No. 12-1036

IN THE
Supreme Court of the United States

STATE OF MISSISSIPPI,
EX REL. JIM HOOD, ATTORNEY GENERAL,

Petitioner,

v.

AU OPTRONICS CORP., *ET AL.*,

Respondents.

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

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN, INC., IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Public Citizen, Inc., is a consumer advocacy organization that appears on behalf of its members and supporters nationwide before Congress, administrative agencies, and courts on a wide range of issues, and works for enactment and enforcement of laws protecting consumers, workers, and the public. The enforcement of consumer protection laws involves both governmental litigation, such as the state *parens patriae* action at issue here, and private enforcement through individual lawsuits and class actions. Public Citizen has a longstanding interest in preserving the viability of these distinct mechanisms for protecting the rights of consumers and the general public.

Public Citizen also has an interest in the proper construction of the jurisdictional provisions of the Class Action Fairness Act (CAFA). Public Citizen was actively involved in the legislative process leading to CAFA's enactment, and although opposing the bill in general, participated in and closely followed the discussions that led to the many compromises incorporated in the final legislation. Public Citizen believes that its perspective on CAFA's language and history may assist the Court in understanding the extent to which the Fifth Circuit's construction of CAFA's "mass action" provision to encompass state *parens patriae* actions distorts the plain language and intent of CAFA.

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[1] This brief was not authored in whole or part by counsel for a party. No one other than *amicus curiae* or its counsel made a monetary contribution to preparation or submission of this brief. Letters of consent to filing from counsel for all parties are on file with the Clerk.

SUMMARY OF ARGUMENT

CAFA's enactment reflected a significant expansion of federal diversity jurisdiction. Equally significant, however, are the limitations Congress imposed on CAFA jurisdiction in order to achieve its intended goal of providing federal jurisdiction over large, multistate class actions. These limitations are expressed in various ways—the statute's $5 million amount-in-controversy requirement, its exclusion of actions against state officials and actions involving fewer than 100 class members, and its provisions limiting federal jurisdiction over controversies primarily affecting citizens of single states. *See* 28 U.S.C. §§ 1332(d)(2)-(6).

The most fundamental limitation of CAFA jurisdiction, however, is that it extends only to "class actions"—actions filed under Federal Rule of Civil Procedure 23 and its state analogs—and to a narrowly defined set of "mass actions"—cases where damages claims of 100 or more plaintiffs are proposed to be tried jointly. *Id*. §§ 1332(d)(1), (2) & (11). Mass actions are "deemed" to be class actions for purposes of CAFA removal jurisdiction, but only as to individual plaintiffs whose claims exceed $75,000. *Id*. § 1332(d)(11)(B)(i).

By CAFA's express terms, *parens patriae* actions filed in the name of states by their attorneys general fall outside the scope of CAFA jurisdiction. Such actions are not class actions because they are not based on procedural rules similar to Rule 23, which permit a member of a defined class to sue on behalf of the class as a whole if the rules' requirements are met. Nor can *parens patriae* actions be squeezed into the mass action pigeonhole and in that way be "deemed" class actions within the scope of CAFA jurisdiction. *Parens*

patriae actions are not cases in which claims of multiple plaintiffs are proposed to be tried jointly because they raise common issues of law or fact. Moreover, the mass action provision's requirement that individual plaintiffs whose claims do not exceed $75,000 be remanded to state court is exceedingly difficult to square with *parens patriae* actions.

CAFA's background and legislative history confirm what its plain language provides: *Parens patriae* actions are not mass actions. The explanations of the mass action provision in the legislative history state that it is aimed at mass joinder cases in which multiple named plaintiffs voluntarily seek to have their cases tried together. And in the final debates on CAFA, its proponents expressly stated their intention not to reach *parens patriae* actions. Congress's words and intentions matched perfectly. CAFA, as the enacting Congress intended, provides no jurisdiction over *parens patriae* actions brought by state officials.

ARGUMENT

I. CAFA's Plain Language Excludes *Parens Patriae* Actions from the Definitions of Both Class Actions and Mass Actions.

In construing a jurisdictional statute—like any other statute—this Court "look[s] first to its language, giving the words used their ordinary meaning." *Levin v. United States*, 133 S. Ct. 1224, 1231 (2013). Just as in last Term's decision in *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1348 (2013), the Court need not look beyond CAFA's express terms to determine the scope of the jurisdiction it confers. *Parens patriae* actions fall outside the ordinary meaning of CAFA's definitions of both "class action" and "mass action," so CAFA confers no jurisdiction over

them. Any attempt to shoehorn a state officer's *parens patriae* action into CAFA's mass action definition would plunge both the federal and state courts into a procedural morass as they attempted to deal with the complexities inherent in applying CAFA's mass action provision to a fundamentally different form of proceeding.

A. CAFA Expands Federal Diversity and Removal Jurisdiction Only Over "Class Actions" and "Mass Actions" as It Defines Those Terms.

In CAFA, Congress expanded diversity jurisdiction over class actions by eliminating the requirement of complete diversity and allowing claims of individual class members to be aggregated to satisfy a $5 million amount-in-controversy requirement. *See* 28 U.S.C. §§ 1332(d)(2) & (6); *see also Knowles*, 133 S. Ct. at 1348. Congress limited this expanded jurisdiction, however, by providing that it is only available if a case "is a class action." *Id*. § 1332(d)(2). A "class action" under CAFA is a "civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." *Id*. § 1332(d)(1)(B).

CAFA also provides that one additional, narrowly defined category of case "shall be deemed to be a class action" subject to removal from state to federal court under CAFA: a "mass action." *Id.* § 1332(d)(11)(A). A "mass action" under CAFA is a civil action (other than a class action as defined in § 1332(d)(1)(B)) "in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or

fact." *Id*. § 1332(d)(11)(B)(i). The statute also provides an important limitation on CAFA jurisdiction as applied to mass actions: CAFA's provision for aggregation of claims in a class action to meet an overall $5 million amount-in-controversy requirement does not apply in the same way to mass actions as it does to class actions. Rather, in mass actions, as in conventional diversity cases, jurisdiction is limited to those individual plaintiffs whose claims exceed the diversity statute's basic amount in controversy threshold of $75,000 per person set forth in § 1332(a). Thus, CAFA's mass action provision states that "jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a)." *Id*. § 1332(d)(11)(B)(i). [2]

B. A *Parens Patriae* Action Is Not a Class Action Because It Is Not Filed Under Rule 23 or One of Its State Analogs.

It is apparent at the outset that a *parens patriae* action does not satisfy CAFA's basic definition of a class action because it is not filed under Federal Rule of Civil Procedure 23 or one of its state counterparts.

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[2] CAFA goes on to specify that cases with certain characteristics are not mass actions—specifically, cases involving claims arising from single-state occurrences, cases where claims are joined on the motion of a defendant, cases where claims are made on behalf of the general public under a state statute authorizing such claims, and cases where claims are consolidated solely for pretrial purposes. 28 U.S.C. §§ 1332(b)(11)(B)(ii)(I)-(IV). As the inclusion of the last category makes evident, at least some of these types of cases would not fall within the basic definition of a mass action even absent the language specifically providing that they are not mass actions.

The fundamental feature shared by these class action rules is that they provide that an individual plaintiff suffering a legal injury may bring an action on behalf of others who are similarly situated if the plaintiff and the claims he or she asserts satisfy requirements specified in the rules to determine the propriety of class-wide litigation. *See, e.g., Amgen, Inc. v. Conn. Retirement Plans & Trust Funds*, 133 S. Ct. 1184, 1191 (2013); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2550 (2011); *Shady Grove Orth. Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, __, 130 S. Ct. 1431, 1437 (2010).

These requirements exist because "[t]he class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Wal-Mart*, 131 S. Ct. at 2550. "[T]o justify a departure from that rule," class action rules must "ensure[] that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate." *Id*. Absent a judicial determination that an individual named plaintiff can represent other class members under the criteria specified by the rules, the class cannot be bound by the outcome of the litigation. *Smith v. Bayer Corp.*, 131 S. Ct. 2368, 2379-81 (2011). Indeed, certain features of the rules, such as the requirement of adequate representation and the necessity of class notice and the opportunity to opt out in actions seeking money damages, reflect fundamental requirements of due process. *See, e.g.*, *Wal-Mart*, 131 S. Ct. at 2559 (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985)).

Within the constraints imposed by due process, state and federal class action rules may permissibly vary, *see, e.g., Smith*, 131 S. Ct. at 2376-78, but the

inquiry they reflect remains fundamentally similar: whether a class member may appropriately bring a claim as a representative of a class. CAFA's definition of a "class action" focuses precisely on such rules, which "must, at a minimum, provide a procedure by which a member of a class whose claim is typical of all members of the class can bring an action not only on his own behalf but also on behalf of all others in the class." *W. Va. ex rel. McGraw v. CVS Pharm., Inc.,* 646 F.3d 169, 175 (4th Cir. 2011).

Parens patriae actions, by contrast, are not brought under the authority of class action rules—that is, rules aimed at determining the appropriateness of an individual's acting as representative of a class of which he is a member. Rather, they reflect application of common-law or statutory principles granting the state, when its sovereign or "quasi-sovereign" interests are implicated, standing to bring actions based on injuries suffered by its citizens. *See, e.g., Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592 (1982). Whether such an action is appropriate turns on considerations that are not expressed in Rule 23 or its state analogs. *Parens patriae* actions are therefore not filed under either Rule 23 or any state rule or law aimed at, in CAFA's words, "authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B).

For these reasons, the courts of appeals have agreed that the plain language of CAFA's class action definition does not encompass a *parens patriae* action. *See Purdue Pharma L.P. v. Kentucky*, 704 F.3d 208, 212-13 (2d Cir. 2013) (citing cases). "In form as well as function, *parens patriae* suits lack the equivalency

to Rule 23 that CAFA demands." *Id*. They therefore fall outside CAFA's class action definition.

C. A *Parens Patriae* Action Is Not a Mass Action Because It Is Not a Proposal That Claims of Multiple Plaintiffs Be Tried Jointly on the Ground That They Share Common Issues.

The language of CAFA's mass action provision likewise cannot be stretched to encompass a *parens patriae* action filed by a state attorney general. Again, that definition applies only to cases where "monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact." 28 U.S.C. § 1332(d)(11)(B)(i). And the definition provides that, even in such cases, federal jurisdiction does not extend to the claims of "those plaintiffs" whose individual claims do not exceed § 1332(a)'s $75,000 amount-in-controversy threshold. This definition on its face does not encompass a *parens patriae* suit.[3]

The mass action definition expressly contemplates actions in which there are multiple named "plaintiffs" whose otherwise separately asserted claims are proposed to be tried jointly. A *parens patriae* action does not propose a joint trial of claims of 100 or more "plaintiffs." Although a *parens patriae* action may involve an effort by the state to obtain relief that will

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[3] Public Citizen agrees with petitioner Hood that the clause excluding actions asserting claims "on behalf of the general public," *id*. § 1332(d)(11)(B)(ii)(III), confirms that CAFA does not provide jurisdiction here. The Court need not reach that issue, however, because *parens patriae* actions do not meet the basic definition of mass actions.

ultimately benefit individual citizens of the state who have been injured, the action encompasses the claims of a single plaintiff—the state, proceeding through its relator, the attorney general. As the Seventh Circuit put it in *LG Display Co. v. Madigan*, 665 F.3d 768 (7th Cir. 2011), in a *parens patriae* action "only the … Attorney General makes a claim for damages." *Id*. at 772. Thus, "[by] the plain language of § 1332, this suit is not removable as a mass action." *Id*.

Not only does a *parens patriae* suit not involve claims of multiple "plaintiffs," it also does not involve a proposal for a joint trial of otherwise separate claims on the ground that they involve "common questions of law or fact." The reference to a joint trial presupposes claims that otherwise would be subject to separate trials, which does not square with claims made in a single complaint by a single plaintiff—the state. Describing such a complaint as a proposal for a joint trial stretches English usage further than the language allows.

Moreover, the determination of whether a *parens patriae* action is proper does not involve an inquiry into whether otherwise separate claims asserted by different plaintiffs involve "common questions." While the presence of common legal or factual questions may be determinative of whether separate plaintiffs may *join* their claims in a single action under rules such as Federal Rule of Civil Procedure 20(a)(1)(A), or whether separate actions may be *consolidated* for trial under rules such as Federal Rule of Civil Procedure 42(a), it does not aptly characterize the grounds on which *parens patriae* actions are filed by state attorneys general. The terms used in CAFA's definition of a mass action plainly describe cases in-

volving "the joinder of multiple plaintiffs in a single suit," *Bullard v. Burlington N. Santa Fe Ry. Co.*, 535 F.3d 759, 762 (7th Cir. 2008), as well as cases in which plaintiffs in separate suits move to consolidate their cases for trial on the ground that they present common questions of law or fact. *See, e.g., In re Abbott Labs., Inc.*, 698 F.3d 568 (7th Cir. 2012).[4] By contrast, *parens patriae* suits are not proposals for joint trials based on the existence of common questions.

That mass actions under CAFA include only actions where claims of multiple named plaintiffs are joined for purposes of trial is confirmed not only by the plain language of the primary definition of the term, but also by the limitation on federal jurisdiction that immediately follows and is incorporated in the statutory definition: "except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a) [of section 1332]." 28 U.S.C. § 1332(d)(11)(B)(i). This language not only presupposes the existence of individually identifiable "plaintiffs," but also imposes, at a minimum, an obligation on a court to remand claims of any particular plaintiffs whose claims would not meet the amount-in-controversy requirement for conventional diversity jurisdiction under § 1332(a).[5]

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[4] Consolidation at the behest of a defendant, however, does not qualify a case for treatment as a mass action. 28 U.S.C. § 1332(d)(11)(B)(ii)(II).

[5] The lower courts have not resolved whether establishing that there are individual plaintiffs whose claims exceed $75,000 is part of the defendant's threshold burden to establish the propriety of removal. *Compare Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676 (9th Cir. 2006) (remanding case where defendant failed

(*Footnote continued*)

As the Eleventh Circuit has recognized, the language of the "except" clause refers "to individual plaintiffs and their claims." *Lowery*, 483 F.3d at 1205. The clause unambiguously reflects Congress's intent that the mass action provision apply to instances where individual named plaintiffs have filed claims jointly (or proposed a joint trial of separately filed actions). Only in that circumstance does it make sense to provide that jurisdiction is limited to "those plaintiffs" whose claims would otherwise be subject to jurisdiction under §1332(a).

Indeed, implementing the statutory command that claims of individual plaintiffs that do not meet the amount-in-controversy requirement of § 1332(a) be remanded to state court would prove a procedural nightmare if the Fifth Circuit's view that *parens patriae* actions are mass actions were to prevail. The district court would be obligated either to identify the individual citizens who might ultimately receive relief if the state's claims were successful and remand those whose potential claims did not exceed $75,000, or else to remand to the state court a parallel *parens patriae*

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to show that even one plaintiff had claims whose value exceeded $75,000), *with Lowery v. Alabama Power Co.,* 483 F.3d 1184, 1203–07 (11th Cir. 2007) (expressing doubt that showing the existence of plaintiffs with claims exceeding $75,000 is a threshold requirement). Nonetheless, there is no disagreement that individual plaintiffs whose claims do not exceed $75,000 are outside of federal jurisdiction, and their claims must be remanded to state court if they are included in a mass action otherwise subject to removal under CAFA. *See also* S. Rep. No. 109-14, at 47 (2005) ("[A]ny claims that are included in the mass action that standing alone do not satisfy the jurisdictional amount requirements of Section 1332(a) (currently $75,000), would be remanded to state court.").

action on behalf of those citizens with losses not exceeding $75,000, while retaining only a *parens patriae* action seeking recoveries to benefit citizens with losses exceeding $75,000. The first alternative would likely be impossible, or at least extremely burdensome, while the second would result in significant duplication of effort between the state and federal court systems. Adding to these complexities, the state's own claims for damages that *it* suffered, as well as claims for penalties and injunctive relief as to which the state is concededly the real party in interest, would also likely require remand, as they do not fall within federal jurisdiction under § 1332(a). And at the end of the day, any resolution of whatever part of the case remained in the federal system would not be binding on any person who lacked an individual claim that was not subject to jurisdiction under § 1332(a).

The procedural difficulties inherent in any effort to treat a state's *parens patriae* action as a CAFA mass action only underscore that the statute means what it says. A mass action is one where claims of separate plaintiffs are proposed to be tried jointly, not one where a single plaintiff, the state through its attorney general, asserts claims based in part on injuries to its citizens.

II. CAFA's History Confirms That *Parens Patriae* Actions Are Not Class Actions or Mass Actions.

That Congress did not intend the strange consequences described above is confirmed not only by the language of the mass action provision, but also by CAFA's legislative history. The history is replete with explanations that the mass action provision is aimed at cases involving claims of multiple named plaintiffs

that are joined or consolidated for trial, and that it has no impact on *parens patriae* claims by state attorneys general.

The forerunner of the mass action provision appeared in a version of CAFA introduced in the House of Representatives in the 107th Congress, which provided that a civil action that is not otherwise a class action (because not filed under Rule 23 or one of its state analogs) would be "deemed" a class action if "monetary relief claims in the action are proposed to be tried jointly in any respect with the claims of 100 or more other persons on the ground that the claims involve common questions of law or fact." H.R. 2341, 107th Cong. § 4(a)(2) (2001).[6] The bill's sponsor explained that the provision was aimed at actions in which a "multitude of plaintiffs" sought relief. H.R. Rep. No. 107-370, at 97 (2002) (statement of Rep. Goodlatte in Committee mark-up session).

Versions of CAFA introduced in both the House and Senate in the 108th Congress included similar provisions. *See* H.R. 1115, 108th Cong. § 4(a)(2) (2003); S. 274, 108th Cong. § 4(a)(2) (2003).[7] Committee reports on both bills confirmed what the plain language of the bills indicated: The statutory language was aimed at actions in which claims of individually identified plaintiffs are joined for purposes of trial. In virtually identical language, the reports described the "mass actions" that would be deemed to be class actions as "suits that are brought on behalf of

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[6] The relevant language would have been inserted into 28 U.S.C. § 1332 as a new subsection (d)(9)(A).

[7] Again, the relevant language in the bills as introduced would have been codified as 28 U.S.C. § 1332(d)(9).

hundreds or thousands of *named plaintiffs* who claim that their suits present common questions of law or fact that should be resolved in a single proceeding in which large groups of claims are tried together, in whole or in part." H.R. Rep. No. 108-144, at 35 (2003) (emphasis added); *see* S. Rep. No. 108-123, at 42 (2003) (using identical language except for the addition of "simultaneously" before "in a single proceeding").

The House Report also included the bill's sponsor's explanation that the mass action provision was aimed in large part at mass joinder proceedings in Mississippi and West Virginia state courts, in which mass actions had been "used to consolidate for trial the claims of as many as 8,000 plaintiffs …." H.R. Rep. No. 108-144, at 94. The sponsor explained that mass actions were effectively "opt-in class actions in the sense that they *include only those claimants who have affirmatively consented to the inclusion of their claims in the action*." *Id*. at 92 (emphasis added).

Notably, the early versions of the mass action provision introduced in the 107th and 108th Congresses would have covered not only claims of multiple plaintiffs proposed to be tried jointly, but also so-called "private attorney general actions," defined in the proposed bills as cases in which "the named plaintiff purports to act … for the interests of the general public" in seeking monetary relief. *See* H.R. 2341, 107th Cong. § 4(a)(2) (2001); H.R. 1115, 108th Cong. § 4(a)(2) (2003); S. 274, 108th Cong. § 4(a)(2) (2003). The bills, however, added that such actions would *only* be deemed class actions for CAFA purposes if the named plaintiff was "not a State attorney general." A Justice Department official testifying in favor of

CAFA at a House hearing in 2003 emphasized that the provision requiring that certain cases be deemed class actions even if not so labeled was "exclusive" of actions brought by "a State attorney general" and applied only to "private attorney general suits" as well as suits involving claims of 100 or more plaintiffs. *Class Action Fairness Act of 2003: Hearing on H.R. 1115 Before the House Comm. on the Judiciary* 8-9, 108th Cong., 1st Sess. (2003) (testimony of Viet Dinh, Assistant Attorney General, Office of Legal Policy).

As ultimately enacted, the mass action provision of CAFA dropped the provision deeming private attorney general suits to be class actions, and replaced it with a provision, 28 U.S.C. § 1332(d)(11)(B)(ii)(III), that makes explicit that such actions are *not* deemed class actions. It would be nonsensical to conclude that in deleting the provision deeming *private* attorney general suits to be class actions and replacing it with a specific exclusion covering such suits, CAFA proponents somehow intended to provide that suits actually brought by *state* attorneys general—which they had previously taken pains *not* to deem class actions—would now be considered class actions even while private attorney general actions were not. Indeed, the fact that CAFA initially provided that actions brought in the name of the general public, *except* for actions brought by state attorneys general, would be deemed to be class actions, and then was altered to provide explicitly that such actions would *not* be deemed class actions—with *no* exception for actions brought by state attorneys general—provides striking confirmation that CAFA was not intended to cover *parens patriae* actions brought by state attorneys general.

CAFA's definition of mass actions was altered to its final form—actions "in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under [28 U.S.C. § 1332] subsection (a)"—later in the 108th Congress, in S. 2062 (2004). The legislation ultimately enacted as CAFA in the 109th Congress, Pub. L. No. 109-2 (2005), was identical to S. 2062. Although the wording was slightly different from that in the bills that were the subjects of the 2003 House and Senate Reports, the differences, including the explicit references to "plaintiffs," made even clearer that the provision was aimed at cases in which claims of individual named plaintiffs were joined.

The Senate Report on the legislation as finally enacted, moreover, again referred to mass actions as "suits that are brought on behalf of numerous *named plaintiffs* who claim that their suits present common questions of law or fact that should be tried together even though they do not seek class certification status," and it explained that under the mass action provision, "any civil action in which 100 or more *named parties* seek to try their claims for monetary relief together will be treated as a class action for jurisdictional purposes." S. Rep. No. 109-14, at 46 (2005) (emphasis added).

The drafting history thus underscores what the statutory language itself makes plain: The mass action provision applies to cases in which claims of multiple named plaintiffs are joined. *Parens patriae* ac-

tions by state attorneys general do not meet that description.

Indeed, the statute's history reveals that in the final debates over CAFA, Congress considered and decisively rejected the possibility that the statutory language might provide for federal jurisdiction over *parens patriae* actions. When CAFA reached the Senate floor for final consideration in February 2005, Senator Pryor introduced an amendment that would have provided that the term "class action" in CAFA's jurisdictional provisions would "not include any civil action brought by, or on behalf of, any [state] attorney general." 151 Cong. Rec. S1157 (Feb. 9, 2005). As Senator Pryor explained, the amendment was not intended to alter CAFA's scope, but merely to "clarif[y]" it, *id*. at S1158, to address concerns expressed by state attorneys general that the statute might be "misconstrued" to apply to *parens patriae* actions. *Id.* (quoting letter from 46 state attorneys general).

As they carefully explained, CAFA's sponsors opposed the amendment not because they intended CAFA to cover *parens patriae* actions, but because the amendment was "unnecessary," *id*. at S1163 (Sen. Hatch), as it was "perfectly clear" that the bill would not apply to *parens patriae* actions, which were "excluded from the reach of the bill." *Id*. at S1164. Each of the other CAFA proponents who spoke in opposition to Senator Pryor's amendment made the same point: The statute would not affect cases brought under the *parens patriae* authority of state attorneys general. *Id*. at S1160 (Sen. Specter), S1161 (Sen. Carper), S1161-62 (Sen. Cornyn), S1163 (Sen. Grassley). Senator Grassley's remarks are typical:

> [I]n my judgment, the amendment is not necessary. I will explain. State attorneys general have authority under the laws of every State to bring enforcement action to protect their citizens. Sometimes these law[suit]s are parens patriae cases, similar to class actions in the sense that the State attorney general represents the people of that State. In other instances, their actions are brought directly on behalf of that particular State. But they are not class actions; rather, they are very unique attorney general lawsuits authorized under State constitutions or under statutes.

Id.

CAFA's proponents also objected that the Pryor amendment was overbroad because its wording could be read to immunize even a conventional Rule 23-type class action from removal if a state attorney general happened to be a member of the class or if the state attorney general had somehow authorized the class's counsel to represent the class. *See id.* at S1161 (Sen. Specter); S1162 (Sen. Cornyn); S1163 (Sen. Grassley); S1164 (Sen. Hatch). Nothing in those comments, however, suggested that CAFA would ever provide for federal jurisdiction over a state *parens patriae* action initiated by a state attorney general in the name of the state. Rather, as Senator Grassley stated unequivocally, "our bill *will not affect those lawsuits*." *Id.* at S1163 (emphasis added).

In short, CAFA's supporters unanimously disclaimed any intent to bring *parens patriae* actions within federal jurisdiction. Accordingly, Senator Pryor's amendment was rejected. *Id.* at S1165. The debate over the amendment strongly underscores

what is evident from the text of the statute and the explanations offered in the committee reports: CAFA does not authorize a *parens patriae* action to be deemed a class action for purposes of CAFA jurisdiction.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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