QUESTION PRESENTED:

Following the Court's decision in M / S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972), the majority of federal circuit courts hold that a valid forum-selection clause renders venue "improper" in a forum other than the one designated by contract. In those circuits, forum-selection clauses are routinely enforced through motions to dismiss or transfer venue under Fed. R. Civ. P. 12(b)(3) and 28 U.S.C. § 1406. The Third, Fifth, and Sixth Circuits, however, follow a contrary rule. This Petition presents the following issues for review:

1. Did the Court's decision in Stewart Organization, Inc. v. Ricoh Corp., 487 U.S. 22 (1988), change the standard for enforcement of clauses that designate an alternative federal forum, limiting review of such clauses to a discretionary, balancing-of-conveniences analysis under 28 U.S.C. § 1404(a)?

2. If so, how should district courts allocate the burdens of proof among parties seeking to enforce or to avoid a forum-selection clause?