No. 08-1008

IN THE

Supreme Court of the United States

SHADY GROVE ORTHOPEDIC ASSOCIATES, P.A.,

Petitioner,

v.

ALLSTATE INSURANCE COMPANY,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

This brief is filed on behalf of Public Justice, P.C., a national public interest law firm that specializes in precedent-setting and socially significant civil litigation and is dedicated to pursuing justice for the victims of corporate and governmental abuse. Public Justice prosecutes cases designed to advance consumers' and victims' rights, civil rights and civil liberties, occupational health and employees' rights, the preservation and improvement of the civil justice system, and the protection of the poor and the powerless.

Public Justice regularly represents consumers and employees in class actions, and our experience is that the class action device, properly used, often represents the only meaningful way that individuals can vindicate important legal rights. Public Justice is gravely concerned that, if the lower court's decision in this case is upheld, there will be no limit to the extent to which states can eliminate class actions in diversity cases in federal courts.

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or 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 to its preparation or submission.

STATEMENT OF THE CASE

Because the factual background of this case has been thoroughly set forth in Petitioner's Opening Brief, this brief contains only a limited discussion of the underlying litigation. However, because the history of the class-action device in general, and of Federal Rule of Civil Procedure 23 in particular, is relevant to the question presented in this case – *i.e.*, whether a state legislature may prohibit federal courts from using the class-action device for state law claims – this Statement of the Case is largely devoted to a description of the history and evolution of representative litigation in federal court.

This Litigation:

In brief, this is a proposed class action seeking compensatory damages and declaratory relief for Allstate Insurance Co's. alleged disregard of a New York statute that provides for mandatory statutory penalties for violations of certain "no-fault" insurance laws. *See* N.Y. Ins. Law § 5106(a) (McKinney 2009). Jurisdiction in the district court was based on the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 14. Both the district court and the United States Court of Appeals for the Second Circuit held that no class action could be maintained in federal court due to a prohibition on class actions set forth in Section 901(b) of New York's Civil Practice Law and Rules. (The statute specifically provides that, "[u]nless a statute creating or imposing a penalty, or a minimum measure of recovery, specifically authorizes the recovery thereof in a class action, an

action to recover a penalty, or minimum measure of recovery created or imposed by statute, may not be maintained as a class action.")

In so ruling, the Second Circuit held that New York's prohibition on class actions supersedes Federal Rule of Civil Procedure 23, the procedural rule that governs class actions in federal court.

The Origins of Representative Litigation in Federal Court:

Representative litigation has always been an essential tool for managing the business of the federal courts. Representative litigation existed in English law since the very beginning of that country's legal system, and the practice was adopted by United States federal courts in the earliest days of their existence. *See* STEPHEN C. YEAZELL, FROM MEDIEVAL GROUP LITIGATION TO THE MODERN CLASS ACTION 3, 216-17 (1987). Since then, the federal courts have literally never been without the benefits of some variation of the class action device.

As this Court explained in *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 832-33 (1999), representative litigation was created by courts of equity in response to the procedural problems of managing litigation involving large numbers of similarly situated persons. Because the traditional rule that all interested persons must be made parties to the suit would "at times unfairly deny recovery to the party before the court," the federal courts created exceptions to that rule "to cover situations 'where the parties are very numerous, and the court perceives that it will be al-

most impossible to bring them all before the court; or where the question is of general interest, and a few may sue for the benefit of the whole.'" *Id*. (quoting *West v. Randall*, 29 F. Cas. 718, 722 (No. 17,424) (C.C.D.R.I. 1820) (Story, J.)).

The centuries-old practice of enabling individuals to sue on behalf of a class was first codified in 1842, in Federal Equity Rule 48, which was succeeded by Federal Equity Rule 38 in 1912. *See* HERBERT NEWBERG, NEWBERG ON CLASS ACTIONS § 1.9 at 31 (4th ed. 2002). In 1934, Congress enacted the Rules Enabling Act, which authorized the creation of uniform rules of federal practice and procedure. Act of June 19, 1934, ch. 651, § 2, 48 Stat. 1064. That process produced the Federal Rules of Civil Procedure in 1938, which established Rule 23, the modern version of which governs the use of class actions in federal court today. *See* NEWBERG ON CLASS ACTIONS § 1.9 at 32. A key component of Rule 23 is subsection (b), which defines the types of claims for which class actions are available in federal court.

The Evolution of Rule 23:

The original version of Rule 23 set out three categories of class actions: so-called "true" class actions, which concerned "joint, common, or secondary rights"; the "hybrid" category, which involved "several" rights related to "specific property"; and "spurious" actions, which encompassed "several" rights affected by a common question and for which common relief was sought. The drafters of the original Rule 23 believed that these three categories "described the

situations amenable to the class-suit device." 1966 Adv. Comm. Notes to Rule 23.

These three categories proved difficult for courts to apply, however, and the consensus became that they were unworkable. *See* Benjamin Kaplan, *Continuing Work of the Civil Committee: 1966 Amendments to the Federal Rules of Civil Procedure*, 81 HARV. L. REV. 356, 380-86 (1967) (hereinafter "Kaplan, *Continuing Work*"). In 1966, the drafters entirely rewrote Rule 23 in an effort to resolve the problem. Far from abandoning the idea of defining the types of claims for which class actions should be available in federal court, the drafters sought instead to clarify precisely which claims should be eligible for class treatment in federal court. As Advisory Committee Reporter Benjamin Kaplan explained, the Advisory Committee sought to lay out in "functional" terms "those recurrent life patterns which call for mass litigation through representative parties." Benjamin Kaplan, *A Prefatory Note*, 10 B.C. Ind. & Com. L. Rev. 497, 497 (1969).

The drafters of revised Rule 23 described the numerous benefits of class-action litigation. First, class actions preserve judicial resources by providing a mechanism for the efficient resolution of large numbers of like claims. *See* Kaplan, *Continuing Work*, 81 HARV. L. REV. at 390. *See also* NEWBERG ON CLASS ACTIONS § 1.10 at 36. Second, the device protects defendants from incompatible judicial decisions. *See* Kaplan, *Continuing Work*, 81 HARV. L. REV. at 388 ("The party is saved by a class action from being forced into a 'conflicted' position.") Third, class actions ensure that all persons affected by a lawsuit

will have their interests represented in the litigation. *See* 1966 Adv. Comm. Notes to Rule 23. Finally, class actions provide access to justice for litigants whose claims are too small to make individual adjudication cost effective. *See* Kaplan, *A Prefatory Note*, 10 B.C. Ind. & Com. L. Rev. at 497 (stating that the 1966 revisions were intended "to provide means of vindicating the rights of groups of people who individually would be without effective strength to bring their opponents into court at all"); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.") (citation omitted).

The commentary accompanying the 1966 amendments to Rule 23 describes how each category of claims for which class relief is available under Rule 23(b) serves to promote these three goals:

- Under Rule 23(b)(1)(A), class actions are permitted when individual actions might lead to inconsistent decisions establishing "incompatible standards of conduct for the party opposing the class." Without the availability of class action relief in these cases, different courts might issue rulings imposing inconsistent obligations, which would be unfair to the party subject to those rulings, and would inevitably undermine the effectiveness and le-

gitimacy of judicial decisionmaking. For that reason, the drafters concluded that the "class action device can be used effectively to obviate the actual or virtual dilemma which would thus confront the party opposing the class." 1966 Adv. Comm. Notes to Rule 23.

- Rule 23(b)(1)(B) provides that a class action is appropriate when individual adjudications would "as a practical matter be dispositive of the interests of the other members not party" to the actions. The commentary to the 1966 amendments explains that, in such cases, the "vice of an individual action would lie in the fact that the other members of the class, thus practically concluded, would have had no representation in the lawsuit." 1966 Adv. Comm. Notes to Rule 23. By allowing for representative litigation in such cases, the class action device ensures that absent class members' interests will be protected.

- Rule 23(b)(1)(B) also applies when individual adjudication would "substantially impair or impede" other persons' "ability to protect their interests," such as "when claims are made by numerous persons against a fund insufficient to satisfy all claims." Again, the Advisory Committee noted that a "class action by or against representative members to settle the validity of the claims as a whole," followed by "proportionate distribution of the fund," will ensure equitable distribution of a limited fund. 1966 Adv. Comm. Notes to Rule 23.

- Rule 23(b)(2) allows class actions in cases in which the party opposing the class "has acted or refused to act on grounds that apply generally to the class," and thus where "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." In such cases, the Advisory Committee determined, "individual lawsuits . . . would . . . be inadequate and inefficient" due to the group nature of the rights at stake. Kaplan, *Continuing Work*, 81 HARV. L. REV. at 389.

- Finally, Rule 23(b)(3) permits class adjudication when "questions of law or fact common to class members predominate" and the class action is "superior" to other methods of adjudicating the dispute. Among the factors to be considered in certifying a class under this subdivision is the "burden that separate suits would impose on the party opposing the class, or upon the court calendars." 1966 Adv. Comm. Notes to Rule 23. The Advisory Committee explained that Rule 23(b)(3) covers "cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Id.*

The Rule 23(b) subdivisions thus contribute to the core mission of the Federal Rules of Civil Procedure: to facilitate "just, speedy, and inexpensive" resolution of civil actions in a manner that promotes uniformity of decisionmaking and protects against the

waste of judicial resource. *See Amchem,* 521 U.S. at 617-18 ("Class actions are a means of coping with claims too numerous to secure their 'just, speedy, and inexpensive determination' one by one.") (quoting Fed. R. Civ. P. 1)). As the rulemakers realized, class actions are essential both to promote fairness to litigants and to avoid wasteful, duplicative litigation and/or litigation resulting in conflicting judicial decisions.

Notably absent from the Advisory Committee's comments is any distinction between class suits premised on state as opposed to federal law. The categories of class suits defined in Rule 23(b) turn on questions about the fairness and efficiency of the class device under various circumstances. The source of the underlying claims is irrelevant. Indeed, the drafters of the 1966 revisions expressly noted that the Federal Rules would apply in diversity cases, and that conflicting state law would necessarily give way to federal procedure. Kaplan, *Continuing Work*, 81 HARV. L. REV. at 369.

SUMMARY OF ARGUMENT

For nearly as long as they have existed, the United States federal courts have employed representative litigation to ensure the just and efficient resolution of cases before them. States cannot, through their own legislative or judicial choices, eliminate class actions in federal diversity cases, for at least four reasons.

First, the class action device is codified in Federal Rule of Civil Procedure 23, which specifies the types

of claims eligible for aggregation as a class. As this Court has previously made clear, *see Hanna v. Plumer*, 380 U.S. 460, 471-72 (1965), a federal rule cannot be altered by state practice unless the rule violates the Rules Enabling Act or transgresses constitutional boundaries – a position that *no* party to this case has taken. Rule 23 is carefully calibrated to make class actions available in cases in which courts and litigants alike have a reason to prefer that a representative litigate the claims on behalf of a group of similarly situated claimants. Accordingly, states cannot disrupt the balance struck by Rule 23 by dictating which claims are eligible for class treatment in federal court.

Second, even if Rule 23 were not embodied in a federal rule, the class action is a longstanding procedural device whose use by the federal courts cannot be controlled by state practice. Under the principles established in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), and its progeny, substantive state law governs in diversity cases in federal courts, but state procedures do not. States have no authority to change – or, as in this case, eradicate – the procedural practices of the federal courts.

Third, as their long historical pedigree illustrates, class actions are an essential tool for managing the business of the federal courts. Federal courts rely on the class action device to conserve scarce judicial resources and to ensure that litigants are treated fairly. States cannot eliminate this essential characteristic of federal judicial practice, just as this Court has previously found they have no power to alter the relationship between judge and jury because of its

central role in the operation of the federal courts. *Byrd v. Blue Ridge Rural Elec. Coop., Inc.*, 356 U.S. 525, 537 (1958).

Fourth, through the recently-enacted Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 14, Congress has made clear that class actions are to be governed by federal standards in cases qualifying for federal diversity jurisdiction. Indeed, the principal goal of that legislation was to expand federal diversity jurisdiction to ensure that Rule 23 governs in large interstate class actions, rather than leave out-of-state litigants at the mercy of idiosyncratic state practices and procedures. If state law could determine when the class action device is available in federal court, CAFA would be severely undermined.

The far-reaching consequences of Respondent's position in this case further demonstrate why Rule 23, and not state law, governs in federal courts. According to Respondent, any state, either through legislative action or judicial decision, may choose to eliminate the class action device not only in its own courts, but in every federal court sitting in diversity, without creating a conflict with Rule 23. If Respondent were correct, then federal courts could be forced to hear thousands of identical claims in separate actions, even if those claims would qualify for class treatment under Rule 23, and regardless of the obvious inefficiencies of such a procedure and the potential for it to paralyze the operation of the federal judicial system. Nor could federal courts use aggregate litigation to avoid issuing decisions establishing incompatible standards of conduct (as they can now

under Fed. R. Civ. P. 23(b)(1)(A)), thereby forcing litigants to disobey one judicial decision in order to follow another, and undermining the authority of the federal courts in the process. Finally, under Respondent's theory, states could effectively eliminate the federal courts as a forum for litigants whose state law claims are too small to enable them to pursue individual adjudications, even though Rule 23(b)(3) exists to provide access to justice for such claimants.

Moreover, if Respondent were correct that the availability of the class action device is a substantive rule governed by state law rather than a procedural rule governed by federal law, then states would be equally free to drastically *expand* the availability of class actions beyond the limits of Rule 23. Federal courts could be forced, for example, to certify class actions whenever they meet the requirements of state law, even if they fail to satisfy the prerequisites of Rule 23. For all these reasons, Rule 23 cannot be displaced by state statutes and/or judicial decisions purporting to eliminate class actions for certain categories of claims.

ARGUMENT

STATES CANNOT ELIMINATE CLASS ACTIONS IN FEDERAL DIVERSITY CASES.

I. NEW YORK RULE 901(b) CONFLICTS WITH FEDERAL RULE 23, AND THUS CANNOT LAWFULLY BE APPLIED IN FEDERAL COURT.

There is no dispute that claims such as Petitioner's here could be brought as class actions under Federal Rule of Civil Procedure 23. New York Civil Practice Law & Rules 901(b) ("N.Y. Rule 901(b)"), which bars class treatment for Petitioner's claim, directly conflicts with Rule 23 and therefore has no application in federal court. *See Hanna*, 380 U.S. at 471-72.

Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938), and its progeny established that federal courts must follow state substantive law in diversity cases, although federal courts continue to apply federal procedural rules and practices in such litigation. *See, e.g., Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1966). However, this Court has also made clear that, when a Federal Rule of Civil Procedure is directly on point, "the question facing the court is a far cry from the typical, relatively unguided *Erie* choice." *Hanna*, 380 U.S. at 471. Rather than engage in an analysis of the state law to determine whether it is substantive or procedural, courts instead must apply the federal rule in federal court unless it finds that "the Advisory Committee, this

Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Rules Enabling Act nor constitutional restrictions." *Id.; see also Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 6 (1987) ("[T]he study and approval given each proposed Rule by the Advisory Committee, the Judicial Conference, and this Court, and the statutory requirement that the Rule be reported to Congress for a period of review before taking effect . . . give the Rules presumptive validity under both the constitutional and statutory constraints."); *Gasperini*, 518 U.S. at 428 n.7 ("It is settled that if the Rule in point is consonant with the Rules Enabling Act, 28 U.S.C. § 2072, and the Constitution, the Federal Rule applies regardless of contrary state law.").[2]

Without question, Rule 23 comports with the Rules Enabling Act and does not overstep constitutional restrictions on the power to establish procedural rules governing litigation in federal court. Respondent has never claimed otherwise. Rather, Respondent contends that "there is no conflict between [N.Y. Rule] 901 and Rule 23" because "nothing in Rule 23 either requires or forbids a federal court to certify a class action for any specific claim." Cert. Opp. at 8. Respondent apparently reads Rule 23 as doing no more than establishing the procedures governing class actions in federal court, without dictat-

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[2] The Rules Enabling Act provides that the "Supreme Court shall have the power to prescribe general rules of practice and procedure . . . for cases in the United States district courts," 28 U.S.C. § 2072(a), and states that the rules "shall not abridge, enlarge or modify any substantive right." *Id.* § 2072(b).

ing the types of claims for which the class device is available.

Although Respondent is correct that Rule 23 grants federal courts discretion as to whether to certify a class action as satisfying the requirements of Rule 23(a) and (b), Respondent is wrong to conclude that the two rules are therefore compatible. By prohibiting class treatment of an entire category of claims seeking monetary damages, N.Y. Rule 901(b) *prohibits* class actions in cases in which Federal Rule 23 *expressly allows* class actions to go forward. *See* Fed. R. Civ. P. 23(b)(3) Because N.Y. Rule 901(b) bars class actions for some of the very claims eligible for class actions under Rule 23, it is in clear conflict with that rule. *See, e.g., Burlington N. R.R.*, 480 U.S. at 7 (holding a state law rule mandating damages for unsuccessful appeals invalid because it conflicted with Federal Rule of Civil Procedure 38, which gave district courts discretion to award such damages).

As explained in the Statement of the Case, Rule 23(b) carefully defines the types of claims in which representative litigation best serves the interests of the federal courts and litigants in obtaining "just, speedy, and inexpensive" resolution of their disputes. Fed. R. Civ. P. 1. Not only did the 1966 revisions to Rule 23 set out in detail the types of claims for which the class action device should be made available, but the Advisory Committee explained the purpose of each Rule 23(b) subdivision and described how enabling representative litigation in such cases would further the Federal Rules' ultimate goal of ensuring just and efficient resolution of civil disputes. For ex-

ample, Rule 23(b)(3) – the subdivision of Rule 23 that applies to Petitioner's claim in this case – permits class actions in cases in which "questions of law or fact common to class members predominate" and the class action is "superior" to other methods of adjudication. The Advisory Committee explained that class actions are desirable in these circumstances because representative litigation "achieve[s] economies of time, effort, and expense, and promote[s] uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." 1966 Adv. Comm. Notes to Rule 23.

A state law barring class actions under Rule 23(b)(3) would be in direct conflict with the express intentions of the drafters to make the class action device available for such claims. N.Y. Rule 901(b) is just such a state law. Claims that are eligible for certification as a class action under Rule 23(b)(3), such as Petitioner's claim here, would be barred from proceeding as a class action were N.Y. Rule 901(b) to apply in federal court. In light of this direct conflict, and Respondent's admission that Rule 23 does not violate the Rules Enabling Act and the U.S. Constitution, N.Y. Rule 901(b) may not lawfully be applied in federal court. *See Hanna*, 380 U.S. 460.

Were it otherwise, then any state could prevent federal courts from aggregating individual claims together in a class action, rendering Rule 23(b) a nullity and eliminating the availability of class actions in diversity cases in federal courts. Although N.Y. Rule 901(b) does not bar class actions for *all* claims under New York law, the logic of Respondent's posi-

tion is that any state could choose to do just that with respect to its own laws. The results could be disastrous for the already-overloaded federal courts. For example, even if thousands of identical claims were filed in federal district courts, a state law barring class actions could force those courts to resolve each and every claim separately rather than address them together in a single action, as they may do under Rule 23. Likewise, if class actions were prohibited in federal diversity cases, district courts would inevitably issue decisions establishing incompatible standards of conduct in cases seeking injunctive relief, putting litigants in the impossible position of trying to comply with conflicting court rulings, and undermining the legitimacy of judicial decisions in the process. Finally, if Respondent were to have its way, small claimants could be stripped of their ability to bring their claims as a class, thereby barring their access to federal courts just as surely as if the state had declared their claims nonjusticiable and attempted to impose that conclusion on the federal courts.

All of these results would conflict with the overall purpose of the Federal Rules of Civil Procedure to ensure the "just, speedy and inexpensive determination" of disputes, Fed. R. Civ. P. 1, as well as the specific goals of Rule 23(b), and thus cannot be squared with the Rules Enabling Act's mandate that federal courts, together with Congress, establish uniform rules of procedure to govern litigation in federal courts.

Moreover, if the availability of the class action device were considered a question of substantive law

that could be controlled by the fifty states in diversity cases, then states could similarly control use of all of the various mechanisms for joinder and aggregation of claims in federal court. Rule 23 is closely related to the many other Rules that define when group litigation is permissible. *See* NEWBERG ON CLASS ACTIONS § 1.10 at 38 ("Rule 23 is interrelated with other rules of civil procedure relating to parties in litigation. . . ."); *Atlantis Dev. Corp. v. United States*, 379 F.2d 818, 824 (5th Cir. 1967) (noting that the 1966 "revision [to Rule 23] was a coordinated one to tie more closely together the related situations of joinder, F.R. Civ. P. 19, and class actions, F.R. Civ. P. 23").

For example, Federal Rule of Civil Procedure 42 authorizes joint hearings or trials in actions "involv[ing] a common question of law or fact." Interpleader allows a party to file a case seeking to join persons with potential claims against that party to avoid exposure to double or multiple liability. Fed. R. Civ. P. 22. Various joinder rules, such as Federal Rules of Civil Procedure 14, 18, 19, 20 and 24, allow multiple claims and parties to come together in a single suit under certain conditions. If Respondent's view were correct, a state could conceivably alter or abolish all of these other mechanisms as well on the ground that none is truly "procedural." As Advisory Committee Reporter Benjamin Kaplan commented, joinder rules such as Rule 19 "operate[ ] in a field long identified with the procedure of courts," and thus he found it "hard to imagine the [Supreme] Court overthrowing" these Rules in favor of state law in diversity cases. Kaplan, *Continuing Work*, 81 HARV. L. REV. at 369.

All of these interrelated rules are permissible under the Rules Enabling Act, and they govern in federal court, because they are procedural devices for ensuring the just and efficient adjudication of disputes. States are of course free to establish their own procedural rules to govern aggregation and joinder in their own courts. State cannot, however, dictate the procedures to be followed in federal courts.

II. CLASS ACTIONS ARE A PROCEDURAL DEVICE CONSTITUTING AN ESSENTIAL CHARACTERISTIC OF THE FEDERAL JUDICIAL SYSTEM, AND THUS CANNOT BE DISPLACED BY STATE LAW.

As discussed above, because N.Y. Rule 901(b) directly conflicts with Rule 23, the state law must give way in federal court. Even if the class action device had never been codified in the Federal Rules of Civil Procedure, however, it could not be displaced by a state law. Class actions serve the important procedural goals of providing for the just and efficient resolution of large groups of similar claims. *See Amchem,* 521 U.S. at 617-18. The class device does not alter the substance of claims or the remedy permitted, but simply governs the *method* by which plaintiffs pursue their claims in federal court. Thus, state laws prohibiting class actions are conflicting procedural rules that have no place in federal court. *See, e.g., Gasperini.*, 518 U.S. at 427 ("Under the *Erie* doctrine, federal courts sitting in diversity apply state substantive law and federal procedural law.").

In addition, because the class device is an "essential characteristic" of the federal judicial system, it cannot be displaced by a state law prohibiting class actions. In *Byrd v. Blue Ridge Rural Elec. Coop., Inc.,* 356 U.S. 525, 537 (1958), this Court held that a federal policy favoring jury resolution of disputed questions of fact could not be displaced by a conflicting state law requiring a judge to make such determinations. The Court reasoned that the judge-jury relationship was an "essential characteristic" of the federal judicial system, and concluded that "'state laws cannot alter the essential character or function of a federal court,' because that function 'is not in any sense a local matter.'" *Id.* at 539 (quoting *Herron v. Southern Pacific Co*, 283 U.S. 91, 94 (1931)).

Likewise, class actions are an essential tool for managing the business of the federal courts. In fact, as explained above, the very first generation of federal judges turned to representative litigation as a means of ensuring the just and efficient resolution of disputes. *See* YEAZELL, FROM MEDIEVAL GROUP LITIGATION TO THE MODERN CLASS ACTION at 216-17. Class actions' long historical pedigree is a testament to the essential role they play in conserving judicial resources, consolidating like claims, and preventing federal courts from issuing incompatible decisions. The ability to determine when and how like claims can be aggregated into a single lawsuit is just as essential to the federal judicial system as is the power to maintain the division of labor between judge and jury, and therefore cannot be altered by conflicting state law. *Byrd*, 356 U.S. at 537.

III. THE CLASS ACTION FAIRNESS ACT DEMONSTRATES CONGRESS'S INTENT THAT FEDERAL LAW CONTROL THE AVAILABILITY OF CLASS ACTIONS IN FEDERAL COURT.

The Class Action Fairness Act of 2005 expanded federal jurisdiction over class actions in diversity cases. CAFA accomplished this goal by amending the diversity jurisdiction statute, 28 U.S.C. § 1332, to provide for jurisdiction over class actions involving minimal diversity of citizenship between any class member and any defendant if the class consists of at least 100 members and the aggregate amount in controversy exceeds $5 million. It would frustrate the core purposes of CAFA if states could bar class actions in federal courts or otherwise alter their availability in diversity cases.

As the statute's legislative history makes clear, Congress intended CAFA to serve a number of purposes. First and foremost, CAFA made it easier for parties to class actions to litigate their cases in federal courts so that they could benefit from the application of federal procedural rules applied by an Article III judge. S. Rep. No. 109-14, at 5 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 6. Congress was concerned that state judges were not dealing fairly with out-of-state parties, and that states were too willing to certify class actions in cases where federal courts would not. *Id*. at 4. Congress sought to ameliorate that problem by providing for a federal forum in which Federal Rule of Civil Procedure 23 would govern all certification decisions. *See* Stephen B. Burbank, *Aggregation on the Couch: The Strategic*

Uses of Ambiguity and Hypocrisy, 106 Colum. L. Rev. 1924, 1950 (2006) (CAFA gives litigants "access . . . to courts that have a different attitude toward aggregate litigation, and in any event access to a potentially different outcome on the certification question.").

Second, CAFA was intended to provide for more efficient resolution of like claims by enabling their consolidation into a single federal forum, thereby avoiding the waste of judicial resources that can occur when "multiple judges of different courts must spend considerable time adjudicating precisely the same claims asserted on behalf of precisely the same people." S. Rep. No. 109-14, at 23. By expanding federal jurisdiction, CAFA was designed to "create[ ] efficiencies in the judicial system by allowing overlapping and 'copycat' cases to be consolidated in a single federal court . . . ." *Id.* at 5. Although Congress was primarily concerned about the filing of duplicative "copycat" class actions in multiple state courts, the burden on judicial resources would be even greater if states could compel each injured party to file a separate lawsuit, as N.Y. Rule 901(b) does.

If states were permitted to bar class actions in federal courts, even when those actions satisfy Rule 23(a) and (b) and the jurisdictional requirements of CAFA, then CAFA could be rendered irrelevant. No longer would litigants benefit from the application of Rule 23; indeed, there would be no point to seeking removal to federal court. Furthermore, by preventing the consolidation of like cases into a single federal court, as Congress intended, states could un-

dermine Congress's goal of reducing duplicative litigation in matters that could be treated as a single class action in a single federal court. A state could frustrate Congress's purpose not only in cases in which that state's substantive law is at issue, but also in cases involving the laws of more than one state, or in which state law claims are supplemental to those brought under federal law, since the state law component of these cases could not be resolved together with the rest of the class's claims.

Furthermore, under Respondent's theory, states could also pass laws *expanding* the categories of claims available for class treatment in federal court, which would be in directly conflict with Congress's intent to give defendants the opportunity to defend against certification according to the criteria set forth in Rule 23 by removing class actions to federal court. As discussed above, CAFA was inspired by Congress's perception that some state courts were certifying class actions too easily, making this procedural device more readily available than it would be under Rule 23. Although Congress recognized that states have the power to establish procedural rules in their own courts, it wished to give parties to interstate class actions – and in particular, defendants in such class actions – the opportunity to benefit from federal certification standards. If states could dictate the types of claims available for class treatment, then presumably state laws that expand the class action device beyond the categories listed in Rule 23 would also govern in federal court in diversity cases.[3]

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[3] Nor would these state rules necessarily have to be codified into state law. Under the principles of *Erie*, 304 U.S. 64, if

(*Footnote continued*)

Such a result would undermine the very purposes of CAFA – an outcome that Congress could not have intended and that this Court should not permit.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals affirming the district court's dismissal of the complaint should be reversed and the case should be remanded for further proceedings.

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a state Supreme Court establishes a more lenient rule for the certification of class actions in that state, then, following Respondent's logic, the federal courts would be bound to follow that state precedent.

Respectfully submitted,

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