Nos. 25-2322, 25-2323, 25-2324, 25-2325, & 25-2327

IN THE
United States Court of Appeals for the Seventh Circuit

IN RE: ABBOTT LABORATORIES, ET AL. PRETERM INFANT NUTRITION PRODUCTS LIABILITY LITIGATION

TERRAINE ABDULLAH, on her own behalf and as Parent and Natural Guardian of H.S., a minor, et al.,

Plaintiffs-Appellants,

v.

MEAD JOHNSON & COMPANY LLC, et al.,

Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Illinois, the Honorable Rebecca R. Pallmeyer
D.C. Nos. 1:22-cv-00071, 1:24-cv-11759, 1:24-cv-11760, 1:24-cv-11761, 1:24-cv-11763, & 1:24-cv-11765

BRIEF FOR *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLEES AND AFFIRMANCE

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November 25, 2025

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-2322, 25-2323, 25-2324, 25-2325, & 25-2327

Short Caption: Abdullah v. Mead Johnson & Company LLC, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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The Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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Attorney's Signature: /s/ Jonathan S. Franklin Date: 11/25/2025

Attorney's Printed Name: Jonathan S. Franklin

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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N/A

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

Attorney's Signature: /s/ Jennifer B. Dickey Date: 11/25/2025

Attorney's Printed Name: Jennifer B. Dickey

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation.[1] It 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, and from every geographic region of the country. An important function of the Chamber is to represent the interests of its members before Congress, the Executive Branch, and the courts. To that end, the Chamber routinely files *amicus* briefs in cases, like this one, involving issues of concern to the nation's business community.

The Chamber has a particular interest in preventing plaintiffs from fraudulently joining in-state individuals or entities, such as the local hospitals sued here, as defendants in order to defeat federal diversity jurisdiction. Such efforts not only deny out-of-state corporate

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(4)(E). All parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2).

defendants their right to an impartial federal forum, but also unnecessarily drag individuals and small businesses into litigation when they would otherwise never have been sued. The Chamber therefore urges this Court to uphold the district court's finding that Appellants cannot defeat Appellees' right to a federal forum guaranteed to them by statute and provided for in the Constitution by improperly suing local defendants against whom they have no good-faith intent to prosecute their claims.

SUMMARY OF ARGUMENT

This case implicates removal jurisdiction based on diversity of citizenship. At issue is whether a plaintiff may circumvent the jurisdiction constitutionally authorized and congressionally conferred on federal courts to adjudicate claims against out-of-state defendants merely by pleading state-law claims against in-state defendants, where a district court finds that the plaintiff has no real, good-faith intent to pursue those claims. The answer is no.

The fraudulent-joinder doctrine is necessary to preserve diversity jurisdiction, which the Constitution grants to provide a neutral forum for disputes between citizens of different states. While contemplating

the scope of jurisdiction to confer upon the federal courts, the Framers recognized that the "prevalency of a local spirit" could affect state courts' analyses of "national causes." The Federalist No. 81 (Alexander Hamilton). Because of this, the Framers questioned whether state courts could remain impartial in suits between residents and non-residents. *See, e.g.*, *Guar. Tr. Co. of N.Y. v. York*, 326 U.S. 99, 111 (1945). Diversity jurisdiction was therefore created to provide "assurance to non-resident litigants of courts free from susceptibility to potential local bias." *Id.* Empirical evidence has borne out the Framers' concerns, as plaintiffs fare less well when out-of-state defendants exercise their right to have their cases heard by independent federal judges than when plaintiffs retain their "home court advantage" in state courts.

Accordingly, as the Supreme Court held more than a century ago, when a case otherwise satisfies the requirements of the diversity statute, a federal right of removal exists that "cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy." *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97 (1921). In *Wilson*, the Court held that removal is proper, *inter alia*,

when "the rational conclusion" drawn from the facts of record is that a plaintiff has joined a non-diverse defendant "without any purpose to prosecute the action in good faith as against him and with the purpose of fraudulently defeating the [diverse defendant's] right of removal." *Id.* at 98. Despite this longstanding rule, however, plaintiffs continue to tack on baseless claims against non-diverse parties as a tactic to defeat diversity removal. The fraudulent-joinder doctrine is the sole safeguard against such jurisdictional manipulation, and its continued, vigorous enforcement is essential to protect individuals and businesses against unwarranted litigation caused by jurisdictional gamesmanship.

The district court correctly applied the doctrine in this case. It properly determined—and Appellants do not seriously contest—that Appellants showed no real intent to pursue their claims against the non-diverse hospital defendants before they were dismissed. And it correctly held that this improper gamesmanship constitutes fraudulent joinder. This Court should reject Appellants' contention that the longstanding fraudulent-joinder doctrine does not apply when a court finds that joinder was, in fact, fraudulent. As already noted, the Supreme Court held long ago that removal is proper upon a finding that

the plaintiff joined a non-diverse defendant "without any purpose to prosecute the action in good faith." *Id.* The lower courts, including the court below, have had no difficulty applying that objective standard. This Court should not jettison it and thereby allow plaintiffs to defeat federal jurisdiction through bad-faith gamesmanship.

ARGUMENT

I. A ROBUST FRAUDULENT-JOINDER DOCTRINE ENSURES THAT PLAINTIFFS WILL NOT UNDERMINE DIVERSITY JURISDICTION BY UNNECESSARILY FORCING LOCAL PARTIES INTO LITIGATION.

A. Diversity Jurisdiction Exists To Protect Out-of-State Defendants From Local Bias.

As the Framers recognized, "the prevalency of a local spirit" could affect state courts' decisions. The Federalist No. 81 (Alexander Hamilton). In particular, the Constitution's drafters were concerned that state courts' "local attachments" would hinder their ability to impartially decide disputes between citizens of different states. *See* The Federalist No. 80 (Alexander Hamilton); *Bank of the U.S. v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809) (observing that the Constitution reflects "apprehensions" about state courts' impartiality).

Because federal courts had "no local attachments," the Framers understood that they were "likely to be impartial between the different

states and their citizens." The Federalist No. 80 (Alexander Hamilton). Article III of the Constitution therefore allows for diversity jurisdiction to "prevent apprehended discrimination in state courts against those not citizens of the state." *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 74 (1938). Inherent in that provision for jurisdiction is the "presum[ption] . . . that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, . . . the regular administration of justice." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 347 (1816); *see also Barrow S.S. Co. v. Kane*, 170 U.S. 100, 111 (1898) (explaining that the purpose of diversity jurisdiction "was to secure a tribunal presumed to be more impartial than a court of the state in which one of the litigants resides").

Statutory diversity jurisdiction was likewise enacted with the purpose of "provid[ing] a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553-54 (2005); *see also* S. Rep. No. 85-1830 (1958), *as reprinted in* 1958 U.S.C.C.A.N. 3099, 3102 (explaining that diversity jurisdiction exists to "provide a separate forum for out-of-state citizens against the prejudices

of local courts . . . by making available to them the benefits and safeguards of the federal courts"). For purposes of diversity jurisdiction, a corporation is considered a citizen of the state in which its principal place of business is located because "it will not be subject to local hostility [there] the way a foreign corporation might, and therefore need not seek the protection against local biases provided by the federal system." *Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., Inc.*, 316 F.3d 408, 411 (3d Cir. 2003). But the converse is true where, as here, a corporation is sued outside its home venue. Out-of-state defendants, like Appellees, are entitled to a federal forum to protect against the possibility of local bias in the state-court system.

These same principles provide the foundation for diversity removal jurisdiction, which the Judiciary Act of 1789 first conferred. *See Martin*, 14 U.S. (1 Wheat.) at 348-50; Michelle S. Simon, *Hogan vs. Gawker II: A Statutory Solution to Fraudulent Joinder*, 70 Baylor L. Rev. 1, 8 (2018); Judiciary Act of 1789, ch. 20, § 12, 1 Stat. 73, 79-80. Like the Constitution's protections, which apply equally to all, the federal judicial power was designed "not to be exercised exclusively for the benefit of parties who might be plaintiffs, and would elect the

national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their privileges, before the same forum." *Martin*, 14 U.S. (1 Wheat.) at 348. As a result, where federal jurisdiction exists, the defendant has a "right of removal." *Wilson*, 257 U.S. at 97. Without it, a plaintiff's choice of state forum would always control, and the defendant would be "deprived of all the security which the [C]onstitution intended in aid of his rights." *Martin*, 14 U.S. (1 Wheat.) at 348-49.

The doctrine of "fraudulent" joinder, which the Supreme Court recognized long ago, is designed to prevent plaintiffs from easily circumventing the Framers' design. *See, e.g.*, *Chesapeake & Ohio Ry. Co. v. Cockrell*, 232 U.S. 146, 152 (1914) ("[T]h[e] right of removal cannot be defeated by a fraudulent joinder of a resident defendant having no real connection with the controversy."). In its first case on the doctrine, the Supreme Court explained that it prevents plaintiffs' "attempts to wrongfully deprive parties entitled to sue in the Federal courts of the protection of their rights in those tribunals." *Ala. Great S. Ry. Co. v. Thompson*, 200 U.S. 206, 218 (1906). And even before the Court articulated this doctrine, it noted concerns about "sham

defendants." *Plymouth Consol. Gold Mining Co. v. Amador & S. Canal Co.*, 118 U.S. 264, 270 (1886).

As the Supreme Court recognized then, plaintiffs cannot, through the mere artifice of joining unnecessary local parties, circumvent the constitutional and statutory safeguards for out-of-state defendants. *See Thompson*, 200 U.S. at 218. Yet that is what will happen if this Court upholds Appellants' tactics in this case. Given the district court's effectively unchallenged finding that Appellants had no good-faith intent to prosecute their claims against the local hospital defendants other than in a fraudulent effort to defeat federal jurisdiction, remanding these cases would turn the Framers' and Congress's guarantee of diversity jurisdiction into a mirage.

B. Plaintiffs Should Not Be Able To Hale Businesses Or Individuals Into Court Merely As A Tactical Weapon To Destroy Federal Jurisdiction.

Given these concerns, the Supreme Court has long been vigilant in protecting both out-of-state defendants' right to a federal forum, and parties' rights to be free from baseless litigation, against plaintiffs' attempts to secure a perceived advantage in home courts. As the Court held long ago, "[f]ederal courts should not sanction devices intended to

prevent a removal to a Federal court where one has that right, and should be equally vigilant to protect the right to proceed in the Federal court as to permit the state courts, in proper cases, to retain their own jurisdiction." *Wecker v. Nat'l Enameling & Stamping Co.*, 204 U.S. 176, 186 (1907). But despite this longstanding rule, plaintiffs continue to sue resident defendants against whom they have no intention of recovering, as this case shows. Joining "token nondiverse defendants to defeat removal" is "perhaps the most common vehicle for procedural manipulation of removal statutes." Scott R. Haiber, *Removing the Bias Against Removal*, 53 Cath. U. L. Rev. 609, 645 (2004). The fraudulent-joinder doctrine is the only safeguard against such efforts to circumvent diversity jurisdiction, and the Court should not accept Appellants' invitation to water down that doctrine in this case.

1. Plaintiffs Have Strong Incentives To Improperly Sue Local Parties In Order To Avoid Federal Jurisdiction.

The Framers' concerns are neither theoretical nor antiquated. Rather, as demonstrated by this case and others like it, plaintiffs continually seek to destroy out-of-state defendants' right to an impartial federal forum by joining in-state defendants who would not otherwise

have been sued. "It is no secret that plaintiffs often deliberately structure their state court lawsuits to prevent removal by defendants to federal court." Laura J. Hines & Steven S. Gensler, *Driving Misjoinder: The Improper Party Problem in Removal Jurisdiction*, 57 Ala. L. Rev. 779, 781 (2006); *see also* Steven Plitt & Joshua D. Rogers, *Delay, Manipulation, and Controversy: The Impact of the 2012 Amendments to 28 U.S.C. § 1446 on the Battles for Removal of Cases to Federal Court*, 6 Phoenix L. Rev. 633, 635-39 (2013) (discussing plaintiffs' procedural strategies). Plaintiffs do so to gain the precise tactical advantages that diversity jurisdiction was established to combat: a "home court advantage" in disputes between citizens of different states. Some state courts—including those in Philadelphia, where these cases were brought—have developed a reputation for being particularly hostile to business or other out-of-state defendants.[2]

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2 *See* U.S. Chamber Inst. for Legal Reform, *2019 Lawsuit Climate Survey: Ranking the States* 9, 27 (2019) (https://tinyurl.com/4cxeekdf) (according to 2019 survey of corporate executives and in-house lawyers, Pennsylvania's state court system ranks 39th among the 50 states in terms of overall fairness and reasonableness, and Philadelphia was ranked as one of 12 jurisdictions most commonly cited as having the "least fair and reasonable litigation environment for both defendants and plaintiffs").

As a general matter, plaintiffs' success rates drop significantly in cases removed to federal court, likely because plaintiffs must proceed before independent, life-tenured judges rather than a state forum biased against out-of-state defendants. *See, e.g.*, Simon, *supra*, at 3 ("[E]mpirical studies have shown that plaintiffs suffer a drop in win rates after a case has been removed to federal court."); James M. Underwood, *From Proxy to Principle: Fraudulent Joinder Reconsidered*, 69 Alb. L. Rev. 1013, 1014 (2006) (discussing the "low win-rate" in removed cases and noting that "a plaintiff's ability to avoid removal . . . could mean the difference between winning and losing" (quoting Allyson Singer Breeden, *Federal Removal Jurisdiction and Its Effect on Plaintiff Win-Rates*, Res Gestae, Sept. 2002, at 26)). In the study discussed by Simon and Underwood, an examination of data from the Administrative Office of the United States Courts revealed that removed cases had a lower plaintiff "win rate"—the "fraction of plaintiff wins among judgments for either plaintiff or defendant"—than cases in which the plaintiff chose the forum, either by filing in state or federal court. Kevin M. Clermont & Theodore Eisenberg, *Do Case Outcomes Really Reveal Anything About the Legal System? Win Rates and Removal*

Jurisdiction, 83 Cornell L. Rev. 581, 593, 599 (1998). To put it more succinctly, "forum matters." *Id.* at 599. As such, it matters that defendants retain their constitutional and statutory right to remove that home-court advantage when a joinder is fraudulent.

Considerable research has shown that local juries have measurable bias against out-of-state defendants, who are more likely to receive large damages verdicts. *See, e.g.*, Eric Helland & Alexander Tabarrok, *The Effect of Electoral Institutions on Tort Awards*, 4 Am. L. & Econs. Rev. 341, 367 (2002) (interpreting data to "suggest that awards are 21% to 28% higher in partisan states with out-of-state defendants than in other states"). Similarly, there are indications that state-court judges have some bias—whether conscious or unconscious—against out-of-state defendants. *See, e.g.*, Andrew J. Wistrich et al., *Heart Versus Head: Do Judges Follow the Law or Follow Their Feelings?*, 93 Tex. L. Rev. 855, 894-98 (2015). In a survey of 371 responding judges across three states, judges considered a fact pattern in which an in-state plaintiff sued an in-state or out-of-state defendant for dumping toxic chemicals in the plaintiff's lake. *Id.* at 395-96. The judges were tasked with determining the amount of punitive damages,

if any, that they would award. *Id.* Concluding that "[t]he results suggest that in-group preferences are about as salient to judges as they are to jurors," the study found that judges in these jurisdictions, taken as a whole, "showed a notable bias against out-of-state defendants." *Id.* at 898.

Moreover, even without local bias, state and federal courts differ in other ways that affect their attractiveness to plaintiffs. For example, federal courts require unanimous jury verdicts, whereas some states require only "some level of super-majority." Robert L. Jones, *Finishing A Friendly Argument: The Jury and the Historical Origins of Diversity Jurisdiction*, 82 N.Y.U. L. Rev. 997, 1091 n.442 (2007). Notably, Pennsylvania does not require unanimous jury verdicts in civil cases—a verdict of "at least five-sixths" of the jury "shall have the same effect as a unanimous verdict of the jury." *See* 42 Pa. Cons. Stat. § 5104(b). Other procedural distinctions, such as differences in evidentiary rules[3] and summary judgment practice, also affect the appeal of a particular

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[3] For example, Pennsylvania courts use the standard in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), to analyze the admissibility of expert testimony, whereas federal courts, through Fed. R. Evid. 702, use the test from *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *See* Pa. R. Ev. 702 cmt.

forum. *See* Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 Am. U. L. Rev. 369, 418-20 (1992).

For these reasons, removal can often be "outcome-determinative." *Cf.* Jones, *supra*, at 1091. Precisely because federal court presents a neutral, fair forum for both plaintiffs and defendants, plaintiffs generally have a strong incentive to resist it in favor of the more plaintiff-friendly confines of state court. *See* Simon, *supra*, at 9-10.

2. Without A Robust Fraudulent-Joinder Doctrine, Local Defendants Will Continually And Unnecessarily Be Dragged Into Court.

Because diversity removal is generally undesirable to plaintiffs, lawyers for some plaintiffs have long employed improper strategies to avoid it. *Cf.* Underwood, *supra*, at 1042 (noting that the Association of Trial Lawyers of America "has been quite candid in its publications concerning the strategy of using joinder to stay out of federal court").

One of the most popular tactics for avoiding removal is to add non-diverse individuals or businesses—often small businesses—as defendants. H.R. Rep. No. 114-422, at 2-4 (2016) ("House Report"). This includes the ploy used here: joining local hospitals in products-

liability cases that would otherwise have been brought only against the defendant manufacturers. *See* Paul Rosenthal, *Improper Joinder: Confronting Plaintiffs' Attempts to Destroy Federal Subject Matter Jurisdiction*, 59 Am. U. L. Rev. 49, 61-62 (2009); *cf. Kite v. Richard Wolf Med. Instruments Corp.*, 761 F. Supp. 597, 598, 600-01 (S.D. Ind. 1989) (recognizing equitable exception to one-year limit for removal where defendant timely removed, plaintiff added non-diverse hospital as defendant, case was remanded, and plaintiff dismissed hospital outside one-year period).

For example, in insurance cases, plaintiffs frequently join local adjusters to preclude insurers from removing the case. *Fraudulent Joinder Prevention Act of 2015: Hearing on H.R. 3624 Before the Subcomm. on the Const. & Civ. Just. of the H. Comm. on the Judiciary*, 114th Cong. 42 (2015) (statement on behalf of the Chamber and U.S. Chamber Institute for Legal Reform) (https://tinyurl.com/yz4er5um) ("Chamber Testimony").[4] These defendants are effectively used as

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[4] *See, e.g.*, *Ramirez v. State Farm Mut. Auto. Ins. Co.*, No. 15-CV-449, 2016 WL 204490, at *3 (N.D. Ind. Jan. 15, 2016) (insurance agent held fraudulently joined in suit against insurance company); *Schwartz v. State Farm Mut. Auto. Ins. Co.*, 174 F.3d 875, 878-79 (7th Cir. 1999)

pawns to secure plaintiffs' perceived jurisdictional advantages. Indeed, in some coverage cases, "policyholders routinely offer to dismiss the adjuster . . . at an early stage in exchange for the defendant insurer's agreement to refrain from removing the case to federal court." Jennifer L. Gibbs, *Don't Mess with Texas Adjusters in Hail Damage Claims*, Law360 (Feb. 6, 2015, 12:36 PM) (https://tinyurl.com/yfhncar6).

Likewise, in products-liability suits against pharmaceutical manufacturers, plaintiffs' lawyers have a history of naming local pharmacies as defendants to avoid removal. Chamber Testimony at 43.[5] Plaintiffs also often name a local distributor or a sales representative to defeat diversity removal. *Id.* For example, "[w]hen an automaker is sued, the local dealership or repair shop that serviced the

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(district court properly denied remand where insurance agent was fraudulently joined in suit against insurance company).

[5] *See, e.g.*, *In re Yasmin & Yaz (Drospirenone) Mktg., Sales Pracs. & Prods. Liab. Litig.*, 692 F. Supp. 2d 1025, 1029, 1032-39 (S.D. Ill. 2010) (pharmacy held fraudulently joined in suit against drug companies), *aff'd sub nom. Walton v. Bayer Corp.*, 643 F.3d 994 (7th Cir. 2011); *Salisbury v. Purdue Pharma, LP*, 166 F. Supp. 2d 546, 552 (E.D. Ky. 2001) (pharmacies held fraudulently joined in suit against nine drug companies); *In re Rezulin Prods. Liab. Litig.*, 133 F. Supp. 2d 272, 279-86, 281-88 (S.D.N.Y. 2001) (sales representatives held improperly joined in various actions against drug manufacturers).

vehicle may be dragged into court." House Report at 4.[6] And in personal-injury suits against large retailers or hotels, a local store manager or employee will be included as a defendant. *Id.* at 3-4.[7] That is essentially what happened in these cases, where Appellants fraudulently joined non-diverse hospitals responsible for administering Appellees' infant formula. If that tactic is upheld, nothing would prevent Appellants from suing doctors in another case.

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6 *See, e.g.*, *Downing v. Kubota Tractor Corp.*, No. 23-CV-394, 2023 WL 6442144, at *3 (N.D. Ind. Oct. 3, 2023) (seller of tractor held fraudulently joined in suit against tractor manufacturer); *Manley v. Ford Motor Co.*, 17 F. Supp. 3d 1375, 1385 (N.D. Ga. 2014) (tire inspector held fraudulently joined in action against car manufacturer and designer of tire); *Selexman v. Ford Motor Co.*, No. H-14-1874, 2014 WL 6610904, at *5 (S.D. Tex. Nov. 20, 2014) (car dealership held improperly joined in suit against car manufacturer); *In re Bridgestone Firestone Inc. Tires Prods. Liab. Litig.*, No. 07-cv-5838, 2009 WL 103647, at *3 (S.D. Ind. Jan. 9, 2009) (car dealership and tire sellers held fraudulently joined in suit against tire and vehicle manufacturers).

7 *See, e.g.*, *Pryor v. Walmart Inc.*, No. 24-cv-1883, 2024 WL 4542712, at *3 (S.D. Ill. Oct. 22, 2024) (store manager held fraudulently joined in slip-and-fall action against retailer); *Bejarano v. Autozone*, No. 12-CV-00598, 2012 WL 13080099, at *5 (D.N.M. July 24, 2012) (manager of store held fraudulently joined in suit against store); *Anderson v. Ga. Gulf Lake Charles, LLC*, 342 F. App'x 911, 919 (5th Cir. 2009) (per curiam) (affirming district court's determination that employees were improperly joined in personal injury suit against manufacturing company for chemical emissions).

These individuals and businesses often lack "deep pockets" from which a plaintiff may recover; their value to the plaintiff lies solely in their presence as a party. If the plaintiffs succeed in getting the case remanded, they will often dismiss their claims against the in-state businesses or individuals. *See* 162 Cong. Rec. H907, 907 (daily ed. Feb. 25, 2016) (statement of Rep. Bob Goodlatte) (discussing various cases in which non-diverse defendants were dismissed after remand to state court). In this case, plaintiffs did effectively the same thing by promising not to appeal a state-court dismissal. *See* A-03. But to these parties, their eventual dismissal is little comfort. By that time, many such defendants have already felt the "heavy emotional toll" caused by the suit and have "incur[red] substantial financial costs in defending their business." House Report at 4. It is no trivial matter for individuals and businesses to be named in lawsuits seeking substantial recovery—they could be denied credit, housing, or other opportunities simply based on their fraudulent inclusion in a lawsuit that a plaintiff has no good-faith intention of pursuing against them.

3. Strictly Policing Fraudulent Joinder Is Essential To Ensuring The Fundamental Purposes Of Diversity Jurisdiction.

Not only are plaintiffs unnecessarily dragging parties into litigation simply to preserve a perceived forum advantage, but such devices preclude defendants against whom plaintiffs genuinely seek to recover from exercising their statutory and constitutionally grounded right to remove the case. These tactics undermine the purpose of diversity jurisdiction, which is to allow out-of-state defendants "to assert their rights in the federal rather than in the state courts." *Meredith v. City of Winter Haven*, 320 U.S. 228, 234 (1943).

Failing to vigorously enforce the fraudulent-joinder doctrine undermines the view—adopted by Congress and reflected in the Constitution—that neither party "possess[es] a superior right to select or avoid federal jurisdiction." Haiber, *supra*, at 658. If courts were to accede to plaintiffs' efforts to avoid diversity removal, the judicial power would no longer exist for the "common and equal benefit of all the people." *Martin*, 14 U.S. (1 Wheat.) at 348. To uphold Appellants' tactics in this case would endorse the same kind of procedural manipulation this Court has previously rejected. *See*, *e.g.*, *Price v.*

Wyeth Holdings Corp., 505 F.3d 624, 628-31 (7th Cir. 2007) (removal was timely where plaintiff voluntarily dismissed lawsuit and reinstated it five years later without notifying opposing party); *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 368 (7th Cir. 1993) ("[O]nce removal has been perfected[,] plaintiffs may not manipulate the process to void the removal."), *abrogated on other grounds by Meridian Sec. Ins. Co. v. Sadowski*, 441 F.3d 536 (7th Cir. 2006).

II. THE DISTRICT COURT CORRECTLY FOUND FRAUDULENT JOINDER.

As explained above, continued enforcement of the fraudulent-joinder doctrine is essential to preserving diversity and removal jurisdiction. As the district court found, in these cases Appellants joined local hospitals—thereby unnecessarily dragging them into the litigation—in bad faith to defeat Appellees' removal right. Accordingly, the district court correctly determined that these hospitals were fraudulently joined and that, as a result, Appellants could not avoid removal by relying either on the one-year limit for removal in 28 U.S.C. § 1446(c)(1) or the "voluntary/involuntary" rule. *See Poulos v. Naas Foods, Inc.*, 959 F.2d 69, 72-73 (7th Cir. 1992) (explaining that defendant could establish propriety of removal by demonstrating

fraudulent joinder, notwithstanding the voluntary/involuntary rule). This Court should affirm that well-reasoned and correct decision.

A. Removal Jurisdiction Exists Where A Plaintiff Has No Real Intent To Pursue Claims Against An In-State Party.

"Removal," as this Court has recognized, "is not a one-shot proposition." *Railey v. Sunset Food Mart, Inc.*, 16 F.4th 234, 238 (7th Cir. 2021). Rather, "[a] defendant may remove even a previously remanded case if subsequent pleadings or litigation events reveal a new basis for removal." *Id.* Even if a case is not initially removable, defendants may file a notice of removal "within 30 days" after they receive, "through service or otherwise, . . . a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3). Here, Appellees properly removed once the non-diverse hospitals were dismissed in state court.

However, the propriety of removal here hinged on certain statutory and judicially recognized limitations on removal: the one-year time limit for removal and the "voluntary/involuntary" rule, respectively. Under the former, a defendant cannot remove a diversity

case pursuant to Section 1446(b)(3) "more than 1 year after commencement of the action, unless the district court finds that the plaintiff has *acted in bad faith* in order to prevent a defendant from removing the action." 28 U.S.C. § 1446(c)(1) (emphasis added). The other limitation—not found in the statute itself—is the "voluntary/involuntary" rule, which provides that a non-diverse defendant must be voluntarily dismissed from the suit in order for a case to become removable. *See Poulos*, 959 F.2d at 71-72; *see also* Underwood, *supra*, at 1025-32 (discussing the voluntary/involuntary rule's history). Fraudulent joinder, however, provides an exception to the voluntary/involuntary rule, *see Poulos*, 959 F.2d at 72-73, and where the finding of fraudulent joinder, as it was here, is based on a lack of any good-faith intent to pursue the claims, that finding may also constitute "bad faith" sufficient to avoid the one-year limit on removal, *see McVey v. Anaplan, Inc.*, No. 19-CV-07770, 2020 WL 5253853, at *3 (N.D. Ill. Sept. 3, 2020).[8]

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[8] Although Section 1446 does not define "bad faith," a finding that a party fraudulently joined an in-state defendant with no real intent to pursue the claims in good faith should—as the district court found below—also suffice to dispense with the one-year time limit.

Case law supports two bases for a finding of fraudulent joinder. The first is where the plaintiff's claims against a non-diverse defendant have no reasonable possibility of success. *Poulos*, 959 F.2d at 73. The second is where a plaintiff has demonstrated no real intention to pursue the claims against the non-diverse defendant. *See, e.g.*, *In re Briscoe*, 448 F.3d 201, 216 (3d Cir. 2006) (fraudulent joinder exists where there is "no real intention in good faith to prosecute the action against the defendant or seek a joint judgment") (citation omitted); *Faulk v. Husqvarna Consumer Outdoor Prods. N.A., Inc.*, 849 F. Supp. 2d 1327, 1330-31 (M.D. Ala. 2012) (non-diverse defendant fraudulently joined where plaintiff "fail[ed] to pursue in good faith his claims against him"); *Linnin v. Michielsens*, 372 F. Supp. 2d 811, 818, 823-26 (E.D. Va. 2005) (plaintiff had "no real intention" of obtaining a joint judgment). These two bases make sense, given Supreme Court precedent holding that whether the plaintiff intended to pursue its claims against a non-diverse defendant is relevant to the fraudulent-joinder analysis. *See*

Fraudulent joinder and "bad faith" under Section 1446(c)(1) are not coextensive, but "there could certainly be scenarios where bad faith and fraudulent joinder are congruent, and proof of fraudulent joinder simultaneously satisfies the requirements for bad faith." *McVey*, 2020 WL 5253853, at *3. This case is such a scenario.

Wilson, 257 U.S. at 98 (joinder was fraudulent where it was "without any reasonable basis in fact and *without any purpose to prosecute the action in good faith* as against [the non-diverse defendant]") (emphasis added); *Chicago, Rock Island, & Pac. Ry. Co. v. Schwyhart*, 227 U.S. 184, 194 (1913) ("On the question of removal we have not to consider more than whether there was a *real intention to get a joint judgment*, and whether there was a colorable ground for it shown as the record stood when the removal was denied.") (emphasis added).

Although this Court has yet to expressly apply the "no real intent" test for fraudulent joinder, it has previously recognized that, at minimum, a plaintiff's claims against non-diverse defendants must be "real," and the "parties [must] not be nominal." *Garbie v. DaimlerChrysler Corp.*, 211 F.3d 407, 410 (7th Cir. 2000). As explained above, plaintiffs (as in this case) have strong incentives to assert claims against in-state defendants without any intention of pursuing them. Indeed, this Court has recognized that 28 U.S.C. § 1441(b)(2)—under which an action otherwise subject to diversity removal cannot be removed if any defendant is a citizen of the State in which the action is brought—extends the forum-defendant rule only to defendants

"properly joined and served." *Morris v. Nuzzo*, 718 F.3d 660, 670 n.3 (7th Cir. 2013). Section 1441(b)(2) therefore protects against the "insertion of a 'straw-man' resident defendant whose presence blocks removal but against whom the plaintiff does not intend to proceed." *Id.* And at least one court within this Circuit, in addition to the court below, has applied the "no real intent" test alongside the "reasonable possibility" test. *See Beal v. Armstrong Containers, Inc.*, No. 22-cv-378, 2023 WL 6441348, at *4-5, *7-9 (E.D. Wis. Sept. 30, 2023).

B. The District Court Properly Held That Removal Was Appropriate Because Plaintiffs Fraudulently Joined The Hospital Defendants.

The issue on Appellants' motion to remand was whether Appellants' fraudulent joinder of the non-diverse hospital defendants created an exception to the one-year limit on removal and the voluntary/involuntary rule. A-06–07 n.9. The district court correctly found that Appellants fraudulently joined the hospital defendants—and therefore removal was proper—because Appellants' collective litigation actions showed that they had no real intent to pursue their claims against the in-state defendants to judgment. *See* A-06, A-11–14.

Appellants do not seriously challenge the court's factual finding that, based on their collective litigation actions, they had no good-faith intention to pursue their claims against the hospitals. Nor could they. In the nearly 1,000 necrotizing enterocolitis cases filed against Abbott in its home state of Illinois (415 of which were filed or appeared in by Appellants' counsel), none named an Illinois hospital. A-12. And Appellants made no meaningful effort to engage in discovery with respect to their claims against the Pennsylvania hospital defendants here. *See* Appellees' Br. at 11-12; *cf. In re Zoloft (Sertraline Hydrochloride) Prods. Liab. Litig.*, 257 F. Supp. 3d 717, 721 (E.D. Pa. 2017) (plaintiffs had no real intent to pursue claims against non-diverse defendant where, *inter alia*, they failed to "propound[] meaningful discovery" on that defendant). Appellants' disclaimer of any intent to appeal or seek reconsideration of the dismissal of their claims against the hospital defendants further confirms their lack of any real intent to pursue those claims. *See* A-13–14; Appellees' Br. at 13-14.

Instead of challenging the district court's finding that they had no real intent to pursue their claims against the hospitals, Appellants principally argue that the Court should not recognize that legal basis

for fraudulent joinder because it purportedly contravenes the text of the diversity statute, *see* Appellants' Br. 20-22, and would be "unworkable" *id*. at 22-28. As Appellees have explained, those arguments are without merit. Fraudulent joinder is a judicially recognized doctrine that seeks to effectuate, not override, the diversity jurisdiction recognized by the Constitution and conferred by Congress, in the face of fraudulent attempts to divest it. As even Appellants note, this Court has already stated and applied the judicially recognized "no reasonable possibility" standard for finding fraudulent joinder. *See id*. at 21. As shown above, the "no real intent" standard has a similarly long precedential pedigree. *See supra* at 24-25.

Nor is that test "unworkable," as demonstrated by the district court's lack of difficulty in applying it in this case. Congress itself has recognized that a good-faith standard for allowing diversity removal is workable. In Section 1446, Congress determined that a party's "bad faith" in suing a non-diverse defendant can avoid the one-year bar on removal. *See* 28 U.S.C. § 1446(c)(1); *supra* at 23-24 & n.8. If, as Congress has recognized, a good-faith standard is workable in applying Section 1446's time limit to determine the propriety of removal, it is

equally workable for applying the fraudulent-joinder doctrine in the same context. Contrary to Appellants' contention, the test is not "subjective." *Cf.* Appellants' Br. at 14, 16, 20, 23. Rather, courts, as the district court did below, will analyze whether the "plaintiff's collective litigation actions, *viewed objectively*, clearly demonstrate a lack of good faith intention to pursue a claim to judgment against [the] non-diverse defendant." *Faulk*, 849 F. Supp. 2d at 1331 (emphasis added); *see also In re Briscoe*, 448 F.3d at 219 (courts may "look to more than just the pleading allegations to identify indicia of fraudulent joinder").

Moreover, allowing plaintiffs to use bad-faith gamesmanship to avoid a federal forum would not only undermine Congress's intent to confer diversity jurisdiction but also its statutory conferral of a single pre-trial forum for multi-district litigation ("MDL") in cases like these. As this Court has noted, "an express purpose of consolidating multidistrict litigation for discovery is to conserve judicial resources by avoiding duplicative rulings." *Winkler v. Eli Lilly & Co.*, 101 F.3d 1196, 1202 (7th Cir. 1996). But if plaintiffs can guarantee a state forum merely by bringing claims against non-diverse defendants without any real intent to pursue those claims—as Appellants are seeking to do

here—the MDL procedure would be thwarted in many cases, leading to the very inefficiency and duplication of judicial resources that Congress sought to avoid.

Appellants' collective litigation actions demonstrate that they had no real, good-faith intent to recover against the hospital defendants, and the district court correctly determined that this fraudulent joinder did not preclude diversity removal. The Court should therefore affirm the district court's order denying Appellants' motion to remand.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's order denying remand.

Respectfully submitted,

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Seventh Circuit Rule 29 because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this brief contains 5,944 words.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 in 14-point Times New Roman typeface.

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit via the Court's CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the CM/ECF system.

November 25, 2025

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