



RESTORING THE ORIGINAL DESIGN OF THE AMERICAN CIVIL JUSTICE SYSTEM

10.23.2013



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AMERICA'S CIVIL JUSTICE SYSTEM IS BROKEN AND IMPOSING UNACCEPTABLE COSTS ON SOCIETY

- Damaging the Economy and Job Creation
- Impeding Medical Innovation
- Contributing to Rising Healthcare Costs
- Undermining American Competitiveness
- Deterring Foreign Investment



JUDICIAL BIAS IS AT THE ROOT OF MUCH OF THE DYSFUNCTION

Exposing Judicial Bias:

- ILR's Lawsuit Climate Report
- ATRA's "Judicial Hellholes"
- JEI: Judicial Evaluation Institute



FRAMERS DESIGNED DIVERSITY JURISDICTION TO PROTECT OUT-OF-STATE DEFENDANTS FROM BIAS

The Framers, apprehensive of actual or perceived state court bias in favor of local interests, considered a neutral federal tribunal necessary in some cases to the peace and harmony of the union, and they took care to extend federal jurisdiction to “cases in which the State tribunals cannot be supposed to be impartial.”

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COMPLETE DIVERSITY IS NOT REQUIRED BY THE CONSTITUTION

- The requirement of complete diversity arises from a perfunctory six-sentence decision by Chief Justice Marshall that he later came to regret as wrongly decided.
- The requirement of complete diversity frustrates one of the central purposes of the Constitution's establishment of the federal judicial power—to provide a neutral federal forum to resolve interstate disputes.
- There is a substantial, unanswered argument that the complete diversity rule violates the text of the Constitution.



CAFA WAS AN IMPORTANT STEP IN DIRECTION OF ORIGINAL DESIGN

- The Chamber led coalition that promoted the passage of CAFA persuaded Congress to reverse, for covered class actions, the 1806 Supreme Court decision that created the “complete diversity” rule.
- A primary purpose of CAFA was to “restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction.”



CAFA “LOOPHOLES” ARE RESULT OF JUDICIAL & LEGISLATIVE DEPARTURES FROM ORIGINAL DESIGN

Article III, Section 2 mandates that “[t]he judicial Power shall extend to,” among other things, “Controversies between two or more States;—*between a State and Citizens of another State*;—*between Citizens of different States*;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.”



FAIRNESS IN INTERSTATE LITIGATION ACT (FILA): CODIFYING THE INTENT OF ARTICLE III

28 USC 1332 shall be amended to provide that:

District courts shall exercise jurisdiction over any civil action in which the matter in controversy exceeds the sum or value of \$75,000*, exclusive of interest and costs, and the defendant is not a citizen of the forum state, when the controversy is between:

- Two or more states;
- A state and any citizen of another state;
- Any citizens of different states;
- Citizens of the same state claiming lands under grants of different states; or
- A state, or the citizens thereof, and foreign states, citizens or subjects.