NO. 19-463

IN THE
Supreme Court of the United States

WILBUR-ELLIS COMPANY LLC,
Petitioner,

v.

BLUE BUFFALO COMPANY, LTD. ET AL.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
For the Eighth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a district court lacks the authority to order discovery of a relevant document filed under seal in a state court where the district court has considered the effect of its order under the principles of comity and federalism on the state court case and determined that an order of production will not override the state court order, nor impact the state court exercising its judicial function.

PARTIES TO THE PROCEEDING BELOW

Wilbur-Ellis Company LLC is the petitioner here, was the petitioner before the court of appeals, and is a defendant before the federal district court in the proceedings below.

Blue Buffalo Company Ltd. is a respondent here and is a plaintiff before the federal district court in the proceedings below.

Diversified Ingredients, Inc., is a defendant before the federal district court in the proceedings below.

Custom Ag Commodities, LLC is a third-party defendant before the federal district court in the proceedings below.

RULE 29.6 STATEMENT

Respondent Blue Buffalo Company, Ltd is an indirect wholly owned subsidiary of General Mills, Inc. a publicly traded company. No publicly traded entity owns more than 10% of General Mills.

DIRECTLY RELATED PROCEEDINGS

- *In re: Wilbur-Ellis Company*, No. 19-2448 (8th Cir.) (judgment entered and mandate issued July 12, 2019);

- *The Blue Buffalo Company, Ltd. v. Wilbur-Ellis Company LLC, et al.*, No. 4:14-cv-00859 (E.D. Mo.) (order granting motion to compel issued Jan. 4, 2019; order denying motion for reconsideration issued June 6, 2019);

- *Ironshore Specialty Insurance Company v. Wilbur-Ellis Company, et al.*, No. CGC-15-549583 (S.F. Super. Ct.) (sealing order issued June 10, 2016; order staying case issued June 20, 2016).

There are no additional proceedings in any court that are directly related to this case.

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INTRODUCTION

This case involves an everyday discovery scenario: following *in camera* review, a federal district court determined that a document produced in a related California state court lawsuit was discoverable and ordered its production.

Petitioner does not dispute that the document at issue is highly relevant to this litigation. Instead, Petitioner argues that the District Court exceeded its authority in overriding an order by the California court. That is not what occurred here. The District Court did not lift the seal on the California court's docket. Instead, it ordered production from Petitioner. Furthermore, the District Court entered a confidentiality order that allows Petitioner to designate the document as confidential, and so the document will not enter the public domain.

The District Court therefore acted well within its discovery-management authority and did not impede or usurp the California court's power. In reaching its decision, the District Court also gave due consideration to comity and federalism. It considered the factors that district courts in similar circumstances have identified, including the effect of its order on the California proceeding, and the practical need for promoting discovery in federal litigation. While other district courts have sometimes reached different conclusions, those decisions ultimately have depended on the unique factual and procedural circumstances of each case. Petitioner does not identify any true conflict among district

courts, and effectively concedes there is no conflict among the Circuits.

For these reasons, this case is a poor vehicle for resolution of the question presented in the Petition. Review of this interlocutory discovery order should be denied.

STATEMENT OF THE CASE

I. THE UNDERLYING LITIGATION

In May 2014, Respondent was sued by its competitor, Nestlé Purina, for alleged false claims regarding the contents of its premium pet food. Discovery in that proceeding revealed that Petitioner had supplied Respondent, including through brokers, Diversified Ingredients and Custom AG, byproduct meal, rather than pure chicken, turkey and poultry. In June 2015, Respondent impleaded Diversified Ingredients and Petitioner for their misrepresentations and substantial damages caused to Respondent.

Respondent settled Purina's claims, *see* 14-cv-00859 (E.D. Mo.) Dkt No. 1145, as well a related multidistrict consumer class action. 14-md-02562 (E.D. Mo.) Dkt No. 160.

In the interim, this case was largely stayed while the U.S. Attorney for the Eastern District of Missouri pursued criminal charges against Petitioner and Diversified, and a number of their employees. Petitioner, Diversified, and an employee of each entity have now pleaded guilty to various criminal charges related to the adulteration and mislabeling of pet food ingredients. *See* 17-cr-00100 (E.D. Mo.)

Dkt No. 87 (Petitioner); Dkt No. 112 (Diversified Ingredients); Dkt No. 94 (Collin McAtee); Dkt No. 124 (Henry Rychlik, Jr.). Another employee of Respondent, the manager of the facility from which the adulterated shipments came, entered a guilty plea on October 24, 2019 for conspiracy and money laundering in connection with Respondent's fraud and is awaiting sentencing. *See* 18-cr-00139 (E.D. Mo.) Dkt No. 176. After Petitioner and the other defendants entered their guilty pleas, the District Court permitted Respondent to amend its suit to bring RICO claims, as well as new fraud and conspiracy claims against Petitioner and Diversified. *See* 14-cv-00859 (E.D. Mo.) Dkt No. 1391.

A. Petitioner's State Court Insurance Litigation

Shortly after Petitioner's fraud was discovered, and Respondent impleaded Petitioner, Petitioner's general liability insurer, Ironshore Specialty Insurance Company, brought suit in San Francisco Superior Court, seeking, in part, a declaration that it had no defense or indemnification obligations to Petitioner in this litigation. *See* CGC-15-549583 (S.F. Super. Ct.)

Petitioner moved the California state court to stay the case pursuant to California's *Montrose* doctrine. The *Montrose* doctrine permits a court to stay a declaratory relief coverage litigation pending the resolution of the underlying liability action. *See Montrose Chem. Corp. v. Super. Ct.*, 6 Cal. 4th 287, 301 (1993). The insurer did not oppose a stay of discovery but requested that the court permit it to

move for summary judgment. Pet. App. 27a-29a. Respondent and the insurer filed supplemental briefing on whether a stay under *Montrose* should include a stay on dispositive motions, such as a motion for summary judgment.

Petitioner initially lodged its supplemental brief with the court (the "*Ironshore* brief"). It did not request the entry of a protective order, or seek to file it under seal. The California court rejected Petitioner's attempt to lodge the *Ironshore* brief, requiring instead that Petitioner seek to file it under seal pursuant to California Rule of Court 2.550.

Petitioner provided Ironshore with an unredacted copy of its proposed brief, and the parties filed a joint letter requesting that the California court seal it and permit a partially redacted version to be filed for public viewing. Petitioner and Ironshore disputed only the extent of the redactions, not whether the standard for limiting public access under Rule 2.550 had been met. Pet. App. 35a-36a.

The California court applied the standard under Rule 2.550 and ordered redactions of a small portion of the publicly available brief, and the unredacted brief to be filed under seal. In its order, the California court held that "there is an overriding interest in having these selected portions sealed, which overcomes the right of public access." Pet. App. 22a.

Having reviewed the supplemental briefing, the California court issued an order staying the coverage

litigation until resolution of this federal court litigation. *See* Pet. App. 24a-25a.

B. The District Court Order

In this case, Respondent served a request for production of the *Ironshore* brief under Rules 26 and 34. Petitioner refused to produce the brief, arguing that the California court's sealing order required that Respondent seek relief from that court. Respondent instead filed a motion to compel arguing that it was entitled to the brief in this action under Rule 26, and did not have to carry the burden of persuading the California court to unseal the brief.

In contesting Respondent's motion to compel the Petitioner invited the District Court to review the brief, and submitted it for *in camera* review.

The District Court rejected Petitioner's arguments and ordered that the brief be produced. It stated that the brief was relevant under Rule 26. Pet. App. 4a. It then considered the effect on the California court's orders. It noted that production of the brief would not "undermine or affect California's interest in the stayed California Superior Court's proceeding." Pet. App. 5a. The District Court made no decision as to the propriety of the *Montrose* doctrine, or the California court's stay order.

Petitioner moved for reconsideration of the production order, or, in the alternative for certification of an interlocutory appeal. The District Court denied Petitioner's motion. Pet. App. 10a-14a. It again noted that it would not defer to the

California court in making a determination of discoverability under Rule 26 notwithstanding its consideration of the principles of comity and federalism.

Petitioner sought a writ of mandamus in the United States Court of Appeals for the Eighth Circuit. Pet. App. 41a-75a. The court of appeals issued a *sua sponte* denial of the petition three days later. Pet. App. 1a.

REASONS FOR DENYING THE PETITION

The Court should deny this Petition because Petitioner seeks reversal of the District Court's straightforward determination of the discoverability of a document containing highly relevant facts. The District Court came to this determination after having reviewed the sealed document at Petitioner's request, and having assessed the impact of its production on the state court's sealing order. There is no error below, nor does the District Court's decision implicate any profound questions of federalism or comity. Petitioner does not contest – and in fact admits – that the facts contained in the brief are generally discoverable under Rule 26. And the District Court's order did not override the California court's order or ignore the principle of comity and impede the state court's judicial function: the *Ironshore* brief remains sealed from the public per the state court's order, and the insurance litigation remains stayed pursuant to California state law.

Petitioner also obscures the District Court's decision in attempting to establish this case as a vehicle by

which this Court may address purported disagreement among the lower courts. But there is no true disagreement, nor are the cases cited by Petitioner analogous to the one in this litigation. Petitioner ignores the important legal and practical differences between the sealing order at issue here and protective orders at issue in Petitioner's cases, and the actual effect of the District Court's order. This is therefore an improper vehicle for resolution of any potential disagreement Petitioner may have identified.

The disagreement among district courts supposedly identified by Petitioner is the result of differing factual and procedural circumstances among those cases, as well as from this case, and those district court's appropriate, flexible and discretionary determination of the discoverability of relevant information under Rule 26.

I. THERE IS NO IMPORTANT QUESTION PRESENTED FOR THE COURT TO REVIEW.

This case does not present any question warranting the Court's review. The District Court made a routine, discretionary determination about the discoverability of a highly relevant document under Rule 26. In doing so, it did not override the California state court order – it carefully assessed the impact of its decision on the state court proceedings under the principles of comity and federalism.

A. This Is A Discretionary Discovery Order That Does Not Warrant This Court's Review.

Petitioner asks this Court to review a discretionary decision by a district court as to the discoverability of a document containing facts highly relevant to claims and defenses in litigation before it. The District Court here correctly noted that in federal litigation parties must produce "responsive materials that are 'relevant to any party's claim or defense and proportional to the needs of the case.'" Pet. App. 4a (*quoting* Fed. R. Civ. Proc. 26(b)(1)); *see also Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 139 (2014) ("The general rule in the federal system is that, subject to the district court's discretion, '[p]arties may obtain discovery regarding ***any nonprivileged matter*** that is relevant to any party's claim or defense.'") (emphasis added) (*quoting* Fed. Rule Civ. Proc. 26(b)(1))

Petitioner concedes that the facts contained in the *Ironshore* brief are relevant and so fall within the scope of discoverable evidence under Rule 26. Pet. App. 4a (quoting Petitioner's brief in opposition to Motion to Compel ("[Petitioner] concede[s] this information is relevant.").) Petitioner has further conceded that there is no rule requiring the district court to deny Respondent's motion to compel the production of the *Ironshore* brief, notwithstanding the sealing order. Pet. App. 11a. Petitioner makes no argument that Rule 26, or any other stated rule, law or case, contains any exception to Petitioner producing the brief or that the district court acted

outside its authority in ordering production. Petitioner only contends that other principles should have stayed the district court's hand to block Respondent from obtaining information to which it is clearly entitled under the Federal Rules.

The district court's straightforward application of Rule 26 does not present a question warranting this Court's review.

B. The Case Does Not Present the Question Asserted by Petitioner Because the District Court Did Not Override the State Court's Order.

Review also should be denied because the District Court did not "override" the state court's decision. Nor did it impede the California court's ability to perform its judicial function. It therefore does not present the question of whether a federal district court may "override the order of a state court" as Petitioner contends. The district court overrode neither the California court's sealing order – the brief remains sealed – nor did it alter the stay of the insurance coverage litigation – the litigation remains stayed.

1. The State Court's Sealing Order

In accordance with California law, the California court ordered that certain limited portions of Petitioner's brief be filed under seal. Pet. App. 20a. It applied the standard laid out in California Rule of Court 2.550 by balancing the public's interest in access to open judicial records against the prejudice Petitioner might suffer were the whole brief to be

publicly available.[1] Pet. App. 22a-23a. The California court's order was focused on ***public access*** to the filed copy of the brief. In sealing the filed copy of the brief from the public, it concluded that "there is an overriding interest in having these selected portions sealed which overcomes the right of ***public access***; this overriding interest supports the sealing of the selected items." *Id.* (emphasis added).

The California court's order did not address, much less restrict, Respondent's right to obtain the brief through discovery to Petitioner. Nor did the order place restrictions on Petitioner's use of its own brief. Indeed, California Rule of Court 2.550 is expressly limited in scope and is not a tool for managing discovery or the disclosure of such information. Rule 2.550(A)(3) ("These rules do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings.").

Petitioner's own conduct in the District Court reflects the limited scope of the California court's order. The District Court conducted an *in camera* review of the *Ironshore* brief to consider its relevance, "[a]t [Petitioner's] invitation." Pet. App. 5a. Petitioner would not have been able to make this

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[1] Rule 2.550(e)(1)(A) states that a record may be sealed if the court finds that "(1) There exists an overriding interest that overcomes the right of public access to the record; [¶] (2) The overriding interest supports sealing the record; [¶] (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; [¶] (4) The proposed sealing is narrowly tailored; and [¶] (5) No less restrictive means exist to achieve the overriding interest."

offer if the California court had prohibited any disclosure of the *Ironshore* brief.

Petitioner's contention that the sealing order has been overridden because it created the brief in reliance on that order is also incorrect. Petitioner created and submitted the brief without seeking a sealing order, or a more general protective order. It only sought the sealing order when the California court instructed it to. It could not have relied on an order it had no intention of seeking. Nor would such reliance have been reasonable. *See Riddell, Inc. v. Super. Ct.*, 14 Cal. App. 5th 755, 768 (Cal. App. 2017) ("the federal district court hearing the MDL is not bound by a state court confidentiality order in the coverage action"); *see also Baker v. General Motors Corp.*, 522 U.S. 222, 225 (1998) ("a Michigan court cannot, by entering the injunction to which [the parties] stipulated, dictate to a court in another jurisdiction that evidence relevant in [another] case . . . shall be inadmissible").

The District Court only ordered the production of the brief by Petitioner to Respondent. It left in place the California court's sealing order and as such the *Ironshore* brief remains sealed on the California court's docket and is not available to the public.

2. The Stay Order

The District Court's decision also had no effect on the California court's stay of the insurance litigation or its exercise of any judicial function. The insurance litigation remains stayed; nothing in the district court's order has affected the stay or impeded the California court's exercise of its judicial function in

resolving the coverage dispute between Ironshore and Petitioner.

* * *

The only effect of the District Court's order is that Petitioner must produce the brief to Respondent (and the other parties in the federal litigation) subject to the protective order in place in this litigation. Accordingly, this case does not provide the Court with an appropriate vehicle to consider the question presented by this Petition.

C. The District Court Sufficiently Considered Comity and the Impact of Its Order on the California Court.

Even though the District Court's order had no effect on the California court's sealing order, it nonetheless weighed California's interest in light of comity, and determined that it was not required to defer to the sealing order. The District Court conducted this analysis in its initial order (Pet. App. 4a-5a), and again in its order on Petitioner's Motion for Reconsideration. Pet. App. 11a-12a.

Petitioner suggests that the District Court should have required Respondent to seek relief from the California court, and requested its unsealing under the analytical framework of California Rule of Court 2.550(e)(1)A). But that Rule has no application here. Respondent did not seek access on behalf of the public, as might a journalist. Respondent's entitlement to the brief was not based on a generalized right to court records, but under Rule 26

as a litigant in federal court. And Respondent seeks the brief from Petitioner, not from the California court's docket. Considerations of prejudice and public access as contemplated under Rule 2.550 are not relevant to the discoverability of relevant information under Rule 26 from a party, at least not in this context, and requiring Respondent to overcome a California standard for *public access* to obtain limited litigation access would have been improper.

II. THERE IS NO SIGNIFICANT DISAGREEMENT URGENTLY REQUIRING THIS COURT'S GUIDANCE.

Next, Petitioner contends that the Court should grant its petition so that it may address an urgent disagreement among lower courts. The factual and procedural differences between this case and those identified by Petitioner make this a poor vehicle for addressing that purported disagreement. Further, there is no true disagreement among the district courts. The different outcomes are the result of each court's analysis of the specific facts and circumstances in each case.

A. This Case Does Not Present The Same Factual Or Procedural Circumstances As The Cases Evincing The Purported Disagreement.

Because the District Court's order did not override the California court's sealing order, and because it did not require Petitioner to violate any order of the California court, this case is a poor vehicle to address

the disagreement Petitioner contends exists among the lower courts. By contrast with this case, the cases Petitioner cites addressed instances where modification or overriding of another court's order was necessary to provide the relief sought, primarily because they addressed protective orders binding on the parties from whom the information was requested. The cases further frequently addressed other district court orders, not orders issued by state courts. Instead of resolving the disagreement Petitioner contends exists, a decision by this Court would provide little guidance in these cases.

Petitioner elides this important distinction. In articulating the purported disagreement Petitioner identifies courts, on the one hand, which "recognize that it is improper to override the ***sealing order*** of another court." (Pet. 11 (emphasis added)). However, these cases address requests for large quantities of discovery governed by a protective order from related federal litigation, not briefs filed under seal in a state court. *See Axcan Scandipharm Inc. v. Ethex Corp.,* 2008 WL 11349882 (D. Minn. Dec. 31, 2008); *Dushkin Pub. Group, Inc. v. Kinko's Service Corp.*, 136 F.R.D. 334 (D.D.C. 1991). And one considered classified information, including filed briefs, involving federal agencies, and anonymized parties, similarly governed by a strict protective order, not merely a single brief filed under seal. *Doe v. Doe Agency*, 608 F. Supp. 2d 68 (D.D.C. 2009). Unlike here, in each of those cases a court had to modify the protective orders to relieve the relevant parties from their obligations so that production could be made.

The other cases Petitioner identifies as reflecting a disagreement in need of resolution similarly reflect a wide variety of factual and procedural circumstances, distinct from this case, and primarily addressing protective orders issued by federal courts. They include: a party requesting documents previously produced to a government agency in other litigation where the agency was subject to a protective order in the prior litigation (*Air Cargo, Inc. Litigation Trust v. i2 Technologies US, Inc.*, 2010 WL 348492 (D. Md. Jan. 22, 2010); considering the effect of protective order in settled litigation where discovery was sought from the party who had obtained the protections of the original protective order (*Tucker v. Ohtsu Tire & Rubber Co., Ltd.*, 191 F.R.D. 495, 501 (D. Md. 2000) ("it should be noted that discovery is sought in this case not from the party against whom the obligations of the Texas Order apply . . . but instead from the source of those documents.")); *Abel v. Mylan, Inc.*, 2010 WL 3910141, at *3-4 (N.D. Ok. Oct. 4, 2010); a Rule 45 subpoena served on a non-party subject to restrictions of protective order in state court litigation (*Donovan v. Lewnowski*, 221 F.R.D. 587 (S.D. Fl. 2004)); and addressing whether the party seeking discovery would have standing under the terms of the relevant protective order to seek its modification (*Melea Ltd. v. C.I.R.*, 118 T.C. 218, 222 (T.C. 2002)).[2]

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[2] In another case supposedly adopting the correct view, *Thunder Studios, Inc. v. Kazal*, 2018 WL 5099748 (C.D. Cal. Jul. 25, 2018), the court considered a party's objections to the scope of a *proposed* protective order to be entered by the court to govern discovery going forward.

The two cases Petitioner cites in which district courts found that they lacked authority to override *state court sealing* orders, otherwise bear no resemblance to this case or the question presented. In *Feinwachs v. Minn. Hosp. Ass'n*, 2018 WL 882808 (D. Minn. Feb 13, 2018), the court considered whether documents already filed under seal in state court, should also be filed under seal in litigation before it. In *Glickman, Lurei, Eiger & Co. v. I.R.S.*, 1975 WL 706 (D. Minn. Oct. 14, 1975), the court considered a Freedom of Information Act suit in which the plaintiff contended that the state court had erred in sealing documents. Plaintiff's suit was explicit in asking the district court to override the state court sealing order. In neither case did the courts consider Rule 26 discovery, and in both instances contrary decisions would have disclosed documents directly to the public. The balancing of a federal litigant's rights to discovery under Rule 26 and the comity owed to a state court sealing order fundamental to this suit is lacking in both cases.

This case stands out, factually, procedurally, and legally, from the cases Petitioner contends establish a question in need of this Court's guidance. In none of the cases cited by Petitioner, did the district court consider whether a party was required under Rule 26 to produce a document of undisputed relevance, that had also been filed under seal in a related state court action, and where there was no question that the party could produce the brief without violating a court order. Accordingly, review by this Court of this case would provide little, if any guidance to the district courts Petitioner contends is needed.

B. There Is No Disagreement Warranting Review.

There is also no significant disagreement among the district courts as to the question purportedly presented by this Petition.

For example, Petitioner contends that some courts will modify another court's protective order based solely on the "single factor" of whether litigation has concluded. Pet. 15. But Petitioner has identified no case where that rule was in fact applied in that manner. In *Mugworld, Inc. v. G.G. Marck & Assocs., Inc.*, 2007 WL 2229568 (E.D. Tex. June 15, 2007), the court did not modify the protective order. Instead, it ordered the party seeking discovery to first seek relief from the issuing court, the approach Petitioner supports. The rest of the cases are no different. *See Ford Motor Co. v. Versata Software, Inc.*, 316 F. Supp. 3d 925, 947 (N.D. Tex. 2017) (declining to modify the protective order despite completion of the collateral litigation absent the moving party's application to the issuing court); *Holland v. Summit Tech., Inc.*, 2001 WL 1132030, at *4 (E.D. La. Sept. 21, 2001) (refusing to modify a magistrate judge's entry of a protective order based on good cause finding in related MDL litigation); *Puerto Rico Aqueduct & Sewer Auth. v. Clow Corp.*, 111 F.R.D. 65, 67 (D.P.R. 1986) (holding that defendants were not obligated to cooperate in seeking modification of any such orders in other courts); *Ohio Willow Wood Co. v. ALPS S., LLC*, 2010 WL 3470687, at *2 (S.D. Ohio Aug. 31, 2010), *aff'd and adopted*, 2011 WL 1043474 (S.D. Ohio Mar. 18, 2011) (declining to

modify protective order issued by Florida district court and instructing party to seek modification from that court). In fact, these courts came to precisely the same conclusions as those Petitioner contend represent the other side of this purported disagreement. *See e.g. Axcan*, 2008 WL 11349882 at *9 (party seeking to modify terms of a protective orders issued in the prior suits must move in that case); *Dushkin*, 136 F.R.D. at 335-36 (D.D.C. 1991) ("To the extent that the plaintiff should desire to obtain those additional documents, that request should be addressed to the issuing court[.]").

And Petitioner's reliance on *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003), to identify the "correct" approach consistent with comity and federalism similarly establishes no disagreement. Indeed, rather than failing to follow *Foltz*, the District Court's order is consistent with the decision.

In *Foltz* the Ninth Circuit considered a district court's refusal to modify its own protective order at the request of litigants seeking discovery for a related case. Modification of the protective order was necessary because "[n]either State Farm nor the Plaintiffs in *Foltz* could disclose covered documents without complying with the terms of [the court's protective] order." *Id.* at 1128. The court reversed the district court for failing to adequately consider the relevance of the documents to the related litigation under Rule 26 so as to avoid duplicative discovery.

Rather than adopting the bright line rule Petitioner proposes, the *Foltz* court held that seeking relief in

the issuing court was appropriate because "[t]he court that issued the order is in the best position to make the relevance assessment for it presumably is the ***only court*** familiar with the contents of the protected discovery." *Id.* at 1132 (emphasis added). The issuing court should then "weigh the countervailing reliance interest of the party opposing modification against the policy of avoiding duplicative discovery." *Id.* at 1133. In *Foltz* therefore, the issuing court was appropriate because only the issuing court could make an adequate relevance determination, a determination the District Court here, could and indeed, did make.

Petitioner's further reliance on this Court's decision in *Ex Parte Uppercu*, 239 U.S. 435 (1915) is similarly unavailing. The Court considered a request to unseal documents directly on an original petition for a writ of mandamus before the issue had been considered by the appropriate Court of Appeal on direct appeal from the district court. The Court held that the federal district court was required to release documents it had sealed in prior litigation to the petitioner, because "the mere unwillingness of an unprivileged person to have the evidence used cannot be strengthened by such judicial fiat as this, forbidding it, however proper and effective the sealing may have been against the public at large." *Id.* at 440. The Court further concluded that its own exercise of authority in the separate action brought by the petitioner, not on appeal from the issuing court, was appropriate to correct the district court's error, in part because the petitioner may have lacked standing to seek release of the sealed documents for the purpose of discovery in a related case. *Id.* at 441.

Far from requiring a party to approach the issuing court, the decision stands for the proposition that sealing documents from the public cannot justify keeping relevant information from a litigant. In coming to that conclusion, Court noted the difficulty a litigant may face in approaching the issuing court, the importance of a litigant being able to obtain relevant documents despite them being sealed against the public at large, and that the practicalities and circumstances of the situation before it warranted getting involved outside the normal course of appeals from the issuing court.

In short, these case outcomes depend on each court's analysis of the specific factual and procedural context. No bright-line rule could address this variety of circumstances.

C. Review by This Court Would Not Bolster Consideration of The Principles of Comity and Federalism.

Petitioner also argues that review is necessary to ensure that district courts consider comity and federalism. However, district courts, including the District Court here, do consider the principles of comity and federalism. Petitioner's proposed resolution – a blanket rule requiring application be made to the state court – would deprive district courts of the discretion and flexibility they require to manage their dockets, would potentially undermine the discovery process in federal court, create incentives to use state court litigation to avoid discovery in federal litigation, increase costs for parties seeking discovery to which they are entitled

under Rule 26, and unnecessarily add to the burden of state courts.

III. THE DISTRICT COURT'S ORDER WILL NOT EVADE APPELLATE REVIEW.

This is a routine discovery order that will be reviewed, like all other discovery orders, at conclusion of the litigation. Petitioner has not identified any reason that this discovery order, unlike others, will evade post-judgment appellate review.

CONCLUSION

For the reasons stated above, this Petition should be denied.

Respectfully submitted,

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