamber of Commerce of the United States of America
(name of party/amicus)

who is amicus curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Matthew A. Fitzgerald Date: June 5, 2024

Counsel for: Amicus Curiae

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IDENTITY AND INTEREST OF AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber was involved in organizing support for the Class Action Fairness Act ("CAFA") before its enactment, and the Chamber's members are often named as defendants in the sorts of lawsuits CAFA intended to receive a federal forum, including class and mass actions.

[1] No party's counsel authored this brief in whole or in part, and no entity or person, aside from amicus curiae, its members, or its counsel, contributed any money to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

INTRODUCTION

This Court should join several other circuits that have held, in published opinions, that remands based on CAFA exceptions such as the local-controversy exception are appealable by right under 28 U.S.C. § 1291. Such appeals thus do not require petitions under 28 U.S.C. § 1453 and the extra round of rapid-fire briefing and decision that § 1453 lays out. This Court could improve efficiency for itself and for parties in cases like this one by addressing its jurisdiction under § 1291.

ARGUMENT

I. This Court should hold that appeals of remand orders under the CAFA exceptions can be brought under § 1291 and do not require § 1453 petitions.

This Court must ensure proper jurisdiction over all appeals. *Williamson v. Stirling*, 912 F.3d 154, 168 (4th Cir. 2018) (describing the court's "obligation" to verify appellate jurisdiction). In this case, Skyline Tower Painting and Television Tower Inc. wisely filed notices of appeal under 28 U.S.C. § 1291 and also filed petitions for review under § 1453. This Court should take this opportunity to clarify that only the notice of appeal under § 1291 was required.

A. Remands under the CAFA exceptions are appealable "final" orders unless barred by § 1447(c) and (d).

As a matter of first principles, a remand order qualifies as appealable under 28 U.S.C. § 1291. The Supreme Court made that clear in *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996). In *Quackenbush*, the Court noted that a remand order "puts the litigants . . . effectively out of court" and that "its effect is precisely to surrender jurisdiction of a federal suit to a state court." *Id.* at 714. The Court added that "[w]hen a district court remands a case to a state court, the district court disassociates itself from the case entirely, retaining nothing of the matter on the federal court's docket." *Id.* And the Court pointed out that remand orders "will not be subsumed in any other appealable order entered by the District Court." *Id.* In sum, under both the "effectively out of court" doctrine and collateral-order doctrine, § 1291 finality includes remand orders. *Id.* at 714–15 (adding that remand orders on abstention doctrines conclusively determine issues separate from the merits and present important issues warranting review). *See also Borneman v. United States*, 213 F.3d 819, 826 (4th Cir. 2000) (citing *Quackenbush*).

Yet 28 U.S.C. § 1447(d) excludes many remand orders from review. Section 1447(d) states that, in general, "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." But "the Supreme Court limited the application of § 1447(d), holding that § 1447(d) only restricted appellate review of remand orders based on § 1447(c)." *In re CSX Transp., Inc.*, 151 F.3d 164, 167 (4th Cir. 1998). That is, "only remand orders issued under § 1447(c) . . . are immune from review under § 1447(d)." *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 346, 352–53 (1976), *abrogated by Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996); 28 U.S.C. § 1447(c) (applying to remands for lack of subject matter jurisdiction and remands "on the basis of any [other] defect").

When § 1447(c) and (d) do not apply, remand orders are appealable under § 1291. "Absent the proscription of § 1447(d) . . . an order remanding a case to state court puts the litigants out of federal court, effectively ending the federal case, and therefore is a final order appealable under 28 U.S.C. § 1291." *In re CSX Transp.*, 151 F.3d at 167. Thus, in *CSX Transportation*, this Court ruled that because a remand order was based on an interpretation of a federal statute and

was outside the scope of § 1447(c), and thus (d), it could be reviewed on appeal through § 1291. *Id.* (adding that mandamus was also available). *See also Borneman*, 213 F.3d at 826 (holding that "we have authority to review [rulings not barred by § 1447(d)] either as appealable decisions under 28 U.S.C. § 1291 or on petition for a writ of mandamus"); *Sonda v. W. Virginia Oil & Gas Conservation Comm'n*, 92 F.4th 213, 218 (4th Cir. 2024) (recognizing that an abstention order leaving a case to be decided in state court is appealable under § 1291).

B. Section 1447(c) and (d) do not bar appeal of CAFA remand orders issued under § 1332(d)(3)–(4).

Section 1447(c) and (d) apply to two types of remands—those based on subject-matter jurisdiction, and those based on "any defect other than lack of subject matter jurisdiction." 28 U.S.C. § 1447(c). The CAFA exceptions at § 1332(d)(3)–(4) (often called the local-controversy, home-state, and discretionary exceptions) are neither of those. Thus, remand orders invoking these exceptions are final orders appealable by right under § 1291.

First, the CAFA exceptions do not eliminate subject-matter jurisdiction. CAFA announces that "the district courts shall have original jurisdiction of any civil action" which is a class action with

minimal diversity and over $5,000,000 in controversy. 28 U.S.C. § 1332(d)(2). The local-controversy and home-state exceptions are codified at 28 U.S.C. § 1332(d)(4). The law instructs that "a district court shall decline to exercise jurisdiction under [CAFA]" when those exceptions are satisfied. *Id.* § 1332(d)(4). It adds that district courts "may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction" under certain other circumstances. *Id.* § 1332(d)(3) (called the discretionary exception).

The statutory language shows that jurisdiction exists in any case that meets the requirements of § 1332(d)(2). This Court has recognized that whenever § 1332(d)(2) is satisfied, "the district court ha[s] subject matter jurisdiction over [the] case pursuant to CAFA." *Quicken Loans Inc. v. Alig*, 737 F.3d 960, 964 (4th Cir. 2013). Then the statute requires or allows district courts to "*decline to exercise* jurisdiction" when the exceptions apply. 28 U.S.C. § 1332(d)(3)–(4) (emphasis added).

Courts have widely understood these CAFA exceptions as "not jurisdictional" but instead as "a form of abstention." *Adams v. West Marine Prods., Inc.*, 958 F.3d 1216, 1223 (9th Cir. 2020). "The local

controversy provision, which is set apart from the above jurisdictional requirements in the statute, inherently recognizes the district court has subject matter jurisdiction by directing the court to 'decline to exercise' such jurisdiction when certain requirements are met." *Graphic Commc'ns Loc. 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 636 F.3d 971, 973 (8th Cir. 2011); *see also Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1023 (9th Cir. 2007) (noting that the CAFA exceptions "require federal courts—although they have jurisdiction under § 1332(d)(2)—to '*decline to exercise jurisdiction*' when the criteria set forth in those provisions are met."). In sum, "rather than divesting a court of jurisdiction, the local controversy exception operates as an abstention doctrine." *Dutcher v. Matheson*, 840 F.3d 1183, 1190 (10th Cir. 2016).

Second, nor are the CAFA exceptions "defects" under § 1447(c). Section 1447(c) refers to remands based on "any defect other than lack of subject matter jurisdiction."

Abstention issues (such as the CAFA exceptions) are not a "defect" in a removal. Section 1447(c) does not define "defect," but the relevant edition of Black's Law Dictionary defines it as "the want or absence of

some legal requisite; deficiency; imperfection; insufficiency." *In re Norfolk Southern Ry. Co.*, 756 F.3d 282, 292 (4th Cir. 2014) (quoting *Black's Law Dictionary* 418 (6th ed. 1990)). Webster's dictionary defines "defect" as "want or absence of something necessary for completeness, perfection, or adequacy in form or function." *Id.* at 292 (quoting *Webster's Third New International Dictionary* 591 (1981)). These definitions suggest that "defect" refers to a problem with the remand itself, not the existence of a later-proven statutory exception.

Further, reading "defect" more broadly, to be "synonymous with 'any remandable ground,'" would "render the term 'defect' superfluous." *Snapper, Inc. v. Redan*, 171 F.3d 1249, 1253 (11th Cir. 1999). For the word "defect" to mean something in § 1447(c), the best "construction of the statute is that the term 'defect' refers to removal defects." *Id.*

The history of § 1447(c) also casts light on the meaning of "defect" in this context. Before 1988, the equivalent phrase was "the case was removed improvidently." 28 U.S.C. § 1447(c) (1987). From 1988 until 1996, the phrase was "any defect in removal procedure." 28 U.S.C. § 1447(c) (1995). In 1996, Congress amended the phrase to the modern formulation "any defect other than lack of subject matter jurisdiction."

See Graphic Comm'cns, 636 F.3d at 974 (explaining the history). Reading "defect" "expansively to cover all remands" would "radically depart from the established law" that Congress did not intend to change when it created the modern text in 1996. *Id.* at 975 (noting that the House Judiciary Committee "held no hearings on the 1996 amendment because it viewed the Bill as technical and noncontroversial"). Using these definitions and interpretive principles, remand issues that are "external to the removal process" do "not render the removal 'defective.'" *Snapper*, 171 F.3d at 1253 (citing the "ordinary sense of the word").

This Court has recognized and applied this rule. "From the context of § 1447, it is apparent "that 'defect' refers to a failure to comply with the statutory requirements for removal." *In re Norfolk Southern Ry. Co.*, 756 F.3d at 292 (holding that a removed case did in fact have a "defect" when 28 U.S.C. § 1445(a) stated that the lawsuit "may not be removed"). *See also Ellenburg v. Spartan Motors Chassis, Inc.*, 519 F.3d 192, 198 (4th Cir. 2008) (describing "defect" in § 1447(c) as meaning "a procedural defect timely raised").

Other courts of appeals have agreed. *See, e.g.*, *Autoridad de Energía Eléctrica de Puerto Rico v. Ericsson Inc.*, 201 F.3d 15, 17 (1st

Cir. 2000) (defining "defect" as "the failure to comply with the various requirements for a successful removal"); *City of Albuquerque v. Soto Enterprises, Inc.*, 864 F.3d 1089, 1097 (10th Cir. 2017) ("We agree with *Snapper* and other circuits that this statutory history shows that 'any defect' is limited to a failure to comply with the statutory requirements for removal.").

The CAFA exceptions are not "defects" under this test. As this case shows, they require litigation and evidence, and place burdens on the parties to prove statutory elements to warrant a remand. Proving a CAFA exception applies in the weeks or months after a removal does not create a "defect" in the removal itself. That is, "a determination that a federal court should abstain in a particular case . . . does not mean the removal was defective." *Snapper*, 171 F.3d at 1253. As "all other circuits that have considered the issue" have held, "Section 1447(c) does not apply to remand motions based on CAFA's mandatory abstention provisions." *Watson v. City of Allen, Tx.*, 821 F.3d 634, 639 (5th Cir. 2016); *accord Graphic Comm'ncs*, 636 F.3d at 975 ("Accordingly, we conclude the local controversy provision was not a 'defect' within the meaning of § 1447(c).").

In sum, an "abstention-based remand order does not fall into either category of remand order described in § 1447(c)." *Quackenbush*, 517 U.S. at 712. "The Supreme Court has held that abstention-based remand orders . . . are appealable." *Myles Lumber Co. v. CNA Fin. Corp.*, 233 F.3d 821, 823 n.1 (4th Cir. 2000) (citing *Quackenbush* and reviewing an abstention order under § 1291).

The same principle applies equally to remand orders under the CAFA exceptions. Because they are "final" orders not subject to § 1447(c), they are outside the bar of § 1447(d) and may be appealed by ordinary notice of appeal under § 1291. This is now hornbook law: "An order remanding after removal under the Class Action Fairness Act . . . can be appealed as of right, and § 1447(d) does not bar review if the remand is based not on a lack of jurisdiction but on a decision to decline jurisdiction under the local-controversy exception or the home-state exception." Wright & Miller, et al., Fed. Prac. & Proc. § 3931.2 (3d ed. 2023).

C. All courts of appeals that have addressed this question agree.

Three circuits have addressed this question—whether § 1291 allows appeals by right of remands under the CAFA exceptions. All agree the answer is yes.

In *Simring v. GreenSky, LLC*, the Eleventh Circuit held that "we have appellate jurisdiction under Section 1291 alone" over an appeal of a remand under CAFA's local controversy exception. 29 F.4th 1262, 1266 (11th Cir. 2022). The court thus accepted and addressed GreenSky's appeal although it filed no § 1453 petition. *Id.* ("GreenSky based its appeal solely on 28 U.S.C. § 1291, which provides an independent basis for our appellate jurisdiction. Because GreenSky did not rely at all on Section 1453, it did not need to file a motion for permissive appeal.").

The *Simring* Court reasoned first that remand orders are "final decisions" under § 1291. *Id.* at 1265. Second, the court observed that § 1447(c) and (d) did not apply because "CAFA's local controversy exception does not implicate subject matter jurisdiction" and because "the local controversy exception is not a procedural 'defect' under . . .

§ 1447(c)." *Id.* Accordingly, § 1291 was a proper path to obtain appellate review.

In *Jacks v. Meridian Resource Co.*, the Eighth Circuit entertained an appeal under § 1291 after *denying* permission to appeal the same order under § 1453. 701 F.3d 1224, 1228 n.2 (8th Cir. 2012), *abrogated on other grounds by BP PLC v. Mayor & City Council of Balt.*, 593 U.S. 230 (2021). The *Jacks* Court held that "the local controversy exception in CAFA . . . operates as an abstention doctrine and does not divest the district court of subject matter jurisdiction." *Id.* at 1229. Thus, "§ 1447(d) interposes no bar to appellate review and the order is final and appealable as a collateral order under § 1291 on that issue." *Id.* (citing *Quackenbush*, 517 U.S. at 711–14). *See also Kitchin v. Bridgeton Landfill, LLC*, 3 F.4th 1089, 1092 (8th Cir. 2021) (holding that "we have jurisdiction under § 1291 over this appeal" in which "[t]he sole issue . . . is whether CAFA's local-controversy exception requires remand in this case, as the district court found").

The Fifth Circuit recently joined the Eleventh and the Eighth Circuits. *Cheapside Minerals, Ltd. v. Devon Energy Prod. Co.*, 94 F.4th 492, 496 & n.5 (5th Cir. 2024). In *Cheapside Minerals*, the court had

granted permission to appeal under § 1453, but also "asked the parties to brief whether we additionally have jurisdiction based on § 1291." *Id.* at 495. Citing *Simring*, *Jacks*, and *Kitchin*, the court held that it would "follow this persuasive authority." *Id.* at 495–96. It added that the court was not aware of any circuit taking a contrary view. *Id.* at 495 n.5. The court concluded that "when a case is remanded for a reason other than subject matter jurisdiction or a procedural 'defect,' § 1447(d) does not bar review and an appellant can rely on § 1291 to appeal the remand order." *Id.* at 496.

D. Allowing defendants to appeal remands under § 1291 would increase efficiency for the Court and parties.

Section 1453 allows a party to seek permission to appeal, and triggers short timelines for decision. But nothing in § 1453 *requires* a remanded defendant to use it. "Section 1453(c) did not supplant § 1291 and become the lone vehicle by which an appellant can obtain review of a final order remanding class action litigation to state court; it simply permits certain appeals . . . that §§ 1447(d) and 1291 would have otherwise prohibited." *Cheapside Materials*, 94 F.4th at 496.

In many cases, seeking permission to appeal under § 1453 cannot be avoided. After all, § 1291 would not allow an appeal from an order

denying remand, but § 1453 does. 28 U.S.C. § 1453(c)(1) ("a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand"). Section 1453 also still must govern appeals when the district court orders remand because one of the initial elements of CAFA, such as the amount in controversy, are found lacking (which would pose a subject-matter jurisdiction problem under § 1447(c) and (d)). Thus, the statutory scheme has ample room for § 1291 to apply to remands based on non-jurisdictional CAFA exceptions, while § 1453 remains a necessary path in other situations.

It would benefit this Court and the bar to make clear, however, when § 1453 is needless and § 1291 provides a path to appeal. It would often be in the courts' best interest to avoid the § 1453 path when the § 1291 path is sufficient, for several reasons.

First, § 1453 sets exceptionally short timelines for both counsel and the Court. Granting only ten days for an initial petition requires quite a scramble by counsel. And then § 1453 calls for the entire appeal to be decided within 60 days. 28 U.S.C. § 1453(c)(2) ("If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than

60 days after the date on which such appeal was filed"); *id.* § 1453(c)(3) (allowing an extension of time that cannot exceed 10 days without all parties' consent).

That 60-day timeline is so tight that courts have created a work-around. Under the work-around, "the 60-day clock does not begin until we grant [a] petition and accept the appeal." *Scott v. Cricket Comm'cns, LLC*, 865 F.3d 189, 193 n.2 (4th Cir. 2017). Courts then adopted a practice of deferring action on the § 1453 petition until after merits briefing. *Id.* ("Consistent with this court's practice, we deferred action on the petition pending full merits briefing.").

As a result, decisions on § 1453 petitions in this Court often await a full second round of briefing and take a year or more. *See, e.g.*, *Dominion Energy v. Metzler Asset Mgmt Gmbh*, No. 18-310 (§ 1453 petition granted after 329 days); *Dominion Energy v. City of Warren*, No. 18-276 (§ 1453 petition granted after 354 days); *Home Depot U.S.A. v. Jackson*, No. 17-184 (§ 1453 petition granted after 297 days); *Saber Healthcare Group, LLC v. Bartels*, No. 16-3115 (§ 1453 petition denied after 468 days); *Cricket Comm'cns v. Scott*, No. 16-3051 (§ 1453 petition granted after 333 days).

The short timing provision in § 1453 creates hydraulic pressure to misshape a statute that requires judgment "not later than 60 days after the date on which such appeal was filed" and limits most extensions to 10 days. And yet petitioners are in no position to complain about this, because if the court simply fails to act within 60 days, their appeal is deemed denied. 28 U.S.C. § 1453(c)(4).

Second, § 1453 offers no real standard to guide the courts of appeals in exercising their discretion. Section 1453 "authorizes a court of appeals to entertain a petition for permission to appeal a remand order," but "does not identify any legal standards that govern a decision on the petition." *Dominion Energy, Inc. v. City of Warren Police & Fire Ret. Sys.*, 928 F.3d 325, 334 (4th Cir. 2019) (adding that, as of 14 years after CAFA passed, the Fourth Circuit still had "yet to specify any relevant factors for deciding such petitions").

In *Dominion Energy*, this Court adopted a "non-exhaustive" eight-factor test for whether a § 1453 appeal should be granted. That test invites parties to spill substantial ink over debatable, factually uncertain points such as weighing "probable harm to the petitioners" against "probable harm to the other parties," whether the "question is

likely to recur," and whether the question seems "important." *Id.* (adding that "we emphasize that the foregoing list is non-exhaustive"). None of these factors, of course, have anything to do with the propriety of the actual remand in question. When a § 1291 appeal by right is available, briefing those factors is a wasteful sideshow for the parties, and analyzing them is equally wasteful of the Court's time.

Third, the non-jurisdictional CAFA exceptions are common bases for § 1453 petitions. This case is one example—it is entirely about the local-controversy exception. Other examples in this circuit include *D.R. Horton v. Brunetti*, No. 24-117 (local-controversy exception); *Geico Casualty Co. v. Bryant*, No. 23-304 (home-state exception); *South Carolina Elec. & Gas v. South Carolina Pub. Serv.*, No. 20-134 (discretionary exception); *Alig v. Quicken Loans Inc.*, No. 12-342 (local-controversy exception). In each of these cases, parties filed petitions for permission to appeal under § 1453, although § 1291 by-right appeals should have been available.

In sum, under the current system, prudent counsel facing remand under non-jurisdictional exceptions to CAFA should file two different appeals from the same remand order: a § 1453 petition and a § 1291

notice of appeal. Counsel should file the § 1453 petition because this Court has not yet announced that it is unnecessary. And they should also file a § 1291 notice of appeal, to preserve proper appeal rights and avoid a possible rapid denial of the § 1453 petition. The Court's current practice and lack of guiding precedent proliferates paperwork, runs up litigation costs, and requires more needless effort by this Court in time spent weighing permission to appeal on petitions filed even though by-right appeal is available.

II. CAFA should be read broadly, and its exceptions narrowly, to further federal jurisdiction over class actions.

"Congress enacted CAFA in 2005 to address abuses of the class action device." *Johnson v. Advance Am.*, 549 F.3d 932, 935 (4th Cir. 2008). Congress wanted to "provid[e] for Federal court consideration of interstate cases of national importance under diversity jurisdiction." Pub. L. No. 109-2, § 2(b)(2), § 2(a)(4)(A), 119 Stat. 4–5 (2005) (adding that this would "restore the intent of the framers" and reduce the problem of state courts "keeping cases of national importance out of Federal court").

The Supreme Court has recognized that "CAFA's primary objective is to ensure Federal court consideration of interstate cases of

national importance." *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014); *see also Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 595 (2013). In light of that objective, the Supreme Court has rejected any presumption against removal in CAFA cases. *Dart Cherokee*, 574 U.S. at 89. The Court has also embraced the purpose of CAFA by pointing out that "CAFA's provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant." *Id.* at 89 (citing S. Rep. No. 109-14, p. 43 (2005)).

To serve CAFA's purpose, this Court also has recognized that it is "obliged to construe and apply CAFA's grant of federal court jurisdiction broadly, and to apply . . . removal exceptions in a narrow fashion." *Dominion Energy*, 928 F.3d at 336 (referring to the exceptions at § 1332(d)(9)); *id.* at 336 n.11 (adding that both the Supreme Court and the Fourth Circuit had previously "rel[ied] on Senate Report No. 109-14, which contains the Senate Judiciary Committee's views with respect to CAFA jurisdiction.").

Other circuits have recognized that the local-controversy exception in particular should be read narrowly. *See, e.g.*, *Evans v. Walter Indus.*,

Inc., 449 F.3d 1159, 1163–64 (11th Cir. 2006). In *Evans*, the Eleventh Circuit held that the "language and structure of CAFA itself indicates that Congress contemplated broad federal court jurisdiction . . . with only narrow exceptions." *Id.* Citing the same Senate Report in *Dart Cherokee* and *Dominion Energy*, the court found that "Congress intended the local controversy exception to be a narrow one, with all doubts resolved 'in favor of exercising jurisdiction over the case.'" *Id.* at 1163 (quoting S. Rep. No. 109-14 at p. 42). Congress had explained that "the local controversy exception 'is a narrow exception that was carefully drafted . . . a federal court should bear in mind that the purpose of each of these criteria is to identify a truly local controversy—a controversy that uniquely affects a particular locality to the exclusion of all others." *Id.* at 1163–64 (quoting S. Rep. No. 109-14 at p. 39).

Multiple other circuits have later agreed. *Arbuckle Mountain Ranch of Tex., Inc. v. Chesapeake Energy Corp.*, 810 F.3d 335, 337 (5th Cir. 2016) ("Congress crafted CAFA to exclude only a narrow category of truly localized controversies . . . the language, structure, and history of CAFA all demonstrate that Congress contemplated broad federal court jurisdiction with only narrow exceptions."); *Benko v. Quality Loan*

Service Corp., 789 F.3d 1111, 1116 (9th Cir. 2015) (announcing that "we agree" with the Eleventh Circuit in *Evans*, and that "[w]e recognize that the local controversy exception is a narrow one, particularly in light of the purposes of CAFA.").

Last, Plaintiffs bear the burden of proof to satisfy the local-controversy exception. *Evans*, 449 F.3d at 1164 ("the plaintiffs bear the burden of establishing that they fall within CAFA's local controversy exception"); *Benko*, 789 F.3d at 1116 ("the plaintiff bears the burden of showing that . . . the local controversy exception applies to the facts of a given case"); *Kaufman v. Allstate New Jersey Ins. Co*, 561 F.3d 144, 153–54 (3d Cir. 2009) (noting that other courts of appeals have "uniformly concluded" that the plaintiffs bear the burden to prove the local controversy exception, and deciding to "join our sister circuits" on that point); *Hart v. FedEx Ground Package Sys. Inc.*, 457 F.3d 675, 680 (7th Cir. 2006).

These principles should guide and inform this Court in addressing the merits of this appeal.

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Respectfully submitted,

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I hereby certify that on June 5, 2024, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the system.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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