No.

IN THE

Supreme Court of the United States

CHARLIE WILSON, AS EXECUTOR OF THE ESTATE OF DEBRA WILSON, PETITIONER

v.

DALLAS COUNTY HOSPITAL DISTRICT D/B/A PARKLAND HEALTH AND HOSPITAL SYSTEM, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE DALLAS COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Are state statutory pre-discovery deadlines tolled – either by the rules of federal appeal, rules of federal procedure, or equitable tolling principles – during a federal appeal if a defendant voluntarily removes a case from state trial court to federal court where the state deadline is inapplicable, the federal trial court dismisses some claims, and the plaintiff pursues a rightful federal appeal; especially when the federal appeal would result in the case remaining in federal trial court if successful, and in the face of the U.S. Supreme Court's expressed desire to avoid "jurisdictional ping-pong games"?

2. Do state statutory pre-discovery deadlines restart anew after a state trial court has regained jurisdiction when a defendant voluntarily removed the case to federal court, and when considering that the state-imposed deadline is inapplicable in federal court?

3. Does the doctrine of Federal Conflict Preemption preempt a state statutory deadline that is inapplicable in federal court and thereby prevent a state court from applying that state-statutory deadline after removal to federal court while the non-removing party is pursuing a rightful federal appeal?

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The Memorandum Opinion of the Court of Appeals for the Fifth District of Texas at Dallas, located at *Charlie Wilson, as executor of the Estate of Debra Wilson v. Dallas County Hospital District et al.*, No. 05-18-01049-CV, reported at 2019 WL 3729502 (Tex. App. – Dallas 2019), and filed August 7, 2019, reversing the Trial Judge's denial of respondent's *Motion to Dismiss*, rendering a judgment against petitioner, and remanding to the state trial court is set forth in the Appendix hereto (App. 2-13).

The unpublished Order of the Trial Judge for the Dallas County 101st District Court, in *Charlie Wilson, as executor of the Estate of Debra Wilson v. Dallas County Hospital District et al.*, Cause No. DC-15-09089, decided August 21, 2018, denying respondent's Motion to Dismiss and overruling respondent's objections to petitioner's Chapter 74 Expert Reports is set forth in the Appendix hereto (App. 16).

JURISDICTION

This case inherently presents a federal question as it requires interpreting the way in which federal appeal in a removed case interacts with state court deadlines. Petitioner timely filed a *Petition for Review* requesting that the Texas Supreme Court, the highest court in the State of Texas, review the opinion of the Court of Appeals for the Fifth District of Texas at Dallas, which *Petition for Review* presented this inherent federal question to the Texas Supreme Court and which *Petition for Review* was denied. Petitioner timely filed a *Motion for Rehearing*, requesting that the Texas Supreme Court revisit its decision to deny petitioner's *Petition for Review*. The Texas Supreme Court denied petitioner's *Motion for Rehearing* on June 5, 2020 (App. 1).

This petition for writ of certiorari is filed within ninety (90) days of June 5, 2020. 28 U.S.C. § 2101(c).

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. § 1257(a).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Article IV, § 2:

> The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

United States Constitution, Article VI, § 2:

> The Constitution, and the Laws of the United States which shall be made in Pursuance thereof…and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Amendment XIV, § 1:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 1331:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1441 (a):

> …[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

Civil Rights Act–42 U.S.C. § 1983:

> Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

Fed. R. Civ. P. 1:

> [The federal rules of civil procedure] ...shall be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Fed. R. Civ. P. 81(c)(1):

> (1) **Applicability.** These rules apply to a civil action after it is removed from a state court.

Texas Civil Practice and Remedies Code § 74.351(a) – (b)(2):

> (a) In a health care liability claim, a claimant shall, not later than the 120th day after the date each defendant's original answer is filed, serve on that party or the party's attorney one or more expert reports, with a curriculum vitae of each expert listed in the report for each physician or health care provider against whom a liability claim is asserted.
>
> (b) If, as to a defendant physician or health care provider, an expert report has not been served within the period specified by Subsection (a), the court, on the motion of the affected physician or health care provider, shall, subject to Subsection (c), enter an order that:
>
> (1) awards to the affected physician or health care provider reasonable attorney's fees and costs of court incurred by the physician or health care provider; and
>
> (2) dismisses the claim with respect to the physician or health care provider, with prejudice to the refiling of the claim.

STATEMENT

Texas has enacted a draconian law that imposes unreasonable and virtually insurmountable hurdles on injured claimants, and particularly indigent claimants, and then punishes claimants who dare pursue their rights under federal law; or at minimum, it imposes on such claimants the Hobson's choice of gambling on the exercise of their federal rights at risk of losing their state rights due to an arbitrary and capricious time deadline under state procedural law that is not applicable in federal court that can be invoked even when the other party suffers no unfair prejudice. This case involves a question of first impression regarding the interaction between such a state-statutory deadline and a rightful federal appeal in a case that was voluntarily removed to federal court by the defendant.

On November 1, 2007, respondent Dallas County Hospital District d/b/a Parkland Health and Hospital System ("respondent" or "Parkland") performed a left-heart catheterization surgical procedure on Debra Wilson ("Debra"), the late wife of petitioner Charlie Wilson ("petitioner"). During this vascular procedure, respondent broke a 20-centimeter- long piece of catheter and left it in her aorta without her knowledge.

Debra remained hospitalized at Parkland for the next ten (10) weeks for post-operative care and evaluation, undergoing various post-operative examinations. In fact, on *thirteen* (13) different occasions within six months following her surgery, respondent performed follow-up radiological examinations of Debra's chest and/or abdomen. As a result of these radiological examinations and the images disclosing the broken piece of catheter in Debra's aorta which could only have been as the result of Parkland's earlier surgical procedure, respondent had actual knowledge of the injury to Debra caused by the piece of catheter which they negligently left in her aorta.

In fact, Parkland's own records show that the broken-off catheter was found during these examinations and was then discussed among its staff. Yet during this time and over the ensuing seven years when she was examined multiple times by respondents, respondents *never* apprised Debra of the broken catheter they had negligently left in her aorta or the risks to her health that its presence posed.

On August 14, 2014, Debra went to Parkland's Emergency Room complaining of abdominal pains. A CT angiography disclosed a foreign body in her thoracic and abdominal aorta. In September of 2014, Debra advised Parkland's "patient advocate" of this discovery; Parkland promised to investigate the incident but never did.

As a result of respondents' negligence, Debra sustained multiple injuries to her abdomen, psychological impairment, permanent body disfigurement and reduced mobility, all of which contributed to her eventual death on September 29, 2016.

On August 11, 2015, before her passing, Debra brought suit in the 101st Judicial District Court in Dallas, Texas, against Parkland and a "Dr. John Doe" alleging, among other things, negligence, lack of informed consent, and fraudulent nondisclosure. Parkland answered the lawsuit on September 11, 2015, filing a *Plea to the Jurisdiction* and by moving for summary judgment claiming that Debra failed to provide notice of her claim within six months of her injury (despite respondents' concealment of their negligence and her injury). Respondent's answer of the lawsuit triggered the beginning of the 120-day deadline for Debra to serve the expert reports upon respondent in accordance with Texas Civil Practices & Remedies § 74.351, which requires a medical malpractice plaintiff to serve expert reports demonstrating a viable cause of action within 120-days of the defendant's answer.

Debra subsequently amended her complaint adding claims against Parkland and a "Dr. John Doe" which arose under federal law, including that respondents' six-months' notice defense violated her due process rights, the violation of a constitutional right to bodily privacy/right against body intrusion, cover-up of a violation of federal constitutional rights, and conspiracy to violate federal constitutional rights.

On December 11, 2015 – 31 days before Debra's expert report deadline[1] – Parkland removed the case to the federal district court for the Northern District of Texas because of these federal claims and filed a *Motion to Dismiss* for failure to state a claim under Fed. R. Civ. P. 12(b)(6). In response, Debra amended her complaint against respondents Parkland and the now John Doe defendants in January of 2016.

While in federal court, the parties submitted an *Agreed Motion for Extension of Deadlines* to the Federal Judge, seeking, in relevant part, an extension to Debra's Chapter 74 expert report deadline. The Hon. Judge Fish denied the extension, stating that the Texas State statutory deadline "does not apply to the administration of this lawsuit in federal court." (App. 17-18). This order was thereafter never challenged by respondents.

Ultimately, the John Doe defendants were dismissed from the case. Additionally, while most of Debra's federal claims asserted claims of Constitutional right violations, on September 21, 2016, the Magistrate Judge for the District Court for the Northern District of Texas, Dallas Division, decided to dismiss all of the federal claims asserted in Debra's amended complaint and remanded the remaining state claims to the 101st Judicial District Court in Dallas, Texas (App. 19-28).

[1] The original deadline fell on a Saturday; thus the deadline is extended to the next immediate Monday under Texas Rule of Civil Procedure 4.

Shortly thereafter, on September 29, 2016, Debra passed away at least in part as a result of the injuries which are the subject of this civil action. Debra's husband, Petitioner Charlie Wilson, then asserted claims individually and on behalf of his late wife.

Following the federal court's order of dismissal and remand, and before the expiration of the federal court's jurisdiction, on October 12, 2016, petitioner moved for a new trial or for the federal court to alter its judgment. This motion was denied on January 23, 2016. The denial of petitioner's motion for new trial began the federal appellate timetable, in accordance with FED. R. APP. PR. 4(A)(4). Desiring to appeal the dismissal of Debra's federal claims, petitioner timely filed his *Notice of Appeal* on February 2, 2017 (App. 29).

Meanwhile, in the State trial court, petitioner filed an *Unopposed Motion to Stay* on February 8, 2017 to ensure that the State court's record was clear that the case was on federal appeal – a stay that even Counsel for Respondent believed was unnecessary, as so indicated in an email to Counsel for Petitioner. The stay was granted on March 23, 2017.

Petitioner diligently pursued his federal appeal; on October 24, 2017, the Fifth Circuit Court of Appeals affirmed the dismissal of the federal claims but outright rejected respondent's argument that the appeals court did not have jurisdiction. *See Charlie Wilson, as executor of the Estate of Debra Wilson v. Dallas County Hospital District et al.*, U.S.C.A. No. 17-10139, reported at 2017 WL 4812579;____Fed. App'x____(5th Cir. 2017). The Federal Appeals Court's order confirming federal jurisdiction was never challenged by respondents. Thereafter, petitioner timely filed a *Motion for Rehearing* on November 6, 2017, which was denied by the Fifth Circuit on November 27, 2017.

In continued diligent pursuit of his appeal, on December 6, 2017, petitioner filed his notice of intent to file for *Writ of Certiorari*. *Writ of Certiorari* was filed with the Supreme Court of the United States on March 1, 2018 and denied on April 23, 2018.

The very following day, on April 24, 2018, the parties filed an agreed motion requesting that the State case be reinstated and the stay lifted. The State Judge lifted the stay and reinstated the case on May 10, 2018. Twenty-six days later, and in reliance on the fact that thirty-one days were remaining when respondent voluntarily removed the case to federal court, petitioner served respondent with a Chapter 74 expert report on June 5, 2018, as well as a second expert report on June 7, 2018 – both served less than thirty-one days following the reinstatement of the case. Those expert reports in support of petitioner's claims were never thereafter controverted by respondents.

Despite previously indicating that a stay was unnecessary in light of petitioner's notice of appeal in the federal court, respondent moved to dismiss the State case on the basis that petitioner's expert reports were allegedly untimely. The State court trial judge denied this motion and overruled respondent's objections, finding that petitioner's expert reports were timely served following the conclusion of petitioner's federal appeal (App. 16).

Respondent then appealed to the Fifth District Court of Appeals of Texas at Dallas, which reversed the Trial Judge's denial of respondent's *Motion to Dismiss*, and rendered a judgment against petitioner (App. 1-10). The Fifth District Court of Appeals assumed that the removal of the lawsuit tolled the State expert report deadline, but did not extend the tolling to the period in which petitioner pursued his federal appeal (App. 4-10). On December 6, 2019, the court of appeals denied petitioner's petition for panel rehearing.

The Texas Supreme Court denied petitioner's *Petition for Review*, and exhausted all of petitioner's available State court remedies on June 5, 2020 when it denied petitioner's *Motion for Rehearing* (App. 1).

Thus, yet again, petitioner finds himself seeking redress before this Honorable Court; this time seeking clarification of an important question of first impression: how a federal appeal of a voluntarily removed case interacts with state-imposed deadlines. More specifically, after a defendant removes a case to federal court, does a plaintiff have an opportunity to appeal a federal court dismissal order before a state's procedural deadline (a deadline which is inapplicable in federal court) is triggered; particularly when the triggered deadline would irrevocably bar his related and meritorious state court claims?

REASONS FOR GRANTING THE PETITION

1. BASED UPON EXTENSIVE RESEARCH, THIS APPEAL PRESENTS AN IMPORTANT QUESTION OF FIRST IMPRESSION AND WILL DETERMINE HOW STATE-STATUTORY PRE-TRIAL DEADLINES INTERACT WITH A PARTY'S RIGHT TO CERTAIN FEDERAL APPEALS.

Petitioner has exhaustively searched for *any* case law that could act as a guiding principle for navigating a federal appeal for a case that was remanded to state trial court, and has found no cases that answer this precise question. There is especially no case law which would answer the even more nuanced factual question of how to traverse the federal appellate deadlines and state trial court deadlines if the case that is on federal appeal would remain in the federal trial court instead of the state trial court upon success on appeal.

There are factually related cases, even out of Texas that specifically address the same Chapter 74 in question, with the Texas Supreme Court holding that the proscribed expert report deadline is tolled when the state trial court does not have full jurisdiction, such as during a nonsuit or after a default judgment. *Gardner v. U.S. Imaging, Inc.*, 274 S.W.3d 669 (Tex. 2008); *CHCA Woman's Hosp., L.P. v. Lidji*, 403 S.W.3d 228 (Tex. 2013). The Fifth Court of Appeals of Dallas has also held that the expert report is tolled pending the resolution of a plaintiff's appeal in *state* appeals court, even without a stay in place. *Drake v. Walker*, 529 S.W.3d 516, 527 (Tex. App—Dallas 2017). It would appear that there is no rational reason, much less legitimate purpose served, to distinguish between the tolling effect of state court appeals from federal court appeals on the expert report deadline, especially when the state deadline is rendered inapplicable upon removal to federal court. At least, respondents have offered no reason or purpose to provide less protection to federal appellants than to state appellants.

These authorities do indicate, at the least, that it was reasonable for petitioner to believe that the state statutory deadline was tolled while he was pursing his federal appeal, but nevertheless fail to address the particular nuanced question that this case presents. Outside of these state cases, there is no authority that would determine exactly how a federal appeal should interact with a remanded state case.

The Texas Supreme Court's abstention from reviewing the state appellate court's holding not only completely closes the door on petitioner's ability to receive his day in court, but also serves as a continued failure to provide any guiding principles of the interaction between state and federal courts in a case that has been removed and subsequently remanded, but when a successful federal appeal would result in the case remaining in federal court rather than state court. This is more notably true in light of the contrary case law out of Texas, which seems to provide protection to those pursing state appeals without extending that same protection to individuals seeking federal appeals.

Looking to a national level, the question of the interaction between federal appeals and state-statutory deadlines will have a profound effect on future cases, with the Texas state appellate court's decision encouraging the very same wasteful and inefficient litigation that this Supreme Court has articulated a long-standing desire to prevent when it comes to removal and remand of cases. *Stevens v. ARCO Mgmt. of Washington D.C., Inc.*, 751 A.2d 995 (D.C. 2000); *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 818 - 819 (1988). This Court's concern with judicial efficiency with regard to removal and remand makes sense considering that more than one in ten of all federal cases are cases that have been removed from state courts.[2]

[2] Available at https://www.uscourts.gov/sites/default/files/data_tables/jff_4.3_0930.2018.pdf

These numbers have been true for every reported fiscal year since 1990 until the last reported fiscal year of 2018, with the number of removed cases steadily rising most years, even when the number of cases filed in federal courts have dropped.[3] Concern with the interaction between state and federal courts, then, is a grave one that affects litigation nationwide. Further, these statistics impart the inevitability of substantially similar factual circumstances occurring in the future.

This Court's protection of judicial efficacy does provide enlightening precedent that ultimately guides the solution, even if it does not answer the precise questions presented in the case at bar. In particular, this Court's precedent regarding the way in which state savings statutes interact with federal appeals is an appropriate, analogous example to the case at bar. *Artis v. D.C.*, 138 S. Ct. 594 (2018). In *Artis*, this Court calculated the deadline to refile a case in state court from *after* the federal appeal of a district court's dismissal of federal claims and declination to exercise supplemental jurisdiction. *Id.* at 600. In its reasoning, this Court balked at holding otherwise, specifically cautioning against the very outcome that leaving the case at bar untouched will create, writing: "plaintiffs [would] resort to wasteful, inefficient duplication to preserve their state-law claims." *Id.* at 607.

The holding in *Artis* meshes with this Court's stated wish to prevent plaintiffs from litigating in both a state and federal forum at the same time purely for claim protection. *Stevens*, 751 A.2d at 1002; *Artis*, 138 S. Ct. at 607. Likewise, and in keeping with the idea that a party should not have to litigate the same case in two different courts at the same time, this Court's precedent dictates that federal courts do not relinquish jurisdiction until after an order is final, which means that the time to take an appeal has expired. *Burnett v. New York Cent. R. Co.*, 380 U.S. 424 (1965).

[3] *Id.*

A logical rule that underscores the fact that a timely notice of appeal is jurisdictional, and that a party's failure to timely file such notice deprives an appeals court of jurisdiction. *Bowles v. Russell*, 551 U.S. 205, 213 (2007). Plausibly, the inverse must be true – if an untimely notice deprives jurisdiction, a timely notice must invoke or maintain jurisdiction. Simply, this Court's interpretation of how federal appeals courts gain or divest jurisdiction must lead to the conclusion that when petitioner filed his timely notice of appeal in federal court, he invoked the jurisdiction of the federal court of appeals and deprived the state court of full jurisdiction over the case, rendering the state deadlines inapplicable unless and until jurisdiction vested in full with the state trial court once again.

Here, it is undisputed that petitioner timely invoked and diligently pursued his federal appellate rights. In accordance with this Court's guiding precedent, federal jurisdiction was not relinquished until the U.S. Supreme Court denied petitioner's first *Writ of Certiorari* on April 23, 2018. At minimum, during that appeal, petitioner's state-imposed expert report deadline must have been tolled at least through April 23, 2018 in order to permit petitioner to pursue his appeal without the hinderance of state-statutory deadlines in the very same case. Then, it must also be considered that a stay was in place in the state court until May 10, 2018. Forcing litigants to adhere to state court deadlines in a case that is not yet certainly, much less fully, reinstated in state court, and which may remain in federal district court upon successful appeal, is the epitome of judicial waste and inefficiency.

Indeed, under the current ruling of the Dallas Court of Appeals, the most logical response for medical malpractice plaintiffs in Texas, and any other state in which statutory pre-discovery deadlines are imposed, is one of great judicial waste: Strategically, it would make more sense to file all malpractice claims in federal court, and "risk" filing in the wrong court, on the idea that a plaintiff should try to exhaust all appeals and claims first in federal court, and then make use of the saving statutes – in Texas, 60 days – in order to refile in state court, based upon the previously discussed holdings from this Honorable Court that saving statutes are in addition to the remaining state statute of limitations, and that the time does not begin to run until federal appeal is exhausted. *Artis*, 138 S. Ct. at 600. This allows the longest possible time for a plaintiff to obtain meet all state pre-discovery statutory deadlines – in this instance, the Chapter 74 expert report deadline that is inapplicable in federal court – and is preferable when the alternative is to simultaneously adhere to state court and federal court deadlines for the same case.

The idea that a state-deadline runs (especially a claim barring procedural deadline such as this) while a party pursues his federal appellate rights is simply nonsensical, placing numerous additional hurdles not only in front of plaintiffs, such as in this instance, but also defendants who have deadlines triggered by actions that plaintiffs take in state cases as well. Even more, this Court has already expressly eschewed these particular barriers when deciding questions of how federal and state cases interact during removal and remand periods. This Honorable Court should hear this case of first impression and hold that state-statutory pre-discovery deadlines are tolled until, or completely restarted, after federal appeals are exhausted.

2. PERMITTING THE LOWER COURT'S RULING TO STAND WILL ENCOURAGE DEFENDANTS TO USE FEDERAL COURTS AS A SPORTS STADIUM FOR STRATEGIC REMOVAL AND REMAND "JURISDICTIONAL PING-PONG GAMES" IN EFFORT TO DELAY LITIGATION AND TRICK PLAINTIFFS INTO MISSING ANY STATE-IMPOSED DEADLINE.

This Court has unambiguously discouraged interpreting procedural rules in a manner that would encourage "game[s] of jurisdictional ping-pong[.]" *Christianson,* 486 U.S. at 818 - 819. In voicing the undesirable ramifications of permitting such strategic litigation games, this Court opined that using removal and remand purely for purposes of jurisdictional gamesmanship "would undermine public confidence in our judiciary [and] squander private and public resources[.]" *Id.*

To that end, should the current appellate court opinion regarding the running of a claim-ending state procedural deadline during pursuit of a federal appeal in this case remain unchanged, the same "jurisdictional ping-pong games" that this Court has spurned are certain to materialize with the goal of using removal and remand statutes as a litigation tool.

Hypothetically, using the Texas Chapter 74 expert report deadline for example, a defendant may choose to wait until the 119th day to remove a case to federal court, in hope that it will get remanded – and may opt to remove the case even if there is no basis for removal. Under this hypothetical, based upon the current lower court's decision, a plaintiff would be forced to have his expert report filed and served the very same day a remand order is signed. With current

technology, some judges may not even serve parties or Counsel with orders until 10:00 or 11:00pm at night, thus causing the expert report deadline to be missed through no fault of the plaintiff (unless choosing a Counsel that requires sleep can be held against him). Moreover, even if a party could successfully adhere to both federal and state court deadlines and have his case returned to federal trial court following federal appeal, the opposing party could restart the game of jurisdictional ping-pong again, seeking to dismiss different claims in the hope of remand, yet again.

As to the case at bar, the current opinion requires that petitioner either should have adhered to state court deadlines – in a case that would not have gone back to state court if the federal appeal was successful – while navigating the quick and time-consuming requirements of the Federal Rules of Appellate Procedure. Alternatively, and the most likely scenario, petitioner could have decided that the Federal Appellate deadlines were too impracticable to meet while also litigating in state court and, thus, choose to forgo a rightful appeal and waive federal claims.

Presumably like most state statutory pre-discovery deadlines, Texas courts have held that "[Chapter 74] was not intended to create a procedural minefield by which colorable medical malpractice claims are lost through attrition." *Simpson v. Barton*, 527 S.W.3d 281, 285 (Tex. App.—El Paso 2016, no pet.) (citing *Mendez-Martinez v. Carmona*, 510 S.W.3d 600 (Tex. App.—El Paso 2016, no pet.)). This notion is perfectly prudent: pre-discovery deadlines are intended to provide notice to defendants and place parties on an even playing field. Yet, the current decision in the case at bar creates a difficult procedural minefield – and uses the federal courts to do so.

Naturally, restarting state statutory deadlines following the full relinquishment of federal jurisdiction presents an easy-to-understand bright-line rule for litigants. Alternatively, however, tolling the deadline until after federal avenues have been exhausted, with the case then certain to be returned to state court is also a clearly communicated precedent. Under both of these scenarios, the statutory deadline was met; as petitioner's expert reports in this case were timely served – twenty five and twenty-eight days after the reinstatement of the state court case, less than the thirty-one days remaining when respondents voluntarily removed the case to federal court.

This Honorable Court should grant *Certiorari* and hold that state statutory deadlines either restart upon, or are tolled until, full relinquishment of federal jurisdiction.

3. The Doctrine of Federal Preemption applies because petitioner had a right to pursue a federal appeal, granted by the rules of federal procedure, and the current decision disregards that federally-granted right.

Conflict preemption exists where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *California v. ARC America Corp*., 490 U.S. 93, 100 (1989); *Oneok, Inc. v. Learjet, Inc*., 135 S. Ct. 1591, 1595 (2015). In such an instance, federal law must prevail. *Oneok, Inc*, 135 S. Ct. at 1595. Related to this specific case, federal law provides that a plaintiff may appeal certain federal decisions as a right. FED. R. CIV. PR. 4.

Petitioner's federal appeal regarded the final dismissal of certain federal and state law claims, an appeal to which he had an absolute right afforded to him under Federal Rule of Civil Procedure 4. However, the standing opinion of the Dallas Court of Appeals, in neither restarting nor tolling petitioner's expert report deadline stands as an "obstacle" to petitioner's federal right to appeal. Under the decision, a party must decide whether to exercise the right to appeal or pursue state law claims in piecemeal fashion, triggering state deadlines that conflict with the federal appellate timetable – state law deadlines that are irrelevant if the federal appeal is successful.

It is maddening that a party would possibly be penalized for seeking an appeal that federal law indicates is his right. The forced decision between litigating the same claim in two courts, one in federal appeal and one in state trial, or to forgo one in favor of the other can be described no other way except as an "obstacle" to the "execution of the full purposes and objectives" of the Federal Rules of Civil Procedure as set forth in this Court's precedent.

Certainly, it is this same doctrine of conflict preemption that resulted in the Federal Judge's unchallenged decision in this very case that the expert report deadline does not apply in federal court because it is in direct conflict with the federal rules of civil procedure. FED. R. CIV. P. 26. Once respondent voluntarily removed this case to federal court, any jurisdiction the state court possessed over the case was lost, vesting entirely with the federal court. 28 U.S.C. § 1446(d); *Ackerman v. ExxonMobil Corp.*, 734 F.3d 237 (4th Cir. 2013).

Here, in choosing to remove this case to federal court, respondent voluntarily decided to forgo the state-imposed expert report deadline. Thus, the question before this Court specifically involves the result of a defendant's voluntary litigation actions. Respondent is not only collaterally estopped to claim that Chapter 74 was applicable in federal court, but should also suffer the consequences of its own litigation decisions – that petitioner's expert report deadline restarts or is tolled until the relinquishment of the federal jurisdiction that *respondent* invoked. As it currently stands based upon the state appellate court's opinion, petitioner, and multitudes of plaintiffs nationwide, are forced to bear the consequences of a defendant's voluntary choices, even though here, respondent knew that the expert-report deadline did not apply in federal court and decided to remove the case to federal court anyway. Now, respondent stands to procedurally benefit, while petitioner is punished, barring him his day in court entirely, because he sought a permissible federal appeal.

Accordingly, this Court should grant *Certiorari* and reverse the unconstitutional decision in this case, holding that the unfair choice parties are now forced to make is unconstitutional under the doctrine of federal conflict preemption.

CONCLUSION

For all of these reasons identified herein, a *Writ of Certiorari* should issue to review the judgment of the Court of Appeals for the Fifth District of Texas at Dallas and to vacate and reverse the judgment and remand the matter to the 101st Judicial District of Dallas with instructions to affirm the trial court's denial of respondent's motion to dismiss, reinstate petitioner's remaining state law claims, that discovery ensue on these claims and that a jury trial be had; or provide petitioner with such other relief as is fair and just in the circumstances of this case, if justice so requires.

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