



Achieving Balance: Which Cases Belong in Which Courts?

Kevin M. Lewis, Coordinator

Legislative Attorney

Liberty Sacker

Research Associate

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Subject to certain limitations, Congress retains the freedom to regulate the jurisdiction of the federal courts. While [Article III, Section 2](#) of the U.S. Constitution sets outer limits to how far the federal courts' jurisdiction can extend, Congress need not—and [often does not](#)—authorize the federal courts to hear the entire universe of cases and controversies that Article III might otherwise allow them to adjudicate. The Supreme Court's recent decision in [Home Depot v. Jackson](#) illustrates how Congress's decisions regarding how to draft and structure jurisdictional statutes can affect which cases end up in which forums—and, in turn, can implicate significant legal considerations. This Sidebar analyzes *Home Depot* and its place within the debate over the balance of power between the state and federal courts and Congress's role in delineating the boundaries between the two.

Background

Congress has attempted to address the balance of power between the state and federal courts by enacting statutes delimiting which cases the federal courts possess jurisdiction to hear. State courts are courts of [general jurisdiction](#) and broadly retain the power to hear most types of cases not explicitly reserved to the federal courts by constitutional or statutory law. By contrast, federal courts are courts of [limited jurisdiction](#), and may only hear cases as permitted by Article III, § 2 of the Constitution and related statutes. For example, [Article III, § 2, cl. 1](#) provides that the federal “judicial Power shall extend to . . . Controversies . . . between Citizens of different States,” which are known as ‘diversity’ cases. To effectuate that constitutional grant of judicial power, Congress enacted [28 U.S.C. § 1332\(a\)\(1\)](#), which

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grants federal courts jurisdiction to hear diversity cases subject to certain limitations. Among other limitations, the amount in controversy at issue in the dispute must exceed \$75,000. Additionally, diversity jurisdiction under Section 1332(a)(1) usually [requires](#) complete diversity, meaning that all defendants are citizens of different states than the plaintiffs.

The federal courts enjoy ‘[exclusive jurisdiction](#)’ over some categories of cases, which means that state courts cannot adjudicate those types of disputes. For example, under [28 U.S.C. § 1338\(a\)](#), the federal courts have exclusive jurisdiction over cases involving patents and copyrights. In other contexts, however, the federal and state courts enjoy ‘[concurrent jurisdiction](#),’ which means that either forum may adjudicate a case. The federal courts’ ability to hear a case under [diversity jurisdiction](#) is an example of concurrent jurisdiction. Where there is concurrent jurisdiction, defendants may seek to ‘remove’ or move the case against them from state to federal court. [28 U.S.C. §§ 1441\(a\)](#) and [1446](#), the general statutes governing the removal of civil actions from state to federal court, ordinarily allow a defendant to remove a case against it so long as the jurisdictional requirements are satisfied, removal is [timely](#), and ([unless consent is unnecessary](#)) all defendants [consent](#) to the removal. Additionally, where removal is based on diversity of citizenship, [no defendant](#) may be a citizen of the state in which the action is brought. Allowing a defendant to remove a case from state to federal court may result in federal courts deciding a broader array of cases that the state courts would otherwise adjudicate, implicating principles of [federalism](#).

Congress’s decisions regarding the scope of federal jurisdiction can directly affect litigants in several ways. First, federal courts use federal procedural law, which is often complex and can place [barriers](#) in the way of plaintiffs’ claims. For instance, in [Bell Atlantic Corp. v. Twombly](#) and [Ashcroft v. Iqbal](#), the Supreme Court interpreted federal procedural law to require a heightened pleading standard whereby a claim must be “plausible on its face” to pass muster, and the court need not accept legal conclusions and conclusory allegations as true when deciding whether to dismiss a complaint. By contrast, many state courts still use notice pleading, a [lower pleading standard](#) that only requires plaintiffs to provide defendants with fair notice of the claims against them. As a result, claims that may survive an initial motion to dismiss in state court may be [thrown out](#) in federal court for failing to meet the federal pleading standard. (Notably, however, although state courts and federal courts generally use different procedural law, under the [Erie doctrine](#), federal courts sitting in diversity jurisdiction must generally apply state substantive law.)

Second, many defendants [prefer](#) to have claims heard in federal courts, in part because of a fear of state court bias in favor of citizen plaintiffs and against out-of-state defendants and business interests. Commentators sometimes [claim](#) that the different procedures for selecting judges are to blame for concerns about impartiality. Whereas federal court judges are [appointed](#) to serve during “[good Behaviour](#)”—which, as a practical matter, usually means until the judge dies or voluntarily retires—many state judges are [elected](#) for limited, potentially renewable terms. [According to critics](#), state court judges who face highly politicized reelection or retention campaigns may be motivated to decide cases according to the prevailing popular will, creating a risk of unfair decision making particularly against non-constituent parties.

Class Action Fairness Act

Congress has periodically amended the statutes governing federal jurisdiction to alter the balance of power between federal and state courts. In 2005, for instance, Congress enacted the Class Action Fairness Act ([CAFA](#)), which sought to prevent what some Members perceived to be the [abuse](#) of [class action](#) lawsuits in plaintiff friendly state forums. Subject to certain exceptions, the statute [provides](#) the federal courts original jurisdiction over class action lawsuits where the amount in controversy exceeds \$5,000,000 and there is minimal diversity among parties. Unlike complete diversity, minimal diversity requires only that “[any member](#) of a class of plaintiffs is a citizen of a State different from [any](#) defendant.”

The choice of a federal over a state forum can have significant implications for litigants, as discussed above. Some of the biggest effects for class action lawsuits occur because of the difference in choice of procedural law between federal and state forums. Prior to the enactment of CAFA, many class action lawsuits were litigated in state court, sometimes leading to [forum shopping](#), whereby plaintiffs, tending to prefer more favorable state class action certification standards, would file in state courts. CAFA allowed more defendants to remove cases to a federal forum, subjecting claims to the more rigorous requirements of [Federal Rule of Civil Procedure 23](#), which often [requires](#) that common questions of fact or law predominate over individual claims and that a class action suit is superior to other forms of resolution. In some cases, a proposed class that would satisfy a state's class certification standards would [not satisfy](#) Federal Rule of Civil Procedure 23's more demanding certification requirements. Failure to obtain class certification often sounds the "[death knell](#)" for class action litigation because the individual claims involved may be too small to make litigation worthwhile, making the choice of forum a critical issue in such litigation.

Supreme Court Decision

The Supreme Court's recent decision in *Home Depot v. Jackson* illustrates how congressional decisions regarding the language and structure of jurisdictional statutes can have significant effects on litigants. The dispute underlying *Home Depot* began when Citibank [sued](#) respondent George Jackson in state court in an attempt to recover a credit card debt incurred through purchases at Home Depot. Jackson [countersued](#), raising individual counterclaims against Citibank and filing class action claims against Home Depot and another entity. When Citibank subsequently [dismissed](#) its claims against Jackson, Jackson was no longer a defendant to the original action, but instead appeared solely as a plaintiff to the emergent class action lawsuit against Home Depot and the other entity. Home Depot sought to remove the case to federal court, but Jackson [moved](#) to remand the case to state court, arguing that precedent barred removal by a third-party counterclaim defendant like Home Depot. The district court [ruled](#) for Jackson in the first instance, remanding the case to state court, and the Fourth Circuit [affirmed](#) that decision. The Supreme Court granted [certiorari](#) to consider whether either the general removal statute or CAFA's class action removal provision allow a third-party counterclaim defendant to remove a case from state to federal court.

In an opinion written by Justice Thomas, the majority of the Court first [concluded](#) that the general removal statute does not permit removal to federal court based on a counterclaim because a district court should consider only the initial lawsuit filed when determining if there is a right to removal. The operative statute, [§ 1441\(a\)](#), provides for the removal of "any civil action" by the "defendant or the defendants" to that action. The majority [interpreted](#) the phrase "the defendant or the defendants" to apply only to parties named by an original plaintiff and to exclude third parties named for the first time in a counterclaim. Then, shifting to an analysis of CAFA's class action specific removal provision, the majority [held](#) that the text of the statute allowing removal by "[any defendant](#) without the consent of all defendants" merely modifies the requirement under the general removal statute that all defendants consent to a change in forum; it does not enlarge the category of defendants who can remove a case. The Court further [reasoned](#) that because the procedures for removal under both statutes are governed by [§ 1446](#), which also uses the term 'defendant,' interpreting the term differently in either removal provision would lead to inconsistency.

The dissent, authored by Justice Alito, disagreed with the majority, arguing that the majority's decision creates a "[loophole](#)" in CAFA whereby a defendant to an initial claim, for example, a debt collection action, can turn around and sue a third party in a counterclaim class action lawsuit, leaving the third party powerless (absent an alternative statutory basis) to remove the case to federal courts. The dissent [pointed out](#) that if Home Depot had been a party to the original case, it could have removed the class action lawsuit under CAFA. According to the dissent, the majority's holding conflicts with Congress's [intent](#) in enacting CAFA, which was to curb potential abuses of class action lawsuits by making it easier for defendants to remove cases to federal courts. The majority, however, [stressed](#) that its interpretation of

CAFA's removal statute was a consequence of how the statute was written, and that the authority to amend the statute to include third-party counterclaim defendants rests with Congress alone.

Considerations for Congress

Home Depot illustrates that the way in which Congress drafts and structures jurisdictional statutes can affect which courts adjudicate which claims—and, by extension, can implicate broader considerations pertaining to federalism and choice of procedural law. Because Congress did not explicitly authorize third-party counterclaim defendants to remove under CAFA or § 1441(a) in the text of either statute, the majority concluded that such parties cannot remove cases against them. Some commentators have [predicted](#) that the situation in *Home Depot* is unlikely to arise with great frequency. However, as a product of Congress's choice of language in those statutes, there may be at least some increase in the number of class actions that are filed in state court and end up remaining there. This, as described above, may alter the success of such lawsuits.