No. 08-1107

IN THE
Supreme Court of the United States

THE HERTZ CORPORATION,
Petitioner,

v.

MELINDA FRIEND, ET AL.,
Respondents.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether, for purposes of determining principal place of business for diversity jurisdiction citizenship under 28 U.S.C. § 1332, a court can disregard the location of a nationwide corporation's headquarters—*i.e.*, its nerve center.

PARTIES TO THE PROCEEDING

Petitioner is The Hertz Corporation, defendant-appellant below.

Respondents are Melinda Friend and John Nhieu, plaintiffs-appellees below. Respondents seek to represent a putative class of persons similarly situated, but no motion for class certification has yet been filed and no class has been certified.

RULE 29.6 DISCLOSURE

The Hertz Corporation is a wholly owned subsidiary of Hertz Global Holdings, Inc., a publicly traded corporation on the New York Stock Exchange. No publicly traded corporation owns 10% or more of Hertz Global Holdings, Inc.'s common stock.

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BRIEF FOR PETITIONER

OPINION BELOW

The opinion of the court of appeals is unpublished, but is available at 297 F. App'x 690, and is reprinted at Pet. App. 1a-3a. The order denying a petition for rehearing en banc is unreported, and is reprinted at Pet. App. 15a.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1332(a), (c). The court of appeals had jurisdiction under 28 U.S.C. §§ 1291, 1453(c). The judgment of the court of appeals was entered on October 30, 2008. Pet. App. 1a. A petition for rehearing en banc was denied on December 5, 2008. Pet. App. 15a. The petition for a writ of certiorari was filed on March 2, 2009, and granted on June 8, 2009. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

Section 1332(c)(1) of Title 28 provides, in pertinent part, that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business . . . ."

STATEMENT OF THE CASE

A. Statutory Background

1. Article III of the Constitution provides, as relevant here, that the "judicial power [of the United States] shall extend to all cases, in law and equity . . . between citizens of different states." U.S. Const. art. III, § 2. In the First Judiciary Act, Congress provided federal courts with jurisdiction over "all suits of a civil nature at common law or in equity, where the matter in dispute exceeds . . . the sum or value of five hundred dollars, and . . . the suit is between a citizen of the State where the suit is brought, and a citizen of another State." Act of Sept. 24, 1789, § 11, 1 Stat. 78. Both the Article III grant of diversity jurisdiction and the diversity statute reflected concerns about the administration of justice in state courts. *See, e.g.*, John P. Frank, *Historical Bases of the Federal Judicial System*, 13 Law & Contemp. Probs. 3, 11 & n.49 (1948) (noting that debates over the Act revealed the "basic sentiment that the state courts were untrustworthy"). Echoing those concerns, the "commercial interests of the country" were "reluctant to expose themselves to the hazards of litigation before" state courts. Henry J. Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483, 498 (1928).

Initially, this Court read the diversity statute to exclude corporations, ruling that a corporation was not itself a citizen of any State. *Bank of the United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809). Subsequently, the Court held that a corporation should be treated as a citizen of the State in which it is incorporated, by "indulg[ing] in the fiction that, although a corporation was not itself a citizen for diversity purposes, its shareholders would conclusively be presumed citizens of the incorporating State." *United Steelworkers of Am. v. R.H. Bouligny, Inc.*, 382 U.S. 145, 147-48 (1965) (citing *Marshall v. Balt. & Ohio R.R.*, 57 U.S. (16 How.) 314 (1854)).

2. In 1958, Congress amended the rules governing corporate citizenship. Congress considered various proposals to curtail substantially the access of corporations to federal court, including by denying corporations citizenship for diversity purposes altogether, or by deeming a corporation a citizen of any state in which it does business. *See Hearings on H.R. 2516 and H.R. 4497 Before Subcommittee No. 3 of the House Committee on the Judiciary*, 85th Cong., at 35-36 (1957) (hereinafter "House Judiciary Hearings"). Congress rejected those proposals after being informed that corporations continued to rely on access to federal court "in States remote from their headquarters," because of the perceived potential for local bias in non-headquarters States. *Id.*

Congress instead elected to address a particular concern: the "evil" by which "a local business" could forgo an in-state charter and incorporate in a different State in order to avoid being sued in the courts of the State where it carried on all its business. S. Rep. No. 1830, 85th Cong. (1958), *reprinted in* 2

U.S.C.C.A.N. 3099, 3101-02 (citing *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*, 276 U.S. 518 (1928)) (hereinafter "S. Rep. No. 1830"). To address that concern, the Federal Judicial Conference, Committee on Jurisdiction and Venue, initially suggested that Congress deem a corporation a citizen of any State from which it derives "more than half of its gross income." House Judiciary Hearings at 14; Report of the Committee on Jurisdiction and Venue (March 12, 1951) (hereinafter "Judicial Conference March Report"), *reprinted in* S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3120. Upon reconsideration, the Conference instead suggested that Congress make a corporation a citizen of the State in which its "principal place of business" is located. House Judiciary Hearings at 25. The Conference representative explained that, whereas the gross-income test "would require evidence" and "would be difficult to apply," the "principal place of business" test offered a "simpler and more practical formula." *Id.* at 36; Report of the Committee on Jurisdiction and Venue (Sept. 24, 1951) (hereinafter "Judicial Conference September Report"), *reprinted in* S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3132.

The Conference borrowed the "principal place of business" formulation from the text of the Bankruptcy Act of 1898 (then codified at 11 U.S.C. § 11). The Conference representative explained to Congress that courts applying the phrase in that context had generally concluded that the principal place of business of a corporation with multi-state interests is where "its officers carry on its day-to-day business, where its accounts are kept, where its payments are made"—*i.e.*, "the actual place where its business op-

erations are coordinated, directed, and carried out," rather than where "it may have a plant." House Judiciary Hearings at 37. Congress accordingly was informed that the "principal place of business" test would "be simple in application." Letter from Elmore Whitehurst, Acting Director of the Administrative Office of the U.S. Courts, to the Honorable Emanuel Celler, Chairman, House Committee on the Judiciary (Mar. 26, 1957), *reprinted in* S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3107 (hereinafter "Letter to House Judiciary Committee"). Congress adopted that proposal, amending § 1332 to provide that a corporation shall "be deemed to be a citizen" not only of "any State by which it has been incorporated," but also "of the State where it has its principal place of business." 28 U.S.C. § 1332(c)(1).

3. In 2005, Congress again amended § 1332 as part of the Class Action Fairness Act (CAFA), expanding the availability of a federal forum to class-action defendants. The amendment provides that "[t]he district courts shall have original [and removal] jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs," and "*any* member of a class of plaintiffs is a citizen of a State different from *any* defendant." 28 U.S.C. § 1332(d)(2)(A) (emphasis added). In substantially broadening the statutory grant of diversity jurisdiction, Congress acted in response to a perception that some state courts, including certain courts in California, had been lax in their application of the requirements for class action suits. *See* S. Rep. No. 109-14 at 17 & n.63, 19 & nn.77, 78 (2005) (hereinafter "S. Rep. No. 109-14").

B. Factual and Procedural Background

1. Petitioner is an international car rental company incorporated in Delaware. Petitioner maintains its headquarters at 225 Brae Boulevard, Park Ridge, New Jersey, and its executive leadership is located at its headquarters. Pet. App. 26a ¶ 1, 29a ¶ 11. Petitioner operates rental facilities in 44 of the 50 States. *Id.* at 30a ¶ 3.

2. On September 6, 2007, respondents filed a putative class action against petitioner in California state court, seeking damages for alleged violations of California's wage and hour laws. *See* Pet. App. 17a, 20a. On October 11, 2007, relying on the removal provisions of CAFA, 28 U.S.C. §§ 1332(d), 1453(b), petitioner timely removed the action to the United States District Court for the Northern District of California on the basis of diversity jurisdiction. Pet. App. 16a, 25a. Petitioner accompanied its notice of removal with a sworn declaration from a corporate official stating that petitioner was incorporated in Delaware and that it maintains its corporate headquarters at 225 Brae Boulevard, Park Ridge, New Jersey. *See id.* at 26a-34a. The declaration observed that petitioner's "leadership . . . is found" at its headquarters site, and its "core executive and administrative functions . . . are carried out" there. *Id.* at 29a-30a. Petitioner alleged in its notice of removal that each plaintiff is a citizen of California, and that it is a citizen of Delaware, its State of incorporation, and New Jersey, where its principal place of business is located. *Id.* at 5a.

On November 27, 2007, respondents filed a motion to remand the case. Pet. App. 4a. Respondents did not dispute the location of petitioner's headquar-

ters. Respondents nonetheless argued that petitioner was a citizen of California rather than New Jersey, and that there was thus no diversity of citizenship sufficient to confer federal jurisdiction. *Id.* at 5a.

On January 15, 2008, the district court granted respondents' motion. The court applied the Ninth Circuit's "substantial predominance" (or "place of operations") test for determining a corporation's principal place of business. Under that framework, if a corporation's "business activity [in one State] 'is significantly larger than any other state in which the corporation conducts business,'" that State "'is the corporation's principal place of business.'" Pet. App. 6a (quoting *Tosco Corp. v. Communities for a Better Env't*, 236 F.3d 495, 500-02 (9th Cir. 2001)). In comparing the activities in different States, the Ninth Circuit instructs courts to consider "'a number of factors,' including 'the location of employees, tangible property, production activities, sources of income, and where sales take place.'" *Id.* at 7a (quoting *Tosco*, 236 F.3d at 497, 500-02). If, after considering those factors, no State has a "substantial predominance" of business activity, the court locates the corporation's principal place of business in the State "where the majority of its executive and administrative functions are performed." *Id.* (quoting *Tosco*, 236 F.3d at 500).

Applying that framework, the district court concluded that, with respect to "the location of [petitioner's] employees, tangible property, source of income, and . . . sales (rentals)," the "plurality of activity occurs in California," with "the next greatest amount of activity . . . in Florida." Pet. App. 8a. The

court relied on the following facts in reaching that conclusion:

(i) "2299 of [petitioner's] employees work in California (20.5% of its employees), compared to 1602 employees in Florida (14.3% of its employees)";

(ii) "273 of [petitioner's] 'profit-center rental locations' are located in California (17% of its tangible property), as compared to 155 such locations in Florida (9.7% of its tangible property)";

(iii) "in the last year for which information is available, [petitioner] earned $811 million from its operations in California (18.6% of its earned revenue), as compared to $505 million in Florida (11.6% of its earned revenue)"; and

(iv) "in the last year for which information is available, [petitioner] 'processed' 3,801,000 rentals in California (18.2% of its rentals), as compared to 2,245,000 rentals in Florida (10.7% of its rentals)." Pet. App. 8a.

After finding "the differential between the amount of those activities" in California and Florida to be "significant," the district court held that California "is [petitioner's] principal place of business." Pet. App. 9a (citing, *inter alia*, *Ghaderi v. United Airlines, Inc.*, 136 F. Supp. 2d 1041, 1047-48 (N.D. Cal. 2001) (applying framework to conclude that United Airlines' principal place of business is California)). The court denied petitioner's request to "take judicial notice of the fact that California's population is larger than that of Florida," or to adjust the figures for each State "to compensate for differences in population." *Id.* at 10a.

3. Petitioner filed a petition for permission to appeal the district court's remand order pursuant to 28 U.S.C. § 1453(c), and the court of appeals ultimately granted the petition. Pet. App. 13a.

On October 30, 2008, the court of appeals affirmed the district court's order remanding the case, concluding that the district court "correctly applied the 'place of operations' test to determine [petitioner's] principal place of business." Pet. App. 2a. The court of appeals concluded that petitioner's "relevant business activities are 'significantly larger' in California than in the next largest state, Florida," and that California therefore "'contains a substantial predominance' of Hertz's operations." *Id.* (quoting *Tosco*, 236 F.3d at 500). The court rejected petitioner's argument that a court "must consider the comparative population of [the] states in which a corporation operates," concluding that neither its prior decisions "[n]or . . . policy concerns mandate the application of a per capita calculation." *Id.* at 3a. Because the court believed that petitioner's operations in California "substantially predomina[ted]" over its operations in Florida, the court held that "California is [petitioner's] principal place of business." *Id.* at 2a-3a.

4. After its decision in this case, the Ninth Circuit issued another decision addressing the determination of a corporation's principal place of business for diversity purposes. *Davis v. HSBC Bank Nev., N.A.*, 557 F.3d 1026 (9th Cir. 2009). Noting that it was not writing on a "clean slate," *id.* at 1028 n.3, the court in *Davis* reaffirmed the basic framework it applied in this case, except that it considered the defendant corporation's business activity in chosen

states on a per capita basis. *See id.* at 1028-30 & n.4. The court explained that, "[i]f a corporation may be deemed a citizen of California on th[e] basis" of "activities [that] roughly reflect California's larger population . . . nearly every national retailer—no matter how far flung its operations—will be deemed a citizen of California for diversity purposes." *Id.* at 1029-30. While the court recognized that "[s]uch a result is untenable," it nonetheless refused to "require that courts apply a per capita approach in every case." *Id.* at 1030.

Judge Kleinfeld concurred in the judgment. He explained that the majority's approach "generates excessive unpredictability and encourages expensive litigation to identify the 'principal place of business' for corporations." *Id.* at 1031 (Kleinfeld, J., concurring in judgment).

SUMMARY OF ARGUMENT

For purposes of federal diversity jurisdiction, a corporation is a citizen of, *inter alia,* "the State where it has its principal place of business." 28 U.S.C. § 1332(c)(1). Under the ordinary meaning of those terms, a corporation is a citizen of the State in which it maintains its most influential or important site—its corporate headquarters. That straightforward rule not only follows directly from the statutory text, but it also accords with the strong interest in establishing clear and consistent jurisdictional standards; with the principles for determining State citizenship in related contexts; and with Congress's purposes in enacting the "principal place of business" criterion.

The Ninth Circuit fundamentally misconstrued the terms of § 1332(c) in two significant respects. First, while the statutory language speaks in terms of the particular "place of business" within a State that constitutes a corporation's "principal" place of business, the Ninth Circuit aggregates all of a corporation's places of business throughout a State to determine which *State* is the corporation's principal place of business. The Ninth Circuit thus concluded here that "California is [petitioner's] principal place of business." Pet. App. 3a. But the statute does not deem a corporation a citizen of "the *State* that is the corporation's principal place of business." It instead deems a corporation a citizen of "the State where it has its principal place of business," language that plainly points to a distinct "place of business" within a "State." That understanding reflects the ordinary meaning of the term "place of business"—*viz.*, a specific "establishment," "office," or "plant," rather than an aggregation of all operations throughout a State as a whole. Focusing the inquiry on which of a corporation's individual business sites constitutes its "principal place of business" necessarily directs attention to the corporation's headquarters, the location from which the corporation's chief executive officers control and direct the corporation's activities at all other individual locations.

The Ninth Circuit departed from the statutory text in a second basic respect as well. Even assuming it were appropriate to aggregate all of a corporation's business locations in a State in an effort to assess which State is the corporation's "principal place of business," the inquiry should still point to the State of the corporation's headquarters. The ordi-

nary meaning of "principal" is "chief," "highest in authority," or "most influential, consequential, and important." Law and business dictionaries accordingly define a corporation's "principal place of business" as its headquarters. The headquarters is more influential, and higher in authority, than any single location or aggregation of locations in a State. A number of federal regulations and provisions of state corporate law, consistent with the plain meaning of the term, explicitly define a corporation's principal place of business as its headquarters.

The Ninth Circuit's approach not only contradicts the statutory text, it also defies this Court's requirement that jurisdictional rules be clear and easy to administer. The test used by the Ninth Circuit requires examination, calculation, and balancing of numerous factors, each of which is itself open to multiple interpretations. The discovery and litigation required to determine in which State, if any, a corporation's operations "substantially predominate" is burdensome for courts and unpredictable for litigants, and fails to deliver clear or consistent results. The "total activities" test applied by other circuits is similarly uncertain and complicated. The headquarters test, in contrast, is straightforward in application and readily administrable in practice.

The headquarters test also coheres with the standard rules for determining citizenship in comparable contexts. This Court has long recognized that a natural person's State of citizenship is the State in which he maintains his "technically preeminent *headquarters*," *Williamson v. Osenton*, 232 U.S. 619, 624 (1914) (emphasis added)—the site of his purposefully "fixed" and "permanent" home. The head-

quarters test for corporate citizenship likewise bases citizenship on a corporation's intentionally fixed and permanent connection to a place. By contrast, the considerations balanced by the Ninth Circuit allow—indeed, require—a corporation's principal place of business to vary with fluctuations in market conditions, local regulations, or the size of a State's population and economy.

The headquarters test also accords with the statutory purposes. In enacting § 1332(c), Congress intended to eliminate the "evil" of a purely local corporation's avoiding state court jurisdiction by incorporating in a separate State in which it conducts no business. At the same time, Congress sought to preserve corporations' ability to seek the protection of a federal forum when litigating "in States remote from their headquarters." House Judiciary Hearings at 35-36. The headquarters test serves both of these goals, providing access to a federal forum when there is a possibility of prejudice, while preventing the gamesmanship that an exclusive focus on incorporation might otherwise permit. The test also furthers Congress's aim in CAFA, which amended § 1332 in 2005, to ensure the availability of a federal forum for class action lawsuits like this one.

For those reasons, the headquarters test should be applied in all circumstances when identifying a corporation's "principal place of business." Nonetheless, the Court could allow for a narrow exception to the headquarters test, limited to corporations that perform all their business activities in one State except for the activity conducted at their headquarters in a different State. That exception would have no application to petitioner. Rather, petitioner's princi-

pal place of business, under any approach this Court might adopt, should be its headquarters in Park Ridge, New Jersey.

ARGUMENT

I. THE STATUTORY TERMS AND STRUCTURE ESTABLISH THAT A CORPORATION'S PRINCIPAL PLACE OF BUSINESS IS ITS HEADQUARTERS

The terms of the diversity statute make a corporation a citizen of "the State where it has its principal place of business." 28 U.S.C. § 1332(c)(1). The Ninth Circuit's test for determining a corporation's citizenship departs from that language in two fundamental respects. First, while the statute requires a court to identify the particular place within a State that is a corporation's principal place of business, the Ninth Circuit aggregates all business locations throughout a State to determine which *State* is a corporation's principal place of business. Second, in determining a corporation's principal place of business, the Ninth Circuit fails to give sufficient weight to a corporation's headquarters—the place from which a corporation's chief executives direct and control all corporate operations. In ordinary understanding and in practical terms, the headquarters location—sometimes referred to as the "nerve center," *see Ill. Bell Tel. Co. v. Global NAPs Ill., Inc.*, 551 F.3d 587, 590 (7th Cir. 2008)—is "the principal place of business" of a corporation. And that would remain true even assuming, *arguendo*, that it were appropriate to aggregate multiple business locations throughout a State.

A. A "Place Of Business" Under § 1332(c)(1) Is A Physical Location Within A State, Not An Amalgamation Of All Business Operations Throughout A State

Because the diversity statute speaks in terms of "the State where [a corporation] has its principal place of business," 28 U.S.C. § 1332(c)(1), the statutory language requires a court to identify the single "place of business" within a State that constitutes a corporation's "principal" place of business. The text nowhere contemplates aggregation of multiple places of business throughout a State to determine which *State* is the corporation's principal place of business. The Ninth Circuit below engaged in precisely that manner of statewide aggregation, however, holding that "*California* is [petitioner's] principal place of business." Pet. App. 3a (emphasis added). That countertextual approach is fundamentally flawed.

1. Had Congress wished to adopt that sort of aggregation approach, it would have made a corporation a citizen of "the State *that is* the corporation's principal place of business." That formulation equates a "State" with the "principal place of business." By specifying instead that a corporation is a citizen of "the State where [a corporation] has its principal place of business," Congress expressly distinguished between a "State" as a whole, on one hand, and the specific location within a State that is the corporation's "principal place of business," on the other hand.

The ordinary meaning of "place of business" confirms that understanding. A "place of business"

normally refers to "[a]n establishment where business is conducted," such as "an office, a retail store, a manufacturing plant, or any other type of commercial or industrial establishment." *American Heritage Dictionary of Business Terms* 394 (David L. Scott, ed. 2009); *see also Webster's Third New International Dictionary* 1727 (1993) (defining "place" as, *inter alia*, "a building or locality used for a special purpose."); 2 *New Shorter Oxford English Dictionary* 2229-30 (3d ed. 1993) (defining "place" as, *inter alia*, "[a] building, establishment, or area devoted to a specific purpose"). Nothing in the text of § 1332(c) suggests that "place of business" in that provision carries anything other than its ordinary meaning. Indeed, this Court has interpreted that language in § 1332(c) to refer to a particular "office." *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 317 n.9 (2006) (explaining that, "in almost every case," the "location of a national bank's main office and its principal place of business coincide").

The use of the term "where" in § 1332(c) reinforces that the relationship between the terms "State" and "principal place of business" is that the latter is a distinct establishment located within the former. The term "where," in this context, means "in which." *Webster's Third New International Dictionary* 2602 (1993) (defining "where" when used in this context as "at or in which place" and offering as examples "the room ~ he was working" and "the store ~ she bought her clothes"). Accordingly, the legislative history of § 1332(c) uses the phrase "where" interchangeably with "in which." S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3102 (explaining that a national corporation "would be regarded as a citizen of that

one of the States *in which was located* its principal place of business") (emphasis added); *see id.* (explaining that that the Committee adopted the recommendation of the Judicial Conference to make a corporation "a citizen of the State *in which* it maintains its principal place of business") (emphasis added). Because the term "where" means "in which," the use of that term to connect "State" with "principal place of business" makes clear that a corporation's "principal place of business" is a "place" *within* a "State," not a State itself.

The use of the singular "principal *place* of business," rather than the plural "principal *places* of business" fortifies the conclusion that a corporation's "principal place of business" is a particular place within a State. The use of the singular precludes determining a corporation's citizenship on the basis of multiple places of business. *See United States v. Hayes*, 129 S. Ct. 1079, 1084-85 (2009) (use of singular "element" rather than plural "elements" demonstrates intent by Congress that requirement apply to a single element). A corporation's "principal place of business" accordingly is a single, distinct business location within a State, not the State as a whole.

The text of § 1332(c) therefore prescribes a straightforward process for determining a corporation's citizenship: (i) identify a corporation's different "place[s] of business," *i.e.*, its distinct "establishment[s] where business is conducted," *American Heritage Dictionary of Business Terms*, *supra*, at 394; (ii) determine which of these places of business constitutes the corporation's "principal" place of business; and (iii) identify the State in which that principal place of business is located. By failing to

follow that process, and instead aggregating multiple places of business in each State to determine which *State* is petitioner's principal place of business, the Ninth Circuit fundamentally erred.

2. The use of the phrase "place of business" to refer to a particular business establishment is by no means unique to the diversity statute. A variety of federal and state laws use "place of business" to refer to a particular business establishment, not an aggregation of business operations in a State. Those provisions buttress the conclusion that the term carries the same meaning in § 1332(c).

a. A number of federal statutes make sense only if the phrase "place of business" refers to a particular business location rather than a State as a whole. For instance, certain statutes require corporations to identify the "address" of their "place of business." *See, e.g.*, 15 U.S.C. § 376(a)(1) (cigarette tax filings); 15 U.S.C. § 1173(a)(4) (registration for manufacturers of gambling devices); 21 U.S.C. § 460(c) (registration for poultry inspections). Related statutes provide for service on corporations by delivery or mail to a "place of business." *See, e.g.*, 15 U.S.C. § 1312(e)(1)(B) (antitrust civil demands); 15 U.S.C. § 21(f) (FTC complaints); 16 U.S.C. § 773i(f)(3) (enforcement of fisheries act); 39 U.S.C. § 3016(b)(3)(C) (administrative subpoenas). Another set of statutes requires corporations to allow access to a "place of business" for inspection. *See, e.g.*, 16 U.S.C. § 1538(d)(2)(B) (endangered species importers); 21 U.S.C. § 1034(d), (e) (inspection of eggs). And still other federal statutes compel a business owner to display certain permits or signs "on the outside of his place of business." 26 U.S.C. § 5180(a) (operators of

distilled spirits facilities); *see also* 12 U.S.C. § 1828(a)(1)(A) (requiring depository institutions to display a sign concerning insurance "at each place of business").

Other federal statutes likewise manifest the understanding that a "place of business" is a specific business site. For example, Congress made a business tax credit available to certain businesses that moved outside New York City "as a result of the physical destruction or damage of such place of business by the September 11, 2001, terrorist attack." 26 U.S.C. § 1400L(a)(2)(C). And another statute provides an exemption from certain labor laws for persons "employed inside or outside places of business where machinery is used to process wood products." 29 U.S.C. § 213(c)(7)(A)(i). Still other federal statutes expressly equate the term "place of business" with a particular business "establishment." *See* 17 U.S.C. § 101 (an "establishment" under copyright law is "a store, shop, or any similar place of business"); *see id.* (a "food service or drinking establishment" is "a restaurant, inn, bar, tavern, or any other similar place of business").

b. State laws governing corporations also regularly refer to a "place of business" as a specific physical establishment, not an amalgamation of business activity throughout a State. The Model Business Corporation Act, adopted by 30 states, requires corporations to maintain within the State "a registered office that may be the same as any of its places of business." American Bar Association Committee on Corporate Laws, Model Business Corporation Act § 5.01(1) (2008) (hereinafter "Model Business Corporation Act"); *see id.* at ix n.1 (listing states). Some

state laws expressly equate a corporation's "place of business" in the State with the corporation's "registered office," reinforcing that a place of business is a specific business establishment. For example, the Delaware Code states that the term "'place of business in this State' . . . shall be deemed to mean and refer to, unless the context indicates otherwise, the corporation's registered office." Del. Code Ann. tit. 8, § 131(b). Other States have laws that are to the same effect. 8 William Meade Fletcher, *Fletcher Cyclopedia of the Law of Corporations* § 4046 (2008); *see also* Uniform Securities Act of 2002, § 102(21); Kan. Stat. Ann. § 17-6202(b); Okla. Stat. tit. 18, § 1021(B).

In sum, a corporation's "principal place of business" within the meaning of the diversity statute is a distinct business location within a State. It is not an aggregation of a corporation's business activities throughout a State.

B. Among A Corporation's Places Of Business, Its "Principal" Place Of Business Is Its Headquarters

1. Once a corporation's "principal place of business" is correctly understood to refer to a particular business establishment within a State, it becomes straightforward to identify which of the corporation's places of business constitutes its "principal" such place. "Principal" means "most important, consequential, or influential." *Webster's Third New International Dictionary* 1802 (1993); *see Comm'r v. Soliman*, 506 U.S. 168, 174 (1993) (applying this definition to a tax provision on an individual's "principal place of business"). And it also means "[c]hief" and "[h]ighest in rank, authority." *See Black's Law Dic-*

tionary 1355 (4th ed. 1951); *see also Webster's New International Dictionary* 1966 (2d ed. 1955) (defining "principal" as "[h]ighest in rank, authority, or importance; chief; directing; head").

Under those definitions, a corporation's headquarters is its principal place of business. When compared with any other single business location, the headquarters is the most "important, consequential, and influential" because it bears responsibility for directing and controlling the corporation's activities at all business locations. For the same reason, the headquarters is a corporation's "chief" business location and its "highest in rank" and "authority."

With regard to petitioner Hertz, for instance, the Ninth Circuit erroneously amalgamated all of petitioner's business locations throughout the State of California to determine that "California is Hertz's principal place of business." Pet. App. 3a. But when one correctly focuses the analysis on which of Hertz's *individual* business locations is its principal place of business—rather than which *State* is its principal place of business—it is plain that petitioner's most important and influential single site, and its highest in rank and authority, is its national headquarters at 225 Brae Boulevard, Park Ridge, New Jersey. Among the company's various individual locations, that site, which directs and controls all of Hertz's operations, exceeds in influence, rank, and authority any other single site—whether any of the 273 individual rental locations in California, *see* Pet. App. 28a ¶ 6, or any individual location elsewhere.

2. Even assuming, *arguendo*, that it were appropriate to aggregate all of a corporation's distinct business establishments throughout a State, the

"principal place of business" test would still point to the State of the corporation's headquarters. The headquarters is the most important location because it bears responsibility for directing and controlling *all* of the corporation's business activities in *all* States. Thus, by definition, a corporation's "headquarters" is its "chief" "place of business," *Webster's Third New International Dictionary* 1043. *Cf. Wheeling Steel Corp. v. Fox,* 298 U.S. 193, 205-07, 212 (1936) (finding that corporation was domiciled for tax jurisdiction purposes in State where it maintained its headquarters rather than in State where it maintained its plants and certain additional offices, because "what is done at those plants and offices is determined and controlled from the center of authority at [the headquarters]").

Indeed, legal and business dictionaries, reflecting the ordinary meaning of the phrase, consistently define a corporation's "principal place of business" as its headquarters or executive offices. *Black's Law Dictionary*, for example, defines "principal place of business" as "[t]he place of a corporation's chief executive offices." *Black's Law Dictionary* 1187 (8th ed. 2004). And the *American Heritage Dictionary of Business Terms* similarly defines "principal place of business" as "[t]he location of a firm's head office." *American Heritage Dictionary of Business Terms*, *supra*, at 408.[1] Accordingly, as the Seventh Circuit

[1] *See also* U.S. Legal Definitions, http://definitions.uslegal.com/p/principal-place-of-business/ ("A principal place of business is where the head office of a business is and where the books and records are kept and/or management works."); Law.com Dictionary, http://dictionary.law.com/Default.aspx?selected=1603 (defining "principal place of business" as the "location of head office of a business where the books and records

has understood, "a corporation has a single principal place of business where its executive headquarters are located." *Metro. Life Ins. Co. v. Estate of Cammon*, 929 F.2d 1220, 1223 (1991).

Rather than recognize a corporation's headquarters to be its principal place of business, the Ninth Circuit first focuses on such factors as the "location of employees, tangible property, production activities, sources of income, and where sales take place." *Tosco*, 236 F.3d at 500. Only if no State contains a substantial predominance of those factors does the court consider the corporation's headquarters to be its principal place of business. *Id.* The Ninth Circuit's two-phased approach cannot be reconciled with the plain meaning of the term "principal place of business." A headquarters does not become the principal place of business only when other, less important factors prove inconclusive. For purposes of achieving a corporation's objectives, its headquarters, from which its chief executives direct and control all business operations, is more important, consequential, and influential than any other location or combination of locations in a single State.

3. a. Defining "principal place of business" as the corporation's headquarters accords with the meaning of that phrase in a number of provisions of federal law, fortifying the conclusion that it retains the same meaning in the diversity statute. For example, multiple federal regulations define "principal place

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are kept and/or management works"); BusinessDictionary.com, http://www.businessdictionary.com/definition/principal-place-of-business.html (defining "principal place of business" as the "[p]remises housing the offices of the senior-most executives of a firm and serving as its command and control center").

of business" as "the business location where the individuals who manage the concern's day-to-day operations spend most working hours and where top management's business records are kept." 13 C.F.R. § 124.3 (Small Business Administration); 49 C.F.R. § 23.3 (Federal Aviation Administration); 38 C.F.R. § 74.1 (veterans programs).

Similarly, federal regulations concerning investment firms define the "[p]rincipal place of business" as "the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser." 17 C.F.R. § 275.222-1(b); *see also* 17 C.F.R. § 275.203A-3(c). A regulation governing bids for State Department contractors provides that "[p]rincipal place of business means the geographic location of the main office or seat of management of the prospective offeror." 48 C.F.R. § 652.237-73(d) (statement of qualifications form). And a motor carrier regulation states that "[p]rincipal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter." 49 C.F.R. § 390.5.

b. State laws also identify a corporation's principal place of business as its headquarters or the location of its chief executive offices. In Massachusetts, for instance, a corporation's "[p]rincipal place of business" is "the corporate headquarters where the general executive offices are located and from which the corporation's activities are controlled and directed by executive officers of the corporation." Mass. Gen. Laws ch. 110C, § 1.

Other State statutes regulating particular industries define the principal place of business as the headquarters or executive offices. The Uniform Securities Act of 2002, adopted by 13 states and territories, defines a broker-dealer or investment adviser's "principal place of business" as "the executive office . . . from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser." Uniform Securities Act of 2002, § 102(24). In New Jersey banking law, "'[p]rincipal office' means the headquarters of a bank which is its principal place of business." N.J. Stat. Ann. § 52:18A-8.1a. In Kansas real estate law, "'[p]rincipal place of business' means a licensed place of business . . . which has been designated by a licensee as the primary headquarters from which all mortgage business and administrative activities are managed and directed." Kan. Stat. Ann. § 9-2201. And in an Iowa law concerning corporate takeovers, "'[p]rincipal place of business' means the executive office of a target company from which the officers, partners, or managers of the target company direct, control, and coordinate the activities of the target company." Iowa Code § 502.321A(7).

For those reasons, the plain and ordinary meaning of the terms of § 1332(c) makes a corporation a citizen of the State where it maintains its headquarters. The court of appeals erred in departing from that basic understanding.

II. INTERPRETING "PRINCIPAL PLACE OF BUSINESS" TO REFER TO A CORPORATION'S HEADQUARTERS AFFORDS A CLEAR AND EASILY ADMINISTERED JURISDICTIONAL RULE

This Court's precedents require jurisdictional rules to be clear and easily administered. A headquarters test readily satisfies those criteria, while competing approaches are complicated and unpredictable, and invite wasteful litigation. Thus, even apart from the text of § 1332(c), this Court's decisions require interpreting that provision to make a corporation a citizen of the State where it maintains its headquarters.

A. This Court Requires Jurisdictional Rules To Be Clear And Easily Administered

1. Because it must be ascertained in every federal case, the question of federal jurisdiction arises often and is frequently litigated. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). But as this Court has observed, "litigation over whether the case is in the right court is essentially a waste of time and resources," *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 464 n.13 (1980) (internal quotation marks omitted), and that "waste counsels strongly against" any interpretation that would "impair the certainty of" the Court's jurisdictional rules, *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 582 (2004). It therefore "is of first importance to have a definition" affecting jurisdiction that "will not invite extensive threshold litigation," even if some applications of the jurisdictional rule may "appear somewhat arbitrary." *Navarro*, 446 U.S. at 464

n.13 (internal quotation marks omitted). In short, "jurisdictional rules should be clear." *Lapides v. Bd. of Regents*, 535 U.S. 613, 621 (2002).

2. The Court's earliest decisions concerning a corporation's citizenship for diversity purposes afford a good example. In those cases, the Court held that a corporation could be deemed to have the citizenship of its shareholders, and "its shareholders would conclusively be presumed citizens of the incorporating State." *United Steelworkers of Am. v. R.H. Bouligny, Inc.*, 382 U.S. 145, 148 (1965). Those decisions were based on a "fiction," *id.*, not found in the text of the Constitution or the First Judiciary Act, allowing corporations to take advantage of the grant of diversity jurisdiction through an easily administered place-of-incorporation test.

Similarly, the rule that jurisdiction is determined at the time of filing, and is unaffected by subsequent events, was "not extract[ed] . . . from any constitutional or statutory text." *Grupo Dataflux*, 541 U.S. at 583 (Ginsburg, J., dissenting) (citing *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537 (1824) (Marshall, C.J.)). That rule instead was adopted "because the facts determining jurisdiction are subject to change, and because constant litigation in response to that change would be wasteful." *Id.* at 580.

And in *Newman-Green v. Alfonzo-Larrain*, 490 U.S. 826, 833 (1989), the Court relied on Federal Rule of Civil Procedure 21 to permit a court of appeals itself to "dismiss a [dispensable] nondiverse party" that destroys federal diversity jurisdiction—even though it had previously been "well settled that 'the Federal Rules of Civil Procedure . . . apply only in the federal district courts,'" *id.* at 840 (Kennedy,

J., dissenting) (quoting *UAW, Local 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965)). The Court recognized that "[a]ppellate-level amendments to correct jurisdictional defects may not be the most intellectually satisfying approach to the [diversity] spoiler problem," but it reasoned that "law is an instrument of governance," and thus "some consideration must be given to practicalities." *Id.* at 836-37 (internal quotation marks omitted). These cases illustrate the importance attached by this Court to jurisdictional rules that are clear and easily administered, and limit wasteful litigation.

B. The Headquarters Test Is Clear And Easily Administered, While Competing Approaches Are Not

1. a. The headquarters test satisfies the Court's standards for a jurisdictional rule. It requires a court to determine only one fact: the location from which a corporation's chief executives direct and control corporate operations. In most cases, the location of a corporation's headquarters is easily ascertained and can be quickly established through an affidavit of a corporate official. Here, for instance, a corporate official filed a declaration stating that "the corporate headquarters of Hertz" is "located at 225 Brae Boulevard, Park Ridge, New Jersey." Pet. App. 26a ¶ 1. That fact has never been—and could not be—disputed.

b. In most instances, a corporation's headquarters also can be readily ascertained from other sources. For example, the Securities and Exchange Commission's official Form 10-K, which satisfies the annual reporting requirements of Sections 13 and 15(d) of the Securities Exchange Act of 1934, 15

U.S.C. §§ 78m, 78o(d), calls for each company to state the address for its "principal executive offices." *See* Form 10-K at 5, *available at* www.sec.gov/about/forms/form10-k.pdf (SEC 1673 (04-09)). Those annual reports are freely and publicly available through the Securities and Exchange Commission's website, which allows the user to search for relevant documents by company name or other identifying information. *See* http://www.sec.gov/idea/searchidea/webusers.htm; Petitioner's Form 10-K (Mar. 4, 2009), *available at* http://www.sec.gov/Archives/edgar/data/47129/000104746909002230/a2191177z10-k.htm (identifying the location of petitioner's "principal executive offices" as "225 Brae Boulevard, Park Ridge, New Jersey"); *see also Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 161 (6th Cir. 1993) (defendant corporation at a pretrial hearing on jurisdiction "produced a copy of the 10-K" to demonstrate its principal place of business).

In addition, the Model Business Corporation Act requires each corporation to submit to the Secretary of State an annual report containing the address of its "principal office," *i.e.*, the place "where the principal executive offices of [the] . . . corporation are located." Model Business Corporation Act §§ 1.40(17), 16.21(a)(3) (2008). These reports also generally are publicly available through the Secretary of State's office or other services that collect them.[2]

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[2] Tawnya Plumb, *Conducting Company Research*, 32-JUN Wyo. Law. 52, 52-53 (June 2009) (explaining that, "[a]t the state level, each Secretary of State has the responsibility of making corporate records . . . publicly available," and "many company annual reports are available through websites such as AnnualReports.com"); M. Thomas Arnold, *Administrative As-*

c. Experience with the headquarters test demonstrates its simplicity and efficiency. The Seventh Circuit uses the headquarters test exclusively and finds it straightforward to administer. As explained by that court, "[s]ome courts use a vaguer standard. They look not just to where the corporation has its headquarters but also to the distribution of the corporation's assets and employees. We prefer the simpler test." *Wis. Knife Works v. Nat'l Metal Crafters*, 781 F.2d 1280, 1282-83 (7th Cir. 1986) (Posner, J.) (internal citation omitted).

To be sure, in certain situations, there may be a dispute about which of two (or several) locations constitutes a corporation's bona fide headquarters, or even about whether the corporation has a cognizable headquarters. But as the experience in the Seventh Circuit demonstrates, those sorts of disputes are likely to arise infrequently. In the vast majority of cases, including this case, a corporation's headquarters can be easily and efficiently identified. *Cf. Sisson v. Ruby*, 497 U.S. 358, 374-75 (1990) (Scalia, J., concurring in judgment) ("The time expended on such rare freakish cases will be saved many times over by a clear jurisdictional rule" that eliminates the "sort of vague boundary that is to be avoided in the area of subject-matter jurisdiction wherever possible.").

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pects of State Corporation Law, 28 U. Rich. L. Rev. 1, 18 (1994) (discussing Model Business Corporation Act and other reporting requirements that provide public access to "basic information about [a] corporation"); *see, e.g.*, Commonwealth of Virginia, State Corporation Commission, *View Corporate Annual Reports Online*, http://scc-internet.scc.virginia.gov/corporate/arfilings/corpsearch.asp.

2. In contrast to the corporate headquarters inquiry, the test applied by the Ninth Circuit "generate[s] excessive unpredictability and encourages expensive litigation to identify the 'principal place of business' for corporations that operate in multiple states." *Davis*, 557 F.3d at 1031 (Kleinfeld, J., concurring). As discussed, the test has two stages. First, where a State encompasses "a substantial predominance of corporate operations," that State is the principal place of business. *Tosco*, 236 F.3d at 500. In making that determination, a court must consider the location of: (1) employees, (2) tangible property, (3) production activities, (4) sources of income, (5) sales, and (6) purchases. *Id.*; *Indus. Tectonics, Inc. v. Aero Alloy*, 912 F.2d 1090, 1094 (9th Cir. 1990). If no State is home to a substantial predominance of such activities, the principal place of business is the State where "the majority of its executive and administrative functions are performed." *Indus. Tectonics*, 912 F.2d at 1092 (internal quotation marks omitted).

a. That test raises a host of complications and uncertainties. Among the questions raised by that test are the following:

* In considering *employees*, should the court consider the number of hours worked, or is it more important to determine the total amount of wages paid? *See Indus. Tectonics*, 912 F.2d at 1092 ("Of the nearly $400,000 paid in wages, more than 53% is paid to California employees."). Should a court count full-time employees, part-time employees, seasonal employees, or some or all of the above? Should a court look to total numbers of employees, or should it distinguish between salaried employees and those

paid by the hour, giving greater weight to the latter? *See id.* ("Although each plant employs approximately the same total number of people, the California plant employs more than 56% of the hourly employees, presumably those involved in actual production.").

* When assessing *facilities*, should the court consider only their total number, or does the size of a facility matter? *See Indus. Tectonics*, 912 F.2d at 1092 ("The California plant is larger than the Michigan plant."). Should the court look to the value of the real estate on which the facilities are located, or the value of the property inside them? *See id.* ("More than 63% of the corporation's equipment is located in California."). Should the inquiry take into account whether the company's ownership of the facility is "passive" or "visible," and if so how should those terms be defined? *Compare Montrose Chem. Corp. v. Am. Motorists Ins. Co.*, 117 F.3d 1128, 1135 (9th Cir. 1997) (suggesting that company's mere ownership of rental property was more "visible" than its operations overseeing investments), *with Village Fair Shopping Center v. Sam Broadhead Trust*, 588 F.2d 431, 434 (5th Cir. 1979) (holding that "single passive [real estate] investment" in one state could not outweigh management activity occurring at office in another state).

* In considering *sales*, should the court consider gross sales or net sales? *See In re Joint E. & S. Districts Asbestos Litig.*, No. CV-87-0537, 1990 WL 129194, at *1 (E.D.N.Y. Aug. 30, 1990) ("In 1987 and 1988, Ohio accounted for the largest volume of gross sales of any single state, [and] New Jersey accounted for the largest volume of sales revenue."). Should a court consider just the value of the sales, or should it

also consider the volume of sales? In light of the value placed on "visibility," *Montrose*, 117 F.3d at 1135, should a court weigh in-store purchases more heavily than internet-based transactions, or should it exclude internet-based sales altogether?

b. With respect to all of those factors—employees, facilities, and sales—the Ninth Circuit's framework also raises a host of more general questions. Among the general questions are:

* Should the court consider the factors on a per capita basis, or is it free to consider them without taking population into account? *Compare Davis*, 557 F.3d at 1030 & n.4 (evaluating business per capita), *with* Pet. App. 3a (holding that court was not required to "consider the comparative population of states in which a corporation operates to determine whether activities are significantly larger in one state than another," and refusing to do so). The answer to that question is highly significant because a non-per capita approach would likely make many national corporations citizens of California, closing off a federal forum in that State: both the population and the economy of California are 50% larger than that of any other State.[3] Accordingly, absent a per capita approach, any national corporation doing

[3] In 2008, California had nearly 37 million people; the next largest state, Texas, had just over 24 million. *See* U.S. Census Bureau Population Estimates, State Population Estimates (2008), *available at* http://www.census.gov/popest/states/tables/NST-EST2008-1.xls. The same year, the gross state product—the state counterpart to gross domestic product—was $1.85 trillion in California and $1.22 trillion in Texas. *See* U.S. Bureau of Economic Analysis (2008), *available at* http://www.bea.gov/regional/gsp/.

business in California comparable to its per capita business in other States would likely be deemed a citizen of California. *See Davis*, 557 F.3d at 1029-30.

* What is the benchmark for finding that a relevant factor *substantially predominates* in one State. Is 5% more substantial? Is 10%? Is 20%? Is substantiality always measured in percentage terms, or is there some other measure? *See Davis*, 557 F.3d at 1029 (refusing to "adopt any hard and fast rule or percentage" to determine whether a corporation's business in one State "'substantially' predominate[s] over operations in other states").

* How does a court *balance* the various factors? Are some factors more important than others, so that if a particular factor predominates it cannot be overcome by other factors, or are all factors weighted equally? How many factors must substantially predominate in favor of one State: all of them; a majority of them; a plurality of them? *Cf. Tosco Corp.*, 236 F.3d at 501 & n.2 (California deemed principal place of business even though only 21% of corporation's employees worked in California, compared with 24% in Arizona).

* What is the relevant *time-frame* for evaluating the relevant factors? Should a corporation's business activities be measured over the course of the last calendar year? Fiscal year? Five years? A decade?

Those are only some of the questions raised by the Ninth Circuit's framework. That framework thus does not approach satisfying this Court's requirement that jurisdictional rules be clear and easily administered.

3. The competing approaches applied by other courts of appeals are also uncertain and difficult to administer.

a. The most common alternative is the "total activity" test applied by the Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits. Their descriptions of that test lay bare its complexity and uncertainty.

The Fifth Circuit's statements are illustrative. It has described the test as requiring a court to consider two focal points: the nerve center and the place of activities. *Teal Energy USA, Inc. v. GT, Inc.*, 369 F.3d 873, 876 (5th Cir. 2004). It has additionally explained that "[g]enerally," when a corporation's activities are "far-flung" the nerve center is more significant; when a corporation has its operations solely in one State and its executive offices in another, the place of activity is more significant; and when the activity of the corporation is "passive," the situs of the "brain" is given "greater significance." *Id.* If that were not complicated enough, the court has further instructed that the relevant factors "may be expanded or contracted in any given case." *J.A. Olson Co. v. City of Winona*, 818 F.2d 401, 411 n.15 (5th Cir. 1987). It is hardly surprising that the court acknowledges that "[t]he 'total activity' test is not an equation that can provide a simple answer to the question of a corporation's principal place of business. Each case necessarily involves somewhat subjective analysis." *Toms v. Country Quality Meats, Inc.*, 610 F.2d 313, 315 (5th Cir. 1980) (internal citation omitted).

Other circuits applying the total activity test have given similarly open-ended guidance. The Sixth Circuit directs district courts in that circuit to

"employ the total activity test, taking into consideration all relevant factors and weighing them in light of the facts of each case." *Gafford*, 997 F.2d at 163. The Tenth Circuit instructs courts to "look to the 'total activity of the company' or the 'totality of the circumstances,' considering 'the character of the corporation, its purposes, the kind of business in which it is engaged, and the situs of its operations.'" *Gadlin v. Sybron Int'l Corp.*, 222 F.3d 797, 799 (10th Cir. 2000) (citation omitted). And the Eleventh Circuit recognizes that its test "requires a somewhat subjective analysis to choose between the results of the nerve center and place of activities tests, if they differ." *MacGinnitie v. Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005).

In addition, courts applying the total activity test consider a virtually limitless array of factors. A sampling of the factors includes:

- the locations in which the corporation is "qualified to do business," *Vareka Invs., N.V. v. Am. Inv. Props, Inc.*, 724 F.2d 907, 910 (11th Cir. 1984);
- the location of the corporation's "principal bank account," *Danos v. Waterford Oil Co.*, 351 F.2d 940, 941 (5th Cir. 1965);
- the location of the corporation's "work force," *Am. Foundation, Inc. v. Mountain Lake Corp.*, 454 F.2d 200, 202 (5th Cir. 1972);
- "the importance of the particular activity" performed at a location "to the corporate purpose and to the corporation as a whole," *J.A. Olson Co.*, 818 F.2d at 411;

- the location where the corporation's accounting functions, including payroll, are performed, *Toms*, 610 F.2d at 316;
- "the degree to which" the corporation's activities "bring the corporation into contact with the local community," *Nauru Phosphate Royalties, Inc. v. Drago Daic Interests, Inc.*, 138 F.3d 160, 164 (5th Cir. 1998);
- the location of corporate records, *Danos*, 351 F.2d at 941;
- "the exclusivity of decision making of the nerve center and the degree of autonomy delegated to other locations," *J.A. Olson Co.*, 818 F.2d at 412;
- the location where the corporation's shareholders are citizens and residents, *Vareka*, 724 F.2d at 910;
- the location of revenues and expenditures, *Danos*, 351 F.2d at 941;
- the location where the "corporate minutes," filings with the Secretary of State of the state of incorporation, and filings with the Internal Revenue Service specify as the corporation's headquarters or principal place of business, *Teal Energy*, 369 F.3d at 876-77;
- whether a "company's activities are not concentrated in one place," in which case the "court is entitled 'to give . . . "nerve-center"-related facts greater significance,'" *MacGinnitie*, 420 F.3d at 1239;

- "commonly known information" about the industry of which the corporation is a part, "even without a request that [the court] take judicial notice of particular facts," *Capitol Indem. Corp. v. Russellville Steel Co.*, 367 F.3d 831, 836 (8th Cir. 2004).

b. The First, Second, and Fourth Circuits apply tests resembling the total activity test, and engendering the same kind of complexity and uncertainty. The First Circuit applies the nerve center test only to a corporation that is "far flung" or "without physical operations." *Diaz-Rodriguez v. Pep Boys Corp.*, 410 F.3d 56, 61 (1st Cir. 2005). Otherwise, it applies what it calls a "locus of operations" test, which "search[es] for the location of the corporation's actual physical operations," taking into account such factors as facilities, inventory, equipment, and sales. *Id.* at 61-62. The Second Circuit similarly appears to have adopted a nerve center test for situations where corporate operations are spread across numerous states. *R.G. Barry Corp. v. Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979). When operations are centralized, the Second Circuit looks for the State "in which a corporation has its most extensive contacts with, or greatest impact on the general public." *Id.* And the Fourth Circuit applies the nerve center test when a corporation is "engaged primarily in the ownership and management of investment assets," but applies a "place of operations" test when a corporation "has multiple centers of manufacturing, purchasing, or sales." *Peterson v. Cooley*, 142 F.3d 181, 184 (4th Cir. 1998).

Finally, the Third Circuit applies a "center of corporate activity" test, which looks to the "the head-

quarters of day-to-day corporate activity and management." *Kelly v. U.S. Steel Corp.*, 284 F.2d 850, 852-54 (3d Cir. 1960). In applying this test, the court considers the location of executive officers responsible for conducting the business of the corporation. *Id.* at 854. It considers the location of the company's "accounting, legal, human resource, and loss-control activities." *Mennen Co. v. Atl. Mut. Ins. Co.*, 147 F.3d 287, 291 (3d Cir. 1998). And it also considers factors it regards as of "lesser importance," including the physical location of employees, tangible property, and productive capacity. *Kelly*, 284 F.2d at 854. That test produces the same lack of clarity as the others.

In short, only the headquarters test satisfies this Court's prescription to establish a clear and easily administrable jurisdictional rule. The competing approaches fall far short of that objective.

C. The Text And History Of § 1332(c) Mandate A Clear And Easily Administered Rule

1. The need for a clear jurisdictional rule is particularly compelling in this context because the text of § 1332(c) demands it. By specifying that a corporation is a citizen of "the State where it has its principal place of business," § 1332(c)(1) unambiguously provides that there will be one—and only one—principal "place" of business for each corporation. 28 U.S.C. § 1332(c)(1), *see* 13F C. Wright et al., *Fed. Prac. & Proc. Juris.* § 3624 (3d ed. 2009). To fulfill that mandate, the test for a corporation's principal place of business should produce the same outcome, regardless of which court applies it. When a test is so elastic and uncertain that lower courts through-

out the country can reach different conclusions, a corporation can effectively be assigned multiple principal places of business, defeating Congress's command for a single such place.

The headquarters test readily fulfills that mandate. Because of its ease of application, all courts will virtually always reach the same conclusion about a corporation's principal place of business. That is not true of the Ninth Circuit's test or the tests applied by other circuits (except the Seventh). Those uncertain tests enable courts to reach different conclusions about a given corporation's principal place of business. *Compare Ghaderi v. United Airlines, Inc.*, 136 F. Supp. 2d 1041, 1048 (N.D. Cal. 2001) (remanding case after holding that "United's principal place of business, as that phrase is used in diversity jurisdiction doctrine, is California"), *with Khouri v. United Airlines, Inc.*, 32 F. App'x 318, 319 (9th Cir. 2002) (affirming district court's determination that "the parties are diverse" because "United's principal place of business is Illinois"); *compare J.A. Olson Co.*, 818 F.2d at 409 (where corporation has "significant administrative authority and activity in one state and lesser executive offices but principal operations in another state," the principal place of business "is generally the district of the *former*") (emphasis added), *with Teal Energy*, 369 F.3d at 877 & n.13 (affirming district court decision based on conclusion that "[u]nder the total activity test, a corporation . . . with significant administrative authority and activity in one state and lesser executive offices but principal operations in another state has its principal place of business in the *latter*") (emphasis added).

2. The history of § 1332(c) reinforces Congress's preference for a clear and simple rule. When the Judicial Conference initially suggested to Congress that it should amend § 1332 to address corporate citizenship, it proposed that Congress provide "that a corporation may not invoke the Federal jurisdiction in a State in which it is doing business and from which it receives more than half of its gross income." Judicial Conference September Report, 2 U.S.C.C.A.N. at 3132. The Conference subsequently amended its recommendation, however, to propose the "principal place of business" formulation ultimately enacted by Congress. *Id.* As the Conference explained, the "principal place of business" criterion "provides a simpler and more practical formula" for determining jurisdiction. *Id.*; *see* Letter to House Judiciary Committee, 2 U.S.C.C.A.N. at 3107 ("principal place of business" test would "be simple in application"). The gross income test, by contrast, "would require evidence" and would "be difficult to apply." House Judiciary Hearings at 36.

Adopting the Ninth Circuit's test would be inconsistent with Congress's rejection of the gross income test as overly complicated. Indeed, the Ninth Circuit's multi-factor, multi-stage test makes the gross income test seem simple by comparison. That is also true of other competing approaches, including the total activity test. Only the headquarters test squares with Congress's desire for "a simpler and more practical formula."

III. THE HEADQUARTERS TEST ACCORDS WITH STANDARD RULES FOR DETERMINING CITIZENSHIP

Section 1332(c) uses a corporation's principal place of business to determine the State in which a corporation is a "citizen." 28 U.S.C. § 1332(c)(1). In *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303 (2006), this Court explained that statutes defining citizenship should generally be interpreted to accord with the normal understanding of that term. *Id.* at 318. Here, the normal understanding of citizenship—that it connotes a place chosen by a person to be his fixed and permanent home—favors the headquarters test.

For purposes of federal diversity jurisdiction, individuals are treated as citizens of the State of their domicile, "the technically preeminent *headquarters* that every person is compelled to have in order that certain rights and duties . . . may be determined." *Williamson v. Osenton*, 232 U.S. 619, 625 (1914) (emphasis added). There is much in common between this personal "headquarters" and a corporation's headquarters. Both follow the well-settled principle that citizenship turns on the presence of a purposefully "fixed" and "permanent" connection to a place. *Gilbert v. David*, 235 U.S. 561, 569 (1915).

"Residence in fact, coupled with the purpose to make the place of residence one's home, are the essential elements of domicile." *Texas v. Florida*, 306 U.S. 398, 424 (1939). Those elements depend largely on the intent of the person. *See Williamson*, 232 U.S. at 624. Because of the primacy of intent, an individual's domicile does not fluctuate in accordance with the demands of uncontrollable external events,

such as the demands of health or the exigencies of a relative's death. *See Texas*, 306 U.S. at 426. Only a fixed intent to relocate one's home indefinitely can suffice to effect a change in domicile. *See Gilbert*, 235 U.S. at 569.

A corporation's headquarters, like an individual's "preeminent headquarters," *Williamson*, 232 U.S. at 625, manifests a purposefully fixed and permanent connection to a particular place. While a corporation can relocate its headquarters, that change would result from the same manner of deliberative process followed by an individual when changing his permanent home. A headquarters test for corporate citizenship therefore offers comparable stability to the governing domicile test for individual citizenship.

Information on the movement of corporate headquarters over the past decade demonstrates the stability of the headquarters test. Of the companies in the 2009 Fortune 50, only one—The Boeing Company—moved its headquarters to a different State in the past ten years. *Compare 500 Largest U.S. Corporations*, Fortune Magazine, May 4, 2009, at F-1 (listing the Fortune 500 and the location of their headquarters), *with 500 Largest U.S. Corporations*, Fortune Magazine, April 26, 1999, at F-1 (same). And the Boeing move resulted from a highly deliberative process. *See, e.g.*, Sam Howe Vehovek & Laurence Zuckerman, *Boeing, Jolting Seattle, Will Move Headquarters*, N.Y. Times, Mar. 22, 2001, at A16 (describing the process).

The Ninth Circuit's approach, by contrast, makes a corporation's citizenship dependent on the fluctuations of the markets in a State at any given time. An influx of population into a State, a change in a

State's regulation of a product or service, a modification of a State's tax rate, or a shift in a State's economic health all could substantially affect the factors considered significant by the Ninth Circuit. Under the ordinary rules of citizenship, a corporation's citizenship should not wax and wane with vacillation in those sorts of uncontrollable variables. The more stable headquarters test better coheres with the basic conception of citizenship.

IV. THE HEADQUARTERS TEST IS CONSISTENT WITH THE PURPOSE OF § 1332, THE RELEVANT BANKRUPTCY BACKGROUND, AND CAFA

1. In enacting § 1332(c), Congress sought to achieve two purposes. The headquarters test is consistent with both.

a. First, in enacting § 1332(c), Congress sought to preserve a corporation's ability to seek the protection of a federal forum. That intent is reflected in Congress's rejection of proposals to more broadly restrict the availability of diversity jurisdiction for corporations. Among the proposals to limit a corporation's access to federal court were ones that would eliminate altogether the treatment of corporations as State citizens for diversity jurisdiction purposes, or that would deem corporations citizens of any State in which they do business. House Judiciary Hearings at 6, 35. The rejection of those, more restrictive proposals in favor of deeming a corporation a citizen of the one State where it has its principal place of business can only be understood to manifest an intent to retain for corporations the ability to obtain a federal forum because of concerns about local bias

against out-of-state corporations. *See* Judicial Conference March Report, 2 U.S.C.C.A.N. at 3119 (explaining that "effect" of deeming a corporation a citizen of any State in which it does business would have been "to deny to business corporations doing business over a wide territory, the sort of protection which they need against local prejudice and the benefit of the salutary rules and practices of the Federal courts").

The headquarters test is consistent with that intent. Indeed, Congress was specifically informed that corporations rely on their ability to "tak[e] their litigation into the Federal courts in States remote from their *headquarters*," States in which "they fear for the results that might be reached in the State court." House Judiciary Hearings at 35-36 (emphasis added). That concern with litigating in States outside the State where a corporation maintains its headquarters is understandable. A corporation often has deeper ties and is more closely identified with its headquarters State than with any other State.

Microsoft, for instance, maintains deeper ties and is more closely associated with Washington than any other State, even though its software is ubiquitous. Similarly, Wal-Mart possesses deeper connections and is more closely identified with Arkansas than any other State, even though it has more stores and derives more revenue in many other States. In accordance with that understanding, the headquarters test preserves a corporation's option to litigate in federal court in any State other than the State where it maintains its headquarters (and the State where it is incorporated).

The potential for bias in States other than the one in which a corporation maintains its headquarters is reflected in decisions reversing verdicts because opposing counsel focused on a national corporation's out-of-state headquarters in arguing for a verdict against the corporation. In *Whitehead v. Food Max of Mississippi, Inc.*, 163 F.3d 265 (5th Cir. 1998), for example, the Fifth Circuit reversed an award of damages after finding that plaintiff's counsel repeatedly "reminded the jury that [defendant] Kmart is a national, not local, corporation, with its principal place of business in Troy, Michigan." *Id.* at 276. Counsel further argued that "'way up there in Troy, Michigan—way up there in Troy, Michigan, where they decide to write a two or three inch thick loss prevention manual, they don't think about the customers' safety and security in the parking lot [] [b]ecause they are more concerned about profits and not people.'" *Id.* (quoting argument to jury).

That argument clearly identified Kmart with its headquarters in Troy, Michigan, and sought to prejudice the jury against Kmart on that basis. In proposing the "principal place of business" test, the Conference specifically alerted Congress to the threat of such prejudice, noting this Court's decision in *New York Central Railroad Co. v. Johnson*, which disapproved of a similar argument by counsel. *See* Judicial Conference March Report, 2 U.S.C.C.A.N. at 3117 (citing *New York Central*, 279 U.S. 310, 319 (1920), where opposing counsel referred to defendant corporation as "an eastern railroad" that had "come into this town" and "sent on from New York" witnesses for the trial). Contemporary ordinances limiting the operations of national chains demonstrate

that the threat remains. *See* Br. for *Amicus Curiae* California Retailers Association (cert. stage) at 13-15; *see also Island Silver & Spice, Inc. v. Islamorada*, 542 F.3d 844, 845 (11th Cir. 2008) (invalidating ordinance prohibiting "formula restaurant[s]" and "restrict[ing] 'formula retail' establishments"). By contrast, it would be surprising if any counsel sought to prejudice a local jury against a corporation by trying to associate it with a State that, at that given moment, had more corporate employees, facilities, or sales.

b. Section 1332(c) also had a second purpose: to selectively reduce the corporate diversity cases heard in federal court by eliminating the "evil" by which a local corporation, "engaged in a local business and in many cases locally owned, is enabled to bring its litigation into the Federal courts simply because it has obtained a corporate charter from another State." S. Rep. No. 1830, 2 U.S.C.C.A.N. at 3101-02 (citing *Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.*, 276 U.S. 518 (1928)). The headquarters test combats the problem of "fictional" diversity cases that Congress concluded should never have been in the federal courts in the first place. *Id.* at 3101. Under the headquarters test, a corporation headquartered in a particular State cannot avoid state court jurisdiction in that State simply by dissolving its corporate charter and reincorporating elsewhere.

To be sure, a corporation conceivably could change its state of citizenship by shifting its headquarters to a different State. But in terms of the problem identified by Congress, shifting the headquarters State bears little comparison to shifting the

State of incorporation. What made the shift in the State of incorporation so troubling to Congress was that it involved a local business that "got the out-of-State charter merely because they could get some advantage taxwise or by virtue of the corporate powers the charter gave them, *but not because they intended to do business in the other State*." House Judiciary Hearings at 39 (emphasis added). When a corporation shifts its headquarters to another State, by contrast, it plainly does business in that other State: its chief executives direct and control its business operations from there.

Shifting headquarters differs materially from shifting the State of incorporation in other critical respects. Although there are few obstacles to dissolving a corporation in one State and reincorporating in another,[4] a company relocating its headquarters would have to change the physical location of its office, its tangible property, and its books and records. And it would also have to relocate the homestead of its senior officials and possibly many other employees as well. That is no small feat; the resulting upheaval would almost invariably be costly, disruptive, and time-consuming.

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[4] *See* Brett H. McDonnell, *Sticky Defaults and Altering Rules in Corporate Law*, 60 SMU L. Rev. 383, 423–26 (2007) (noting that the internal affairs doctrine and most states' current reincorporation rules allow corporations to dissolve and reincorporate with a simple majority vote, giving the board substantial control to dissolve and reincorporate in a more favorable state) (citing Bernard S. Black, *Is Corporate Law Trivial?: A Political and Economic Analysis*, 84 Nw. U. L. Rev. 542, 548 (1990) (noting the ease of reincorporating since certain states have become "chartermongering" states)); *see also Black & White Taxicab*, 276 U.S. at 523-24.

Boeing, for example, changed its headquarters from Seattle to Chicago in 2001, relocating as many as 500 employees, and it was "still . . . dealing with the fallout from the relocation" five years later, in 2006. *See* Ameet Sachdev, *Boeing Change One of Heart: Chicago Headquarters Loss of 'World' Title Has a Symbolic Message*, Chi. Trib. Mar. 5, 2006. For large national companies, in particular, the transformation would "obviously result in worldwide media coverage," *Wojan v. Gen. Motors Corp.*, 851 F.2d 969, 975 (7th Cir. 1988), and might give rise to a significant local backlash. *See, e.g.*, Sam Howe Vehovek & Laurence Zuckerman, *Boeing, Jolting Seattle, Will Move Headquarters*, N.Y. Times Mar. 22, 2001, at A16 (stating that Boeing's decision to move was as "stunning, say, as General Motors pulling out of Detroit or Coca-Cola abandoning Atlanta"). Certainly, there is an overwhelming disincentive to relocate a headquarters simply to obtain federal court jurisdiction in a particular case.

In addition, while it may be possible in theory for a corporation operating under the headquarters test to undertake a strategic move to avoid the courts of a particular State, that possibility also exists under the Ninth Circuit's test. A corporation could use accounting mechanisms or adjust its marketing to affect the State that the Ninth Circuit's test would identify as the principal place of business. And because the headquarters becomes the principal place of business under the Ninth Circuit's two-stage framework if no State substantially predominates on other factors, a corporation in that position could change its headquarters to avoid a particular court system even under the Ninth Circuit's approach.

Finally, the gamesmanship concern identified by Congress involved "corporations doing a local business with a foreign charter." House Judiciary Hearings at 30. Significantly, Congress's concern did not extend to "corporations which do business over a large number of States." *Id.* Thus, for national corporations like petitioner, applying the headquarters test does not implicate the gamesmanship concern that led Congress to make a corporation a citizen of the State where it has its principal place of business.

2. The headquarters test is also consistent with Congress's understanding of the background of the "principal place of business" test. In enacting § 1332(c), Congress borrowed the "principal place of business" formulation from a bankruptcy statute that had used that language to determine the venue for a bankruptcy proceeding. *See* House Judiciary Hearings at 8 (citing 11 U.S.C. § 11). The actual experience under the bankruptcy statute, however, sheds little light on the test Congress intended to incorporate into § 1332(c). Bankruptcy courts used varying tests to determine the principal place of business. Some courts used the headquarters test, but other courts used different approaches.[5]

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[5] *See* 1 Frank O. Loveland, *A Treatise on the Law and Proceedings in Bankruptcy* 404, 405 (4th ed. 1912) (citing cases and explaining that "[t]he principal place of business of a corporation is usually where the general offices or headquarters are located without regard to the place named in the charter," and when "a corporation has several places of business, located in different districts, its principal place of business is where the affairs of the corporation are actually managed"); *accord Burdick v. Dillon*, 144 F. 737, 738 (1st Cir. 1906) (a corporation's "principal office, rather than a factory, mill, or mine, according to ordinary understanding and speech, as well as according to

Of substantially greater significance, Congress was informed that the bankruptcy courts applied a headquarters test in situations involving a corporation conducting business "in several States." House Judiciary Hearings at 37. "[W]hen a corporation's interests are rather widespread" in that manner, Congress was told, bankruptcy courts had "generally taken the view" that the "principal place of business" was the corporation's headquarters—*i.e.*, the "place where its business operations are coordinated, directed, and carried out, which would ordinarily be the place where its officers carry on its day-to-day business, where its accounts are kept, where its payments are made." *Id.* That understanding should inform the proper interpretation of § 1332(c). That is particularly true because Congress was further advised that the recommendation to "follow[] the language of the Bankruptcy Act" stemmed from a desire to avoid a test "that would be difficult to apply" and that "would require evidence." *Id.* at 36. The "precedent in the . . . provisions of the Bankruptcy Act," Congress was informed, "would be simple in application." Letter to House Judiciary Committee, 2 U.S.C.C.A.N. at 3107.

3. The headquarters test is also consistent with Congress's enactment of CAFA in 2005. The enactment of CAFA is relevant because a statute should be interpreted, if possible, to cohere with a subse-

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the intent of Congress, constitutes the 'principal place of business,' within the meaning of the bankruptcy act"). *But see Cont'l Coal Corp. v. Roszelle Bros.*, 242 F. 243, 244-45 (6th Cir. 1917) (finding the principal place of business to be where all of the firm's mining activity was located, rather than the principal office).

quent related statute. *See FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000).

In CAFA, Congress substantially broadened federal court diversity jurisdiction by providing federal courts with original and removal jurisdiction over any civil action where the matter in controversy exceeds $5,000,000, and "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A). That expansion reflected Congress's concern with the practice of "forum shopping," in which attorneys raced to file actions in state court systems perceived to be most lax in their application of the requirements for a class action suit. S. Rep. No. 109-14, at 23, 52. Congress was also responding to "troubling" cases in which it was concerned that state courts had handled class actions inappropriately. *Id.* at 15-21, 25-26. Several of those cases involved litigation in California state courts. *See id.* at 17 & n.63; 19 & nn.77, 78; Testimony of Peter N. Detkin, Vice President, Assistant General Counsel, Intel Corp., Before the Committee on the Judiciary, U.S. House of Representatives, at 2, 4 (Feb. 6, 2002).

Congress created two limited exceptions to the expansion of diversity jurisdiction, for "Home State" and "Local Controversies." S. Rep. No. 109-14, at 28; *see* 28 U.S.C. § 1332(d)(4)(A), (B). Both exceptions turn on the citizenship of the defendant. The "Local Controversy" exception applies to cases in which "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B). That "narrow" exception was "carefully drafted to

ensure that it does not become a jurisdictional loophole." S. Rep. No. 109-14 at 39. Congress likewise limited the "Home State" exception to cases in which "what is primarily a local group of claimants" asserts "primarily local claims under local law" against "primary defendants" that "are all citizens of the state in which the action was filed." *Id.* at 36, 39.

The headquarters test for corporate citizenship best promotes Congress's aim of preventing these exceptions from defeating Congress's effort to deter plaintiffs' attorneys from seeking the forum most likely to favor class action plaintiffs. Under a headquarters test, the CAFA exceptions would apply only when a corporation is sued in its State of incorporation or in the State of its headquarters.

Under the Ninth Circuit's test, by contrast, the purpose of CAFA is jeopardized. Instead of expanding federal jurisdiction, that test discourages resort to the federal courts for fear that any settlement or resolution of a class action will ultimately be vacated by a panel that measures "substantial predominance" differently than the district court in which the suit was resolved. The very uncertainty of its application gives plaintiffs additional opportunities to persuade potentially receptive fora that the corporation is a citizen of that State. The approaches of other circuits create similar uncertainty.

The Ninth Circuit's approach to the question whether its factors should be applied on a per capita basis poses a particularly serious threat to CAFA's goals. If, as in this case, the court refrains from applying a per capita approach, many national corporations could be deemed a "Home State" or "Local" defendant in California. *See* pp. 33-34, *supra*. That

would allow class-action plaintiffs to structure the class so that two-thirds or more are from California, eliminating the ability of a national corporation sued there to remove the case to federal court.

V. ANY EXCEPTION TO THE HEADQUARTERS TEST SHOULD BE LIMITED TO CORPORATIONS THAT PERFORM ALL BUSINESS ACTIVITY IN ONE STATE, EXCEPT THE BUSINESS ACTIVITY PERFORMED AT THE HEADQUARTERS

The headquarters test should be applied in all circumstances. That approach not only accords with the text of § 1332(c), but it also fulfills the need for a simple and easily administered test. There is no affirmative reason to create an exception. The headquarters test is consistent with the purposes of § 1332(c). By contrast, any exception to that test could not be squared with § 1332(c)'s text and would create the potential for wasteful litigation on whether the exception applies.

Nevertheless, the Court could, if it deemed warranted, allow for the possibility of a narrow exception to the headquarters test. That exception should be confined to situations involving a corporation that performs all of its business activity in one State, with the exception of the business activity conducted at its headquarters site in a different State. *Cf. Diaz-Rodriguez*, 410 F.3d at 62 (holding that principal place of business is in State where corporation's "actual physical operations" exist, where "all of [the corporation's] extensive physical operations [are] in one state" and "its administrative and executive functions [are] in another state"). That limited ex-

ception at least would stop short of opening the door to a flood of wasteful litigation on a threshold jurisdictional question. Opening the door more widely not only would run contrary to the text of § 1332(c); it also would engender precisely the sort of wasteful litigation that jurisdictional tests should avoid.

Any such exception would not affect the proper disposition of this case. This case does not involve a company that conducts all of its business in one State except for the business it performs at its headquarters site in a different State. To the contrary, petitioner operates rental facilities in 44 of the 50 States, Pet. App. 27a ¶ 3, and "its business activities are spread among the 44 states where it does business," *id.* at 29a ¶ 10. Accordingly, even if the Court were inclined to allow for an appropriately cabined exception to the headquarters rule, any such exception would not apply here.

Indeed, petitioner should be found a citizen of the State of its headquarters even if the Court elected to apply a test examining a corporation's "total activity" or "corporate operations," based on the array of factors considered by the Ninth Circuit and other courts of appeals that embrace that type of approach. *See* pp. 31-39, *supra*. Any test that turns in material part on the aggregate quantity of a corporation's business activity in a State must be applied on a per capita basis, or else corporations would regularly (and unjustifiably) be deemed citizens of California or other populous States. Normalizing the various measures of business activity in this case on the basis of State population would preclude any conclusion that petitioner's activity in California materially

exceeds its activity in other States.[6] Moreover, the courts of appeals that apply a "total activity" approach generally agree that where, as here, a corporation's activities are spread across multiple States, the corporation's principal place of business is its headquarters, which directs and controls its widespread operations. *See* pp. 35-38, *supra*. In all events, consequently, there should no basis in this case to conclude that "the State where [petitioner] has its principal place of business," 28 U.S.C. § 1332(c)(1), is any State other than New Jersey, where petitioner maintains its corporate headquarters at 225 Brae Boulevard, Park Ridge.

[6] For instance, while California's population is more than twice that of Florida's, *see* Pet. App. 24a, petitioner's business activity in California is substantially less than twice that in Florida with respect to each of the various measures considered by the district court, *see id.* at 8a-9a.

CONCLUSION

The judgment of the court of appeals should be reversed.

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Dated: August 10, 2009