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 *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, BUSINESS ROUNDTABLE, AMERICAN TRUCKING ASSOCIATIONS, AND TRUCK RENTING AND LEASING ASSOCIATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing an underlying

[1] No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation of submission of this brief. No person other than *amici curiae* and their members, or its counsel made a monetary contribution to its preparation or submission. This brief is filed with the consent of the parties.

membership of over three million businesses and organizations of every size, in every industry sector, and from every geographic region of the country. One of the principal functions of the Chamber is to represent the interests of its members by filing *amicus* briefs in cases involving issues of vital concern to the nation's business community.

Business Roundtable is an association of chief executive officers of leading U.S. companies with more than $5 trillion in annual revenues and nearly 10 million employees. Member companies comprise nearly a third of the total value of the U.S. stock markets and pay nearly half of all corporate income taxes paid to the federal government. Annually, they return $133 billion in dividends to shareholders and the economy. Business Roundtable companies give more than $7 billion a year in combined charitable contributions, representing nearly 60 percent of total corporate giving. They are technology innovation leaders, with more than $70 billion in annual research and development spending—more than a third of the total private R&D spending in the U.S.

American Trucking Associations, Inc. ("ATA") is a nonprofit corporation incorporated under the laws of the District of Columbia, with its principal place of business in Alexandria, Virginia. ATA is the national trade association of the trucking industry. It has approximately 2,500 direct motor carrier members and, in cooperation with state trucking associations and affiliated national trucking conferences, ATA represents tens of thousands of motor carriers. ATA was created to promote and protect the interests of the trucking industry, which consists of every type and geographical scope of motor carrier operation in the United States,

including for-hire carriers, private carriers, leasing companies and others. The ATA regularly advocates the trucking industry's position before this Court and other courts.

The Truck Renting and Leasing Association ("TRALA"), headquartered in Alexandria, Virginia, is a national trade association founded to serve as a unified voice for the truck renting and leasing industry. Its mission is to foster a positive legislative and regulatory climate within which companies engaged in leasing and renting vehicles and trailers and related businesses can compete fairly. TRALA members engage in commercial truck renting and leasing, vehicle finance leasing, and consumer truck rental. The membership encompasses the full spectrum of the industry, including major national independent firms as well as small and medium-size businesses that generally participate as members group systems. In total, these 400-plus companies operate more than 4,000 commercial lease and rental locations and more than 18,000 consumer rental locations throughout the United States, Canada and Mexico.

Amici and their members have strong interests in this case. All *amici* have members who are, or who lead, corporations with nationwide activities. The statute at issue applies only to corporations, and determines the fundamental issue of diversity jurisdiction according to a corporation's "principal place of business." *Amici* believe that jurisdictional tests such as this one should be certain and easy to apply at the outset of a case. *Amici* therefore urge the Court to establish a simple, predictable, and stable test under which a corporation's principal place of business is its headquarters, rather than the

ever-changing and uncertain result of a vague multi-factor statistical analysis of the corporation's operations and activities nationwide.

SUMMARY OF THE ARGUMENT

Under 28 U.S.C. § 1332(c)(1), a corporation is a citizen, for purposes of diversity jurisdiction, of the state "where it has its principal place of business." Under this plain language, a corporation is a citizen of the single state in which its sole, principal place of business is located. The statute looks to the specific location *within* a particular state which, out of all of the many places the corporation does business, is its principal place of business. It does not look to operations spread out over an entire state. Thus, the tests employed by the Ninth and other circuits—which amalgamate statewide activities rather than identify a specific principal location within a state—contravene the statute's plain terms. When this improper focus on operations is disregarded, it becomes clear that the corporation's headquarters is its true, principal place of business.

The headquarters, or "nerve center," test also best effectuates the need for certainty, stability, and efficiency in determining the threshold question of jurisdiction. Parties deciding where to file or remove a case must be able to make that initial determination easily without resorting to statistical analyses of constantly changing and often non-public data on corporate operations. The nerve center test, which looks to the readily-ascertainable location of a corporation's headquarters, serves these purposes while staying true to Congress's intent. The operations-based tests contrived by various circuits, which involve an imprecise weighing and balancing of multiple factors, do not. Congress did not intend

the determination of corporate citizenship to involve such number-crunching, litigation-inducing calculations. These tests cannot produce predictable results, require continual reassessment from case to case, spawn costly discovery and mini-trials just to determine jurisdiction, and raise the constant specter of reversal years later. And as in this case, such inquiries often improperly deem nationwide companies to be local "California" corporations merely because they cater to California's large population.

The nerve center test also comports with Congress's expressed intent while effectuating the basic premise of diversity jurisdiction. In basing corporate citizenship on the principal place of business, Congress expressly rejected proposals for operations-based tests because they lacked certainty. The nerve center test also serves the underlying goal of diversity jurisdiction: to protect defendants from the potential for local bias or prejudice against outsiders. The location of a corporation's headquarters, like an individual's choice of domicile, is a signature choice that reflects its roots and public personality. It is that place, rather than the product of a nebulous statistical analysis of corporate operations, where the corporation is, on balance, least likely to experience local prejudice and therefore least likely to need the protections of diversity jurisdiction.

ARGUMENT

I. A CORPORATION'S "PRINCIPAL PLACE OF BUSINESS" IS ITS HEADQUARTERS, OR "NERVE CENTER."

The governing statutory language is clear: for purposes of diversity jurisdiction a corporation is deemed a citizen of "any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. § 1332(c)(1). This jurisdictional rule is "unambiguous and not amenable to judicial enlargement." *Lincoln Prop. Co.* v. *Roche*, 546 U.S. 81, 94 (2005).

Yet the tests employed by the Ninth and other circuits—which attempt to locate a company's principal place of business by amalgamating statewide operations—do just that. The statutory language unambiguously provides that a corporation is a citizen of the state "where" it "has" its one principal place of business. As petitioner has explained, this language identifies a single place, within a single state, in which the corporation's single principal place of business is located. *See* Pet. Br. 14-20. The statute does not look to operations over an entire state, but rather to a singular, principal location *within* a state. Thus, when the Ninth Circuit held that "*California* is Hertz's principal place of business," Pet. App. 3a, it contravened the statute's clear language. Under the statute, Hertz's principal place of business is *in* a state, but it cannot be the entire state itself.

When that error is corrected, it becomes clear that the individual physical location that can best be considered a corporation's principal place of business—out of the many different locations where

it conducts business—is the corporation's headquarters, often referred to as its "nerve center." That is the test the Seventh Circuit exclusively uses to determine a corporation's principal place of business, and it is the one that best comports with the unambiguous language of the statute. *Metro. Life Ins. Co.* v. *Estate of Cammon*, 929 F.2d 1220, 1223 (7th Cir. 1991) ("a corporation has a single principal place of business where its executive headquarters are located"); *Wis. Knife Works* v. *Nat'l Metal Crafters*, 781 F.2d 1280, 1282 (7th Cir. 1986) ("[W]e look for the corporation's brain, and ordinarily find it where the corporation has its headquarters.").[2]

By contrast, under the Ninth Circuit's test, the company's nerve center is its principal place of business only "if no state contains a 'substantial predominance' of corporate operations." *Davis* v. *HSBC Bank*, 557 F.3d 1026, 1028 (9th Cir. 2009) (quoting *Tosco Corp.* v. *Cmtys. for a Better Env't*, 236 F.3d 495, 500 (9th Cir. 2001)). Other circuits similarly hold that the nerve center is presumptively the principal place of business, but that this determination can be trumped by an *ad hoc* statistical weighing of the corporation's current activities or operations within all 50 states. *See infra* at 12-13. These various qualifications on the

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[2] This test is not of recent vintage, but rather dates to one of the first decisions ever to have construed the 1958 amendment that added Section 1332(c)(1). *See Scot Typewriter Co.* v. *Underwood Corp.*, 170 F. Supp. 862, 865 (S.D.N.Y. 1959) (rejecting operations-based test as "misplaced and quite unrealistic" and holding that a corporation's "principal place of business is the nerve center from which it radiates out to its constituent parts and from which its officers direct, control and coordinate all activities without regard to locale, in the furtherance of the corporate objective").

nerve center test do not comport with the statute, because they base citizenship on an amalgamation of a corporation's operations or activities within a state, rather than on a singular, principal location within a state. When those improper qualifications are removed, the nerve center remains the singular place of business within a state that can best be considered the corporation's principal one. It is thus not necessary for the Court to cultivate a new test; the Court needs only to prune away the "operations" or "activities" tests employed by various circuits in order to preserve the good fruit.

The Court's decision in *Wachovia Bank* v. *Schmidt*, 546 U.S. 303 (2006), supports this plain reading. There, the Court interpreted the special statute governing citizenship of national banks, under which they are "deemed citizens of the States in which they are respectively located." 28 U.S.C. § 1348. The Court held that, under this statute, a national bank is "located" at its "main office," and therefore is a citizen of only the state containing that office rather than of all states where it does business. In so holding, the Court specifically noted that the bank's "main office" (a defined term under the National Bank Act) is synonymous with the "principal place of business" under Section 1332(c)(1): "[t]he absence of a 'principal place of business' reference in § 1348 may be of scant practical significance for, in almost every case, as in this one, *the location of a national bank's main office and of its principal place of business coincide*." *Wachovia*, 546 U.S. at 317 n.9 (emphasis added).

So too here, a corporation's principal place of business for purposes of diversity jurisdiction is a single, main office within a state, not an amalgama-

tion of operations spread across a state. The Ninth Circuit found that Hertz was a citizen of California because of the relative size of its widely-dispersed operations in that large state. But those operations do not constitute a single "place" of business within California, much less one that could be considered Hertz's "principal" place in the entire nation. Rather, of all the many different physical locations throughout the country where a corporation may do business, only its headquarters should be considered its sole, principal place of business.

II. THE NERVE CENTER TEST, UNLIKE OPERATIONS-BASED TESTS, PRODUCES PREDICTABLE AND STABLE RESULTS WITHOUT REQUIRING MINI-TRIALS TO DETERMINE JURISDICTION.

The citizenship of a corporation should be readily ascertainable and stable. Questions of jurisdiction should involve "no arduous inquiry." *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U.S. 574, 587-88 (1999); *Sinochem Int'l Co., Ltd.* v. *Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 436 (2007). There should not have to be mini-trials just to determine the threshold issue of jurisdiction.[3] Nor should a test yield results

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[3] *See Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 547 (1995) (rejecting jurisdictional test that "jettison[s] relative predictability for the open ended rough and tumble of factors, inviting complex argument in a trial court"); *Sisson* v. *Ruby*, 497 U.S. 358, 375 (1990) (Scalia, J., concurring) ("a trial judge ought to be able to tell easily and fast what belongs in his court and what has no business there"); *Hanover Star Milling Co.* v. *Metcalf*, 240 U.S. 403, 426 (1916) (Holmes, J., concurring) ("We have sharp lines drawn upon the fundamental consideration of the jurisdiction" and should "get rid of all questions of penumbra, of shadowy marches where it is difficult to decide whether the business extends to them").

that may constantly change from case to case. *See*, *e.g.*, *Houston* v. *Lack*, 487 U.S. 266, 279-80 (1988) (Scalia, J., dissenting) (need for uniformity apparent when statutory provision "bearing upon the very jurisdiction of the courts is at issue," because "allowing courts to give different meanings from case to case allows them to expand and contract the scope of their own competence"). Rather, a "bright line" is needed for jurisdictional rules "so that very little thought is required to enable judges to keep inside it." *Sisson*, 497 U.S. at 375 (Scalia, J., concurring) (quoting Zechariah Chafee, *The Thomas M. Cooley Lectures, Some Problems of Equity* 312 (1950) (internal quotations omitted). Otherwise, courts run the risk of deciding cases beyond their jurisdiction and "an enormous amount of expensive legal ability will be used up on jurisdictional issues when it could be much better spent upon elucidating the merits of cases." *Id*.

These concerns are particularly crucial in the context of diversity jurisdiction. Plaintiffs and defendants must be able to correctly and easily determine a corporation's principal place of business before filing a case or removing one to federal court, without resort to complex statistical analyses of operations information that may be difficult, if not impossible, to obtain.[4] If that critical jurisdictional

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[4] Because jurisdiction cannot be predicated simply on a party's pleadings, factual issues sometimes arise. For example, the amount-in-controversy requirement for diversity jurisdiction will sometimes require modest discovery to determine whether the amount in fact exceeds the statutory threshold. Such limited discovery reduces the risk that plaintiffs will engage in "gamesmanship" by underestimating their damage claims to evade federal jurisdiction. By contrast, the burden placed on defendants to summon statistical proof of their

determination is incorrect, the parties face the specter of reversal years later, which could occur *sua sponte* at any time. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). And both corporations and their potential adversaries should have the assurance that a corporation's principal place of business, once fixed and determined, will not constantly change from case to case depending on the vagaries of economic trends and corporate asset allocations.

The nerve center test serves these purposes. The Seventh Circuit rightly prizes that test for its simplicity and predictability. "[P]arties ought to know definitely what court they belong in, and not face the prospect that their litigation may be set at naught because they made a wrong guess about jurisdiction." *Dimmitt & Owens Fin., Inc.* v. *United States*, 787 F.2d 1186, 1191 (7th Cir. 1986). "Some courts use a vaguer standard * * * we prefer the simpler test. Jurisdiction ought to be readily determinable." *Wis. Knife Works*, 781 F.2d at 1282. The ready determination of diversity jurisdiction in the Seventh Circuit favorably impacts litigation practice, by establishing clarity, efficiency, and stability. Unlike the other circuits' tests, few factual disputes arise under the nerve center test, and they are generally easy to resolve.[5] Moreover, corpora-

national operations to disprove citizenship is not contained by such workable limitations, and serves no comparable purpose.

[5] The nerve center test ably overcomes the situation where an asserted headquarters may only be nominal and is not really the "directing intelligence" of a corporation. *See Wis. Knife Works*, 781 F.2d at 1282-83; *Ace Rent-A-Car* v. *Empire Fire & Marine Ins. Co.*, 580 F. Supp. 2d 678, 687-88 (N.D. Ill. 2008) (holding, despite company president's assertion that Illinois

tions rarely change their headquarters, and such changes are carefully considered long-term policy decisions. *See* Pet. Br. 42-44; *infra* at 17-22.

By contrast, other circuits' tests require vague assessments of ever-changing corporate operations, making those operations determinative of the principal place of business in many cases. For example, the Third Circuit employs the "center of corporate activities" test, which considers the location of day-to-day corporate activities.[6] The First, Second and Fourth circuits apply either the nerve center or "place of operations" test on a discretionary, case-by-case basis.[7] Yet there are no clear standards for determining which test applies.

Other circuits employ a "total activities" test that attempts to combine the nerve center and "place of operations" tests.[8] This test employs "a somewhat

was the principal place of business because his office was there, that Indiana was nerve center from where payments, communications and other governance were made); *Bond* v. *Veolia Water Indianapolis, LLC*, 571 F. Supp. 2d 905, 913 (S.D. Ind. 2008) (discerning nerve center from among three candidates).

6 *See CGB Occupational Therapy* v. *RHA Health*, 357 F.3d 375, 381 n.5 (3d Cir. 2004); *Kelly* v. *U.S. Steel Corp.*, 284 F.2d 850, 853-54 (3d Cir. 1960).

7 *See Diaz-Rodriguez* v. *Pep Boys Corp.*, 410 F.3d 56, 61 (1st Cir. 2005); *R.G. Barry Corp.* v. *Mushroom Makers, Inc.*, 612 F.2d 651, 655 (2d Cir. 1979); *Long* v. *Silver*, 248 F.3d 309, 314-15 (4th Cir. 2001).

8 *See J.A. Olson Co.* v. *City of Winona*, 818 F.2d 401, 409, 411 (5th Cir. 1987); *Gafford* v. *Gen. Elec. Co.*, 997 F.2d 150, 162 (6th Cir. 1993); *Capitol Indem. Corp.* v. *Russellville Steel Co.*, 367 F.3d 831, 835-36 (8th Cir. 2004) ("open-ended" hybrid of the "nerve center" and "place of operations" test); *Gadlin* v. *Sybron Int'l Corp.*, 222 F.3d 797, 799 (10th Cir. 2000); *MacGinnitie* v. *Hobbs Group, LLC*, 420 F.3d 1234, 1239 (11th Cir. 2005).

subjective" analysis to choose between the results of the two inquiries. *MacGinnitie*, 420 F.3d at 1239. When considering a corporation whose operations are far-flung, "the sole nerve center of that corporation is more significant," but the principal place of business is ultimately subject to an analysis of the "nature" of the corporation's activities as a whole. *Olson*, 818 F.2d at 411. Under this vague test, courts are to "take into consideration all relevant factors and [weigh] them in light of the facts of each case." *Gafford,* 997 F.2d at 163.

The Ninth Circuit uses both the "place of operations" and nerve center tests, but applies them in a prescribed order of priority. *See Davis*, 557 F.3d at 1031; *Tosco*, 236 F.3d at 500. A court may only turn to the nerve center test if a defendant fails to meet its burden to prove that "no state contains a substantial predominance of the corporation's business activities." *Tosco*, 236 F.3d at 500. "Substantial predominance" requires the amount of a corporation's business activity in that one state be "significantly larger" than the amount in the state with the second-most operations. *Id*.

The hazards of these approaches are evident. Unlike the nerve center test, operations-based tests require complicated statistical analyses and uncertain balancing of multiple factors. These tests thus "produce the sort of vague boundary that is to be avoided in the area of subject matter jurisdiction wherever possible." *Sisson*, 497 U.S. at 375 (Scalia, J., concurring). And unlike the deliberate and readily-ascertainable choice of a corporate headquarters, the operations of a corporation must constantly change and respond to the vagaries of markets and demographics, and may move in and out of states on

a year-by-year, or even month-by-month, basis. Moreover, because of the subjective balancing inherent in such tests, a corporation could easily wind up with more than one "principal" place of business—in direct contravention of the statute—as different courts weigh the factors differently.

The Ninth Circuit's test amply demonstrates the perils of relying on operations-based tests. The test cannot be consistently applied, and can erroneously deem corporations with nationwide activities to be citizens of California merely because their California operations reflect that state's large population size. The test has so many factors that the statistics can easily be manipulated and will often require a trial before the trial with competing expert evidence.

To determine whether a corporation's activities "substantially predominate" over those in the next largest state, the Ninth Circuit requires "a comparison of that corporation's business activity in the state at issue to its business activity in other individual states." *Tosco*, 236 F.3d at 500. Various indeterminate factors are consulted to decide if a given state contains a substantial predominance of corporate activity, including "the location of employees, tangible property, production activities, sources of income, and where sales take place." *Id*.

Just listing these factors shows how imprecise and manipulable the inquiry is. Calculating the statistics and evaluating their relative weight can quickly devolve into a battle of the economic experts. And much, if not most, of the relevant data would be non-public, if not proprietary and confidential, requiring extensive and expensive discovery, often under protective orders. Like the similar tests of other circuits, this vague test "generates 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). This is an unacceptably inefficient use of judicial resources.

Moreover, prospective litigants will have no certainty that a corporation's principal place of business as determined by an operations test will not surreptitiously move itself somewhere else overnight due to changes in the economy or the company's business. A test that turns on the relative amounts of employees, tangible property, production activities, sources of income, and sales across the 50 states will yield different results over time as corporations continually reallocate their resources to meet market demands and economic conditions. This requires counsel to hit an ever-moving target just to make what should be the simple decision of where to file or remove a case. Even if a corporation's principal place of business has been determined in one case, it may well be different in the next.

These problems are particularly acute in the Ninth Circuit, where this case arose. That is because an operations-based test is especially susceptible to distortion by the effects of California's enormous population, which dwarfs that of any other state.[9] If a

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[9] In 2008, California's population was estimated at 36,756,666, or 12.09% of the total U.S. population. *See* U.S. Census Bureau, Annual Estimates of the Resident Population for the United States (www.census.gov/popest/states/tables/NST-EST2008-01.xls). The next largest state, Texas, had an estimated population of 24,326,974, or 8.17% of the total. *Id*. Thus, California's population is more than 50% greater than that of any other state.

company has operations in all states proportional to population, and predominance between the two largest states is the relevant determination, "California would be the 'principal place of business' for virtually every corporation because of its larger population." *Davis*, 557 F.3d at 1036 (Kleinfeld, J., concurring).

Thus, for example, Starbucks Corporation—world famous as a Seattle, Washington-based corporation—was nevertheless found to be a citizen of California under the Ninth Circuit's test. *Mbalati* v. *Starbucks Corp.*, No. CV-07-3267-RFG (C.D. Cal. June 17, 2007). United Airlines has its world headquarters in Chicago and operates all over the nation, but a California district court found that it is a citizen of California. *Ghaderi* v. *United Airlines, Inc.*, 136 F. Supp. 2d 1041 (N.D. Cal. 2001); *Burgos* v. *United Airlines, Inc.*, No. C-00-04717-WHA, 2002 WL 102607, *6 (N.D. Cal. 2002). Wholesaler Costco has its well-known home office in Washington, but a California district court found that it is a citizen of California. *Castaneda* v. *Costco Wholesale Corp.*, No. CV-08-7599-PSG, 2009 WL 81395, *2 n.2 (C.D. Cal. Jan. 9, 2009). And a district court in California recently found that Target Corporation's principal place of business is in California, although other courts have found it to be its headquarters in Minneapolis, Minnesota. *Compare Diaz* v. *Target Corp.*, No. CV-09-3477-PSG, 2009 WL 1941382, *3 (C.D. Cal. 2009) *with Felipe* v. *Target Corp.*, 572 F. Supp. 2d 455, 460-61 (S.D.N.Y. 2008).

For all these reasons, the "nerve center" test not only best comports with the plain language of the statute, but also provides the most predictable, efficient, and stable results. By contrast, any test that weighs the relative size of operations or

activities introduces intolerable unpredictability, inefficiency and instability as parties must wrangle through potentially protracted litigation just to decide where a case should be filed, with the prospect of reversal years later if that decision proves wrong.

III. THE "NERVE CENTER" TEST BEST EFFECTUATES CONGRESS'S INTENT AND THE UNDERLYING PURPOSES OF DIVERSITY JURISDICTION.

The nerve center test also best effectuates the underlying purposes of diversity jurisdiction, and Congress's specific intent expressed in the 1958 amendment. Congress sought to ensure both that a corporation would not be amenable to diversity jurisdiction in its actual "home" state—where it might be, on balance, less likely to experience local prejudice—and that its home state be easily identifiable.

A. The Nerve Center Test Comports With The Purposes Of Diversity Jurisdiction.

Diversity jurisdiction is predicated on "the supposition that, possibly, the state tribunal[s] might not be impartial between their own citizens and foreigners." *Pease* v. *Peck*, 59 U.S. (18 How.) 595, 599 (1856). *See also* The Federalist No. 80 (diversity jurisdiction ensures "the agency of the national courts in cases in which the State tribunals cannot be supposed to be impartial"). These concerns have particular resonance for corporations sued in state courts outside of their principal place of business, since they can unfairly be perceived by locally elected judges and local juries as "deep pockets" whose profits can easily be "imported." *See Davis*, 557 F.3d at 1037 (Kleinfeld, J., concurring) ("Jurors may have no prejudice at all against citizens and corporations

of other states, but still have a financial incentive to import their money"); John P. Frank, *Historical Bases of the Federal Judicial System*, 13 Law & Contemp. Probs. 3, 28 (1948) (Framers based the diversity grant in part on "the desire to avoid regional prejudice against commercial litigants").

The "nerve center" test serves this purpose of avoiding the potential for local prejudice. In adopting the "principal place of business" test, Congress targeted the "evil" of limiting corporate citizenship only to the state of incorporation, which "gives the privilege of a choice of courts to a local corporation simply because it has a charter from another State, an advantage which another local corporation that obtained its charter in the home State does not have." S. Rep. 85-1830, at 3101-02 (1958). Thus, Congress intended to prevent "local" corporations from bypassing the state courts in their "home states."

The nerve center test ably identifies a corporation's "home state," where it is presumably least likely to experience local prejudice, by looking to the place—its headquarters—that the corporation has intentionally chosen as its home. A corporation in its home state "should be sufficiently 'local'—sufficiently identified with the state—to avoid the obloquy that may attach to a 'foreign' corporation in litigation with a local resident." *Dimmit*, 787 F.2d at 1190. For example, although Wal-Mart does most of its business elsewhere, it is readily identifiable as an Arkansas company because its headquarters are there, and that is the state where it is least likely to experience local prejudice as an "outsider," regardless of where its operations predominate from month-to-month or year-to-year.

A corporation makes a conscious decision about where to place its headquarters. This is a signature decision that reflects a corporation's identity. The location of the nerve center may be a product of the corporation's founding and carry all the history and meaning associated with that birth. Or it might reflect a subsequent symbolic change in location. Regardless, it is the center of a corporation's outreach to the nation and the world, and the place where—regardless of how far-flung the corporation's activities—people know to find it. It is *this* place, and not the unpredictable and ever-changing outcome of a statistical analysis, where the corporation has its "home" and where it is least in need of the protections of diversity jurisdiction. Judges and jurors in Arkansas, for example, do not need to look at reams of statistics from operations in other states to know that Wal-Mart is one of their own.

This test also comports with the manner in which Congress and this Court have determined other aspects of diversity jurisdiction. The other statutory basis for corporate citizenship—the state of incorporation—is likewise the product of choice, not imposition. The choice of a state of incorporation is typically an early and deliberate decision to avail the corporation of particular state laws. In fairness, the corporation could be said to agree to be amenable to the courts in the state where it incorporates.

Citizenship of individuals is also based on intentional acts, not judicial imposition. An individual who resides in more than one State is, for purposes of diversity jurisdiction, a citizen of but one State, that of his or her *domicile*. *Wachovia*, 546 U.S. at 318; *Newman-Green, Inc.* v. *Alfonzo-Larrain*, 490 U.S. 826, 828 (1989). A person's domicile is a

single, intentionally chosen, place.[10] As the Court has stated, the domicile is "the technically preeminent *headquarters* that every person is compelled to have in order that certain rights and duties that have been attached to it by law may be determined." *Williamson* v. *Osenton*, 232 U.S. 619, 625 (1914) (emphasis added).

Just as individual citizenship is determined by the place a person chooses to be his or her personal "headquarters"—regardless of how many other residences he or she may have—so too should corporate citizenship be determined in the same way. This is so, moreover, regardless of whether the corporation has extensive operations outside its headquarters state. By way of analogy, a company headquartered abroad will likely (and perhaps unfairly) be perceived by U.S. residents as a foreign company, no matter how big its U.S. operations. Its headquarters thus should determine its citizenship. *See*, *e.g.*, *Eisenberg* v. *Comm. Union Assurance Co*., 189 F. Supp. 500 (S.D.N.Y. 1960) (company with London headquarters was British citizen for purposes of diversity jurisdiction, regardless of the size of its U.S. operations). The same is true for U.S. companies headquartered outside a forum state. Even in the hypothetical situation where a corporation has the vast majority of its operations in the forum state but

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[10] *See Miss. Band of Choctaw Indians* v. *Holyfield*, 490 U.S. 30, 48 (1989) (domicile is determined by physical presence combined with "one's intent to remain there"); *Texas* v. *Florida*, 306 U.S. 398, 429 (1939) (Frankfurter, J., concurring) ("a person must have one domicile, and can have only one"); *Morris* v. *Gilmer*, 129 U.S. 315, 328-29 (1889) (for domicile to change, "[t]here must be an actual, not pretended, change of domicil * * * The intention and the act must concur in order to effect such a change of domcil as constitutes a change of citizenship.").

its headquarters elsewhere, forum-state residents may well harbor unfair bias against a company that is controlled by out-of-staters and perceived as exporting all its profits to its home state.

To be sure, the nerve center test cannot identify the state where a corporation will, in fact, always experience the least local bias in every case. No test could ever do that. Diversity jurisdiction is based on the theoretical possibility of bias in a general sense, not its presence or absence in any specific case. But the nerve center test admirably effectuates the underlying purposes of the jurisdictional grant. Thus, even if one could envision hypothetical cases where local prejudice might be ameliorated outside the headquarters state, "[t]he time expended on such rare freakish cases will be saved many times over by a clear jurisdictional rule that makes it unnecessary to decide, in hundreds of other cases, what particular activities [create subject matter jurisdiction]." *Sisson*, 497 U.S. at 374-75 (Scalia, J., concurring).

Nor is it a valid objection to the nerve center test that corporations could, in theory, move their headquarters to avoid state courts in places where they have large operations. *Cf. Teal Energy USA, Inc.* v. *GT, Inc.*, 369 F.3d 873, 876 (5th Cir. 2004). In the first place, such extreme circumstances would both reflect and reinforce the potential for local prejudice in the affected state. A corporation is unlikely to engage in such a significant endeavor absent the potential for such prejudice. And local residents are unlikely to look kindly on the company afterwards. But *amici* can attest that a decision to relocate a headquarters, unlike the relatively simple decision to reincorporate, is a costly endeavor undertaken neither lightly nor often. Relocating a headquarters

is far more costly than the filing papers of incorporation. It involves large sunk costs for real estate and other property, typically has tax consequences, and requires relocating senior management and their families. And at the end of the day, relocating a headquarters—for whatever reason—reflects a real change in the corporation's identity and thus its corporate citizenship for purposes of diversity jurisdiction.

Accordingly, a corporation's principal place of business for purposes of diversity jurisdiction is its headquarters, or "nerve center." That rule follows the plain language of the statute, provides certainty and efficiency on the threshold issue of jurisdiction, and effectuates the underlying purposes of the diversity grant.

B. Congress Rejected An Operations-Based Inquiry In Favor Of A Test That Looks To A Singular Principal Place Of Business.

The legislative history of Section 1332(c)(1) shows that Congress rejected proposed tests that would have looked to a corporation's operations. Instead, Congress chose Section 1332(c)(1)'s unambiguous and practical formula for determining a corporation's one principal place of business.

Before enactment of Section 1332(c)(1), corporations were citizens only of their states of incorporation, which led to a specific problem. Congress sought to prevent a corporation "which is in reality a local institution" from being able "to drag its litigation into the Federal courts because it has obtained a charter from another State." Report of the Committee on Jurisdiction and Venue (March 12, 1951), *reprinted* in S. Rep. No. 85-1830, at 3119. The

initial proposal was that a corporation "be deemed a citizen of any State in which it is doing business." *Id*. The Committee later determined, however, that this rule would "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 practice of the Federal courts." *Id*. Such a rule would "create far more evil than it would cure." *Id*.

Next, the Committee proposed a test whereby a corporation seeking federal jurisdiction would have a burden to show that in the fiscal year prior to filing, "less than 50 percent of its gross income was derived from business transacted within the State where the Federal court is held." *Id*. at 3120. The Committee reasoned that "[a] corporation which receives more than half of its gross income from business within a single State is so closely tied to the local commercial fabric of that State as to be properly considered a citizen thereof, even though it may have been incorporated elsewhere." *Id*. But the gross income proposal was also scrapped, in favor of the "principal place of business" language. *Id*. at 3132. The Committee concluded that this rule "provides a simpler and more practical formula than our original suggestions which would have foreclosed the jurisdiction in States where more than half of the corporate gross income is received." *Id*.[11]

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11 The Committee modeled its final language on then-extant provisions of the Bankruptcy Act, which had employed a "principal place of business" formulation. *Id*. at 3132. Under that provision, it had been held that a corporation's headquarters was its principal place of business. *See*, *e.g.*, *Burdick* v. *Dillon*, 144 F. 737, 738 (1st Cir. 1906) ("according to ordinary understanding and speech, as well as according to the intent of Congress," the principal office where a company's "supreme

Thus, the Congressional drafters of Section 1332(c)(1) expressly rejected two different tests that would both have made the citizenship of a corporation turn in some way on its activities or operations in the states where it does business. The second of these rejected tests was very similar to the operations-based tests currently employed by some circuits, as it would have deemed a corporation to be a citizen of any state where it earned more than half its income. That test was rejected in favor of a "simpler and more practical" one, yet the current operations-based tests are even more complex and impractical. This express rejection of operations-based tests is persuasive evidence that Congress did not intend Section 1332(c)(1) to be interpreted in that manner.[12]

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direction and control" is exercised is its "principal place of business"); *Shearin* v. *Cortez Oil Co*., 92 F.2d 855, 857 (5th Cir. 1937). The case law, however, was not uniform, with some courts applying operations-based tests. *See* Note, *A Corporation's Principal Place of Business for Purposes of Diversity Jurisdiction*, 44 Minn. L. Rev. 308, 316 (1959). Given this discrepancy, the actual content of prior Bankruptcy Act case law is not helpful in determining the intent of the 1958 amendment. Lindsey D. Saunders, *Determining a Corporation's Principal Place of Business: A Uniform Approach to Diversity Jurisdiction*, 90 Minn. L. Rev. 1475, 1479-80 (2006).

[12] *See*, *e.g.*, *Sec'y of the Interior* v. *Cal.*, 464 U.S. 312, 327 (1984) ("Since House § 313 would have provided respondents with precisely the protection they now seek here, it is significant that the Conference Committee, and ultimately the Congress as a whole, flatly rejected the provision."); *Thompson* v. *Thompson*, 484 U.S. 174, 183, 185 (1988) (exchange in committee hearing showing "Congress considered and rejected an approach to the problem" provided "unusually clear indication that Congress did not intend" jurisdiction to enforce state custody orders); *Smith* v. *United States*, 507 U.S. 197, 202

Congress has continued to refuse to adopt proposed operations tests. In 1990, the Federal Courts Study Committee recommended the limitation of diversity jurisdiction to a narrow set of circumstances. Fed. Courts Study Comm., Report of the Federal Courts Study Committee (Apr. 2, 1990), *reprinted in* 22 Conn. L. Rev. 733, 778 (1989-1990) As a "back-up proposal" the committee recommended that the statute be amended to "deem corporations to be citizens of every state in which they are licensed to do business." *Id*. at 782. Congress did not adopt that proposal, and has consistently supported diversity jurisdiction despite other attempts to undo it.[13]

Indeed, in 2005 Congress *strengthened* the protection of diversity jurisdiction through provisions included in the Class Action Fairness Act ("CAFA"), which provides greater ability for corporations to remove class action litigation to federal courts by requiring only minimal diversity between the parties. 28 U.S.C. § 1332(d)(2)(A). Congress sought to make it harder for "plaintiffs' counsel to 'game the system' by trying to defeat diversity jurisdiction," S. Rep. 109-14, at 5 (2005), and aimed to avoid forum-shopping and judge-shopping. *See* 151 Cong. Rec. S999 (Feb. 7, 2005) (statement of Sen. Spector).

However, under the Ninth Circuit's malleable test—which can deem nationwide corporations to be "local" California companies merely because they cater to California's large population—the incentive

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n.4 (1993) (rejecting interpretation that "would effectively resurrect the scheme rejected by Congress").

13 *See*, *e.g.*, 124 Cong. Rec. H5008–09 (Feb. 28, 1978) (rejected bill for "the abolition of diversity of citizenship jurisdiction in federal courts"); H.R. Rep. No. 95-893 (1978).

remains for plaintiffs to shop for potentially favorable state courts in California. CAFA's exceptions for so-called "home state" and "local" controversies preclude removal if certain conditions are met, including that a super-majority of putative class members and at least one significant defendant are from the state of original filing. *See* 28 U.S.C. §§ 1332(d)(4)(A), (B). If a company like Starbucks can be deemed a California corporation despite its well-known Washington identity, *see supra* at 16, then plaintiffs will continue to be encouraged to seek out California state courts for class actions against nationwide corporations that would otherwise be removable to federal court. By contrast, the easily-applied nerve center test eliminates that gamesmanship and best effectuates the intent of CAFA.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below.

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