No. 21-755

In The

Supreme Court of the United States

CARTER PAGE; GLOBAL ENERGY CAPITAL LLC; AND GLOBAL NATURAL GAS VENTURES LLC,

Petitioners

v.

DEMOCRATIC NATIONAL COMMITTEE; DNC SERVICES CORPORATION; PERKINS COIE LLP; MARC ELIAS; AND MICHAEL SUSSMANN,

Respondents

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

BRIEF FOR AMERICA FIRST LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

America First Legal Foundation (AFL) is a public interest law firm providing citizens with representation in cases of broad public importance to vindicate Americans' constitutional and common law rights, protect their civil liberties, and advance the rule of law.

From our Nation's founding, a fair tribunal has been recognized as due process in the primary sense. One great object in the establishment of the courts of the United States was to have a tribunal in each state, presumed to be free from local influence, to which all who were non-residents might resort for legal redress. This was the purpose of diversity jurisdiction, and it is an important part of the reason why the federal courts are where American citizens turn to protect their rights and liberties from abuse at the hands of the rich and powerful. AFL thus has a profound interest in the jurisdictional issues presented here.

SUMMARY OF ARGUMENT

The constitutional purpose of diversity jurisdiction is to ensure at least the appearance of even-handed justice. It is a core constitutional function of the federal courts. *See* U.S. Const. art. III, §§ 1,2; *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010) (Breyer, J.); *Bank of the United States v. Deveaux*, 9 U.S. 61, 87 (1809) (Marshall, CJ). Therefore, the question

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[1] This brief was not written in whole or in part by counsel for any party, and no person or entity other than the amicus has made a monetary contribution to the preparation and submission of this brief. Amicus files this brief with timely notice and all parties' consent.

whether multinational law firms may rely on a single expatriated partner to avoid federal diversity jurisdiction presents a jurisdictional issue of deep significance.

Petitioners Dr. Carter Page, Global Energy Capital LLC, and Global Natural Gas Ventures LLC are Oklahoma residents. Respondents Democratic National Committee, DNC Services Inc., Perkins Coie LLP, Marc Elias, and Michael Sussmann are not. *Pet. App. 10a.* The gravamen of this case is the allegation that Respondents defamed Dr. Page to establish the "Russia collusion" hoax aimed at crippling then candidate Donald Trump's presidential campaign. *Pet. App. 29a-31a*; *see also United States v. Igor Y. Danchenko*, Case 1:21-cr-00245, Doc. 35 at 4-5 (E.D. Va. Dec. 17, 2021).

The district court denied Dr. Page jurisdictional discovery and dismissed his case for lack of personal jurisdiction. *Pet. App. 27a.* On appeal, the Seventh Circuit "questioned the existence of subject matter jurisdiction on the basis that Perkins Coie (with a few of its U.S. based partners working and living abroad) may not qualify as a proper defendant for purposes of diversity jurisdiction under 28 U.S.C. § 1332." *Pet. App. 2a.*

Responding to the court's concerns, Perkins Coie submitted affidavits from three of its partners averring that each one was a U.S. citizen who had expatriated to live and practice law in the People's Republic of China (PRC), a totalitarian state ruled by the Chinese Communist Party (CCP). *Pet. App. 10a*; Br. of Appellees, Case No. 20-2781, Doc. 24 Addendum Exhibits 1-3 (Feb. 2, 2021). Among other things, the CCP directly controls the Chinese legal system and

the lawyers who practice in it. *See* Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, Country Reports on Human Rights Practices for 2020: CHINA at 1, 2, 13-14, 20-21 (2021) (the "*China Report*") https://www.state.gov/wp-content/uploads/2021/03/CHINA-2020-HUMAN-RIGHTS-REPORT.pdf.[2]

Based on the China partners' affidavits, the Seventh Circuit found them to be "domiciled" in the PRC. *Pet. App. 10a.* Accordingly, relying on *Newman-Green, Inc. v. Alfonzo-Larrain,* 490 U.S. 826, 828-29 (1989), it declared them "stateless" U.S. citizens over whom federal courts lack diversity jurisdiction. *Pet. App. 8a*, *11a*. Then, noting this Court has not

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[2] This was identified as a significant human rights violation. Other significant human rights violations identified were arbitrary or unlawful killings; the mass detention of more than one million Uyghurs and other members of predominantly Muslim minority groups in extrajudicial internment camps and subjecting an additional two million more to daytime-only "re-education" training; pervasive and intrusive technical surveillance and monitoring; serious restrictions on free expression, the press, and the internet, including physical attacks by communist party agents on and criminal prosecution of journalists, lawyers, writers, bloggers, dissidents, petitioners, and others as well as their family members; censorship and site blocking; interference with the rights of peaceful assembly and freedom of association; severe restrictions and suppression of religious freedom; substantial restrictions on freedom of movement; restrictions on political participation; corruption; forced sterilization and coerced abortions; government-sanctioned trafficking in persons; and child labor. *China Report* at 1-2.

"explicitly answered the question" if the "stateless status of these individual partners must be attributed to Perkins Coie", it held, based on *Carden v. Arkoma Assocs.*, 494 U.S. 185 (1990) (Scalia J.), and on a footnote in *Lincoln Prop. Co. v. Roche*, 546 U.S. 81 (2005), that "a partnership made up of at least one stateless citizen is itself stateless and cannot be sued in diversity." *Pet. App. 7a, 11a.*

As a result, the court below dismissed Dr. Page's case. In doing so, it acknowledged that "in today's global business environment, where multinational entities exist in every facet of commerce, [our] result may strike some as impractical." *Pet. App. 14a.* Nevertheless, it reasoned 28 U.S.C. § 1332, "by its terms," requires that each individual partner be subject to diversity jurisdiction. "If this outcome seems to defy modern commercial realities, the responsibility for amending § 1332—updating it to account for today's forms of business associations—rests with Congress." *Pet. App. 15a.*

AFL urges the Court to grant review because the Seventh Circuit's holding threatens to constrict a core constitutional function of the federal courts without a clear textual basis for doing so. Nor did the court below address an arguably contrary line of precedent including *Navarro Savings Assn. v. Lee*, 446 U.S. 458, 461 (1980) (Powell, J.); *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 865 (5th Cir. 2003); *E.R. Squibb & Sons, Inc. v. Accident & Casualty Insurance Co.,* 160 F.3d 925 (2d Cir. 1998); *Certain Interested Underwriters at Lloyd's, London, England v. Layne*, 26 F.3d 39 (6th Cir. 1994); and *Morson v. Kreindler & Kreindler, LLP,* 616 F. Supp. 2d 171, 173 (D. Mass. 2009).

On the merits, AFL believes the decision below was wrongly decided, and that three partners who live and work in the PRC should not immunize Perkins Coie from diversity jurisdiction. Regardless, the lower court has decided an important issue of federal law that has not been, but should be, settled by this Court. S. Ct. Rule 10(c). Doctrinal clarity is plainly needed.

ARGUMENT

I. THE QUESTION PRESENTED IS IMPORTANT AND RIPE FOR DECISION NOW.

A. *The Constitutional Rationale for Diversity Jurisdiction Applies with Force to Multinational Law Firms.*

The constitutional rationale for diversity jurisdiction is that the federal courts are more likely to provide at least the appearance of impartial justice for out-of-state persons, such as Dr. Page, who are challenging powerful local persons or business interests. *Hertz*, 559 U.S. at 92; *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 553-54 (2005); *Pease v. Peck*, 59 U.S. 595, 599 (1855). According to Chief Justice Marshall:

> However true the fact may be, that the tribunals of the states will administer justice as impartially as those of the nation, to parties of every description, it is no less true that the constitution itself either entertains apprehensions on this subject, views with such indulgence the possible fears and apprehension of suitors, that it has established national tribunals for the decision of controversies between aliens and a

> citizen, or between citizens of different states.

Deveaux, 9 U.S. at 87.

This rationale applies with force to multinational law firms. At least seventy-six major law firms in the United States are multinational, allowing them to generate more revenue and, if the decision below stands, avoid federal diversity jurisdiction.[3] However, law firms enjoy at least the perception of a significant hometown advantage in state courts. Big firm lawyers tend to be deeply intertwined with local justice systems, serving on bar committees, appearing before and socializing with the judges, and, in states with elected judges, providing political campaign contributions. This entanglement necessarily colors litigants' views of whether there is fair and straight justice to be had against such firms in their "home" state court. Federal courts, rightly or not, are generally viewed as providing a more neutral forum.

"[T]here [is] much to fear from the bias of local views and prejudices, and from the interference of local institutions." *Dodge v. Woolsey*, 59 U.S. 331, 357 (1855). Therefore, requiring a resident of (for example) Oklahoma to sue Perkins Coie in Seattle (or Jones Day in Cleveland, Greenberg Traurig in Miami, or Wilmer Hale in Boston) simply because the firm has a single overseas resident partner upends the constitutional point of diversity jurisdiction. *See also Pease,* 59 U.S. at 599. In "today's global business

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[3] *See e.g.,* Chambers Associate, "US and international presence" (2021) https://www.chambers-associate.com/law-firms/us-and-international-presence.

environment, where multinational entities exist in every facet of commerce," such a result is at least, and unnecessarily, *see Navarro,* 446 U.S. at 461, "impractical." *Pet. App. 14a.*

B. *The Doctrinal Confusion Is Significant and Ripe for Clarification Now.*

The Seventh Circuit's decision highlights the need for this Court to step in and clarify the doctrine.

The lower court's ruling is an extrapolation of this Court's precedents but is by no means dictated by them. From *Newman-Green* and *Carden*, it derived the proposition that "the Court has held both that a stateless citizen cannot be sued in diversity and that the citizenship of a partnership is based on the citizenship of each individual partner." *Pet. App. 11a* (citations omitted); *Pet. App. 7a, 15a.* But then, avoiding *Navarro* and the other cases in its line, the panel pivoted to a footnote in the factually inapposite *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 84 n.1 (2005) citing it as authority for requiring all partners, limited and general, to be diverse from all parties on the other side. *Pet. App. 11a.*

The Seventh Circuit failed to dig as deeply as it arguably should have. *See e.g. Squibb*, 160 F.3d at 930 n.11 ("the jurisdictional result is the same under either the 'real party to the controversy' test of *Navarro* or the rule of *Carden*"); *see also Morson,* 616 F. Supp. 2d at 173 (citizenship of contract partner with no ownership interest in the partnership, no right to share in profits and losses, and no right to participate in policymaking for the business was "irrelevant" for the purposes of diversity jurisdiction analysis). To begin with, *Navarro* remains good law.

There, the district court ruled a business trust was a citizen of every State in which its shareholders reside and dismissed for want of complete diversity. The Fifth Circuit reversed, holding there was complete diversity between the plaintiff and the "real parties in interest," those with full power to manage and control the trust and to sue on its behalf. The Court affirmed, holding a federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy. 446 U.S. at 461 (citations omitted). Under *Navarro*, the China partners are not of jurisdictional significance.

Justice Breyer's analysis in *Hertz* ends in a similar place. In *Hertz*, the Court acknowledged commercial reality ("corporations come in many different forms, involve many different kinds of business activities, and locate offices and plants for different reasons in different ways in different regions"), and crafted a jurisdictional rule tied to the place where a corporation's officers direct, control, and coordinate its activities. 559 U.S. at 92-93. In other words, jurisdiction rests only on the citizenship of the corporation's "nerve center," for it is the "nerve center" that contains the real parties to the controversy. *See* 559 U.S. at 93; *accord Navarro*, 446 U.S. at 461-62. Also in this analytic framework, the China partners are not of jurisdictional significance. The Seventh Circuit cited *Hertz* but did not discuss it. *Pet. App. 4a.*

In *Carden* footnote 1, Justice Scalia wrote: "The question presented today is not which of various parties before the Court should be considered for purposes of determining whether there is complete diversity of citizenship, a question that will generally be answered by application of the "real party to the

controversy test." Rather, "what we must decide is the quite different question of how the citizenship of that single artificial entity is to be determined—which in turn raises the question whether it can (like a corporation) assert its own citizenship, or rather is deemed to possess the citizenship of its members, and, if so, which members." *Carden*, 494 U.S. at 188, n.1. He then distinguished *Navarro* on the ground it involved not a juridical person but rather the "distinctive common-law institution of trustees." 494 U.S. at 194 (Scalia, J.).[4]

However, under *Navarro* the nature of the named party does not settle the question of who the real parties to the controversy are. 494 U.S. at 204 (O'Connor, J., dissenting). And partnerships are every bit as much a "distinctive common-law institution" as trustees. This Court has applied a control test to professional partnerships in other settings. *See, e.g., Clackamas Gastroenterology Assocs., P. C. v. Wells*, 538 U.S. 440, 446 (2003) (Stevens, J.) ("Today there are partnerships that include hundreds of members,

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[4]In 2016, Justice Sotomayor wrote "When we last examined the 'doctrinal wall' between corporate and unincorporated entities in [*Carden*], we saw no reason to tear it down. Then as now we reaffirm that it is up to Congress if it wishes to incorporate other entities into 28 U.S.C. § 1332(c)'s special jurisdictional rule." *Americold Realty Trust v. Conagra Foods, Inc.*, 577 U.S.378, 384 (2016). But as Justice O'Connor pointed out at the time, the notion that the Court had "long since decided" to leave the issue of the proper treatment of "unincorporated" entities for diversity purposes to the Congress is "insupportable" considering *Navarro* and *Steelworkers v. R.H. Bouligny, Inc.,* 382 U.S. 145 (1965). *Carden,* 494 U.S. at 198-99 (O'Connor, J., dissenting). The "doctrinal wall" is hardly that.

some of whom may well qualify as 'employees' *because control is concentrated in a small number of managing partners*") (emphasis added) (citations omitted); *accord Morson,* 616 F. Supp. 2d at 173. *Navarro* is similar, and there is nothing in the text of § 1332(a) that prevented the Seventh Circuit from applying it to the China partners.

For example, citing *Carden* the Sixth Circuit considered, in the context of insurance syndicates, whose citizenship counts for the purposes of establishing diversity jurisdiction: the agent-underwriters or the syndicate members.[5] *Layne*, 26 F.3d 39 (6th Cir. 1994). It held that under Tennessee law, the agent-underwriters were the "real parties in interest." Thus, only their citizenship was relevant to the jurisdictional analysis. The court reasoned:

> When the question is which of various parties before the court should be considered for determining whether there is complete diversity of citizenship, that question is generally answered by application of the "real party to the controversy" test. Diversity must be complete between all of the plaintiffs and all of the defendants. If, however, one of the "nondiverse" parties is not a real party in interest, and is purely a formal or nominal party, his or its presence may be ignored in determining jurisdiction.

Id. at 42 (citations omitted)

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[5]"In a nutshell, Lloyd's consists of unincorporated groups of investors, called syndicates, who appoint agents, called underwriters, to act on their behalf." 26 F.3d at 43.

Layne has been criticized for circumventing *Carden*. *Osting-Schwinn,* 613 F.3d at 1090; *Indiana Gas Co., Inc. v. Home Ins. Co.,* 141 F.3d 314, 319 (7th Cir. 1998). But *Carden* did not overrule *Navarro*, and the result, as the Second Circuit acknowledged in *Squibb*, is conflicting rules. *Squibb*, 160 F.3d at 930 n. 11, 931. Perhaps *Layne* misapplied insurance syndicate law, but unless and until this Court overrules *Navarro*, its diversity jurisdiction analysis should not be criticized for it is at least coherent.

Based on the precedent, the court below certainly could have found subject matter jurisdiction over Perkins Coie, had in felt inclined to do so. But it was not inclined to do so. Instead, it followed *Swiger v. Allegheny Energy, Inc.*, 540 F.3d 179 (3d Cir. 2008); *Pet. App. 14a*. As Judge McKee quite accurately wrote in concurrence, the outcome there was "inconsistent with both reality and common sense." *Id.* at 186.

To sum up, the Seventh Circuit, without considering *Navarro*, and relying heavily on a Third Circuit precedent that the concurring judge called unrealistic and inconsistent with common sense, reached a result that was "impractical" and inconsistent with commercial reality. *Pet. App. 14a, 15a.* This outcome reflects the confused state of the precedent. But the diversity jurisdiction calculus should not be so complicated.

C. *There are at Least Two Paths Forward to Doctrinal Clarity and Advancing Diversity Jurisdiction's Constitutional Purpose.*

There are at least two paths forward for the Court to consider with respect to the problem presented by the lower court's decision. One involves harmonizing

Carden and *Navarro*. The other is based on the ordinary public meaning of key terms in 28 U.S.C. § 1332(a). Both paths enhance the clarity of diversity jurisdiction doctrine while advancing diversity jurisdiction's constitutional purpose.

1. What is a partner? Harmonizing *Carden* and *Navarro*.

Assuming *arguendo* that the Seventh Circuit properly and correctly extrapolated from the footnote in *Roche*, a narrow solution that might harmonize *Carden* and *Navarro* would be to make it clear trial courts must determine whether "stateless" partners are really that, or merely employees with a title. *Compare Pet. App. 8a-12a* with *Layne*, 26 F.3d at 41-42 (analyzing Tennessee law) and *Morson*, 616 F. Supp. 2d at 172 (analyzing New York and Massachusetts law).

The Seventh Circuit wrote "the only way to determine citizenship for diversity purposes is *to look at the individual partners*-an analytical path repeatedly endorsed by the Supreme Court." *Pet. App. 13a* (citations omitted) (emphasis added). The problem is that it did not do this. The panel did not decide what state law to apply, or even analyze whether any or all the China partners (for example) possessed normal indicia of partnership, such as a share of profits and losses or the authority to bind other partners. Perkins Coie provided a chart purporting to explain the firm's convoluted internal structure, Br. of Appellees, Doc. 24 at ADD-1 – ADD-4. But it did not divulge its ownership and control structure, specify how many shares (if any) the China partners own, describe how profits and losses are allocated among the partners, or even specify whether

the firm differentiates among classes of equity partners or between equity and non-equity partners. If the "stateless partners" in this case were not actually partners under the controlling state statutory or common law (whatever it might be), then, even if the Seventh Circuit's approach was correct in all respects, the case was wrongly decided.

2. Textualism.

Another path forward is outlined by statutory text. Section 1332 provides in relevant part:

> The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—(1) citizens of different States; [and] (2) citizens of a State and citizens or subjects of a foreign state ….

Newman-Green holds "In order to be a citizen of a State within the meaning of the diversity statute, a natural person must be both a citizen of the United States *and* be domiciled within the State." 490 U.S. at 828 (citations omitted). The court below declared the China partners do not have a U.S. domicile. *Pet. App. 11a.* But it did not consider 52 U.S.C. § 20310(5) which provides:

> "[O]verseas voter" means …. (B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (C) a person who resides outside the United States and (but for such residence) would

> be qualified to vote in the last place in which the person was domiciled before leaving the United States.

A person's voting address has long been deemed highly relevant of domicile, though it is not alone controlling. *See District of Columbia v. Murphy,* 314 U.S. 441, 456 (1941); *Smith v. Marcus & Millichap, Incorporated,* 991 F. 3d 1145, 1149 (11th Cir. 2021).

It would be an easy thing to analyze each China partner's domicile under § 20310(5), and then determine whether diversity was complete. More broadly, by using § 20310(5) as a decisional standard, the anomalous "one foreign partner defeats diversity rule" is easily cured, the doctrine is rationalized, and the federal courts' core constitutional function of hearing diversity cases advanced. Importantly, there is nothing facially evident in the text of § 1332(a) that obviously forecloses this approach to the problem.

Also, the Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1738 (2020). Here that would mean starting with the ordinary public meaning of the terms "citizens" and "subjects" in 28 U.S.C. § 1332(a)(2), and then analyzing the facts presented in the China partners' affidavits to determine diversity.

This Court has ruled:

> "[C]itizen" and "subject" simply do not mean the same thing. Although the word "citizen" may imply (and in 1789 and 1875 may have implied) the enjoyment of certain basic rights and privileges, see

> Black's Law Dictionary 237 (7th ed.1999) (defining "citizen" as "entitled to enjoy all its civil rights and protections" of a community), a "subject" is merely "[o]ne who owes allegiance to a sovereign and is governed by that sovereign's laws," *id.,* at 1438. Thus … the text of § 1332(a)(2) has no room for the suggestion that members of a polity, under the authority of a sovereign, fail to qualify as "subjects" merely because they enjoy fewer rights than other members do. For good or ill, many societies afford greater rights to some of its members than others without any suggestion that the less favored ones have ceased to be "citizens or subjects."

See JP Morgan Chase Bank v. Traffic Stream (BVI) Infrastructure, Ltd., 536 U.S. 88, 99 (2002);[6] *see also* Lawrence B. Solum, 107 MICH. L. REV. FIRST IMPRESSIONS 22, 28 (2008).

A subject, unlike a citizen, is not on equal footing with the sovereign, either in a court of law or elsewhere. Instead, all franchises, immunities, and privileges flow from the sovereign's "grace and grant." When the sovereign has all power, the judgments of

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[6] *Contra Van Der Schelling v. U.S. World & News Report, Inc.,* 213 F. Supp. 756 (E.D. Pa.) ("there [is] an equation, perhaps unconscious, in the minds of the framers that 'citizen' and 'subject' mean the same thing.") aff'd per curiam 324 F.2d 956, (3d Cir.), cert. denied, 377 U.S. 906 (1964); *see also Smith v. Carter*, 545 F.2d 909, 912 (5th Cir. 1977). However, *JP Morgan* seemingly overrules *Van Der Schelling* and its progeny.

the courts are merely monitory not mandatory. *Chisholm v. Georgia*, 2 U.S. 419, 471 (1793). These are the PRC's defining characteristics. *See generally China Report* at 1-8; U.S. Dep't of State, THE CHINESE COMMUNIST PARTY: THREATENING GLOBAL PEACE AND SECURITY, CHINA'S DISREGARD FOR HUMAN RIGHTS (Jan. 19, 2021) (archived) https://2017-2021.state.gov/chinas-disregard-for-human-rights/index.html (last accessed Dec. 20, 2021). By contrast, American citizens are equal "joint tenants" in the national sovereignty. 2 U.S. 471-72 (1793).

The China partners aver registering with the CCP Ministry of Justice, Br. of Appellees, Doc. 24 at ADD-2 ¶ 6, ADD-10 ¶ 6, ADD-15 ¶ 6; paying taxes to the CCP, having CCP-issued "social security cards," and maintaining their financial accounts in banks owned or regulated thereby, Br. of Appellees, Doc. 24 at ADD-11 ¶¶ 11-13, ADD-16 and 17 ¶¶ 11-12; and having CCP-issued drivers' licenses and leasing or owning property in the PRC, Br. of Appellees, Doc. 24 at ADD-8 ¶8 ADD-12 ¶17, ADD-16 ¶8. Notably, the China partners did not aver an intention to resume domicile in the United States, even at some indefinite future time. Instead, they aver an intention to remain in the PRC. *See* Br. of Appellees, Doc. 24 at ADD-8 ¶¶ 8, 9, ADD-12 ¶ 17, ADD-17 ¶ 15.

Based on these averments, the obvious question is whether the China partners are "subjects of a foreign state" under § 1332(a)(2). The diversity jurisdiction

consequences of expatriating to a hostile[7] totalitarian state without any intention of resuming domicile in the United States are not clear. The China partners are not naturalized subjects of the PRC. But their affidavits certainly provide reason to question whether they have become, in the strictest sense of the word, CCP subjects, and whether the federal court accordingly has subject matter jurisdiction over Perkins Coie under 28 U.S.C. § 1332(a).

Although the issue is complex, it appears there is at least a case to be made that in the language of the Constitution, the primary linguistic origin for the terms used in 28 U.S.C. § 1332(a), the China partners are indeed subjects of the PRC's sovereign, the CCP, and therefore subject to diversity jurisdiction. *See, e.g., JP Morgan,* 536 U.S. at 99; *Nagle v. Loi Hoa,* 275 U.S. 475, 477 (1928); *The Pizarro,* 15 U.S. 227, 245-46 (1817). On the other hand, if U.S. citizenship alone means the China partners cannot be "subjects of a foreign state", a highly problematic result based on the text of § 1332(a)(2),[8] then that should be clearly declared.

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[7] Olivia Gazis, "China is 'unparalleled priority' among world threats, top U.S. intelligence officials say", CBSNEWS.COM (Apr. 14, 2021) https://www.cbsnews.com/news/china-primaryworld-threat-says-u-s-intelligence/.

[8] In one account, the common law roots of the word "subject" may be found in the concept, derived from feudal England's Gothic ancestors, of allegiance, or "ligamen," which binds the subject to the king in return for protection. An alien (non-subject) was not one born out of the king's realm, but rather out of the king's "liegeance." *See* Mary Brigid McManamon, "The Natural Born (continued…)

II. THE DISTRICT COURT'S RULING ON PERSONAL JURISDICTION DOES NOT PREVENT THE COURT FROM REACHING THE SUBJECT MATTER JURISDICTION QUESTION.

"Customarily, a federal court first resolves doubts about its jurisdiction over the subject matter." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999) (Ginsberg, J.).[9] Here, the district court's ruling on personal jurisdiction is no reason for the Court to depart from the customary order of jurisdictional inquiry. The question presented is the "more fundamental issue," *Pet. App. 3a,* and is "important to clarify." *Pet. App. 16a*. Also, as discussed in Section III below, the political and social consequences of Dr. Page's case make it uniquely worthy of the Court's attention.

The question of personal jurisdiction, that is, whether this case may be brought in the Northern District of Illinois, is presently inconsequential. It poses no obstacle to the Court deciding the more fundamental and preliminary question of whether this case and others like it may be brought in any federal court at all. Especially given the need for

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Citizen Clause as Originally Understood", 64 CATH. U. L. REV. 317, 320-21 (2015). The China partners, though born outside the CCP's "realm", seem to be within the CCP's "liegeance."

[9] Affirming that the customary rule treats subject matter jurisdiction first, Justice Ginsburg then narrowly ruled that "where . . . a district court has before it a straightforward personal jurisdiction issue presenting no complex question of state law, and the alleged defect in subject-matter jurisdiction raises a difficult and novel question, the court does not abuse its discretion by turning directly to personal jurisdiction." 526 U.S. at 588.

doctrinal coherence with respect to subject matter jurisdiction evident in the case law, the district court's ruling should play no role in the Court's consideration of the pending writ.

III. DR. PAGE DESERVES A FAIR FORUM AND HIS CASE SHOULD BE HEARD IN FEDERAL COURT.

The jurisdictional issue is important, and the question presented is clear cut. As the court below acknowledged, its decision seems at odds with reality and common sense. *Pet. App. 14a-15a* ("this result may strike some as impractical …. Right to it, Page makes worthy policy arguments"); *accord Swiger*, 540 F.3d at 186. Especially considering the accelerating concentration of economic power into smaller and smaller numbers of global firms, AFL believes it is past time for the Court to address the question.

But this is not a simple commercial dispute between corporations or a run-of-the-mill defamation case against a local news outlet. Rather, this case arises from a political dirty trick without parallel in American history. Dr. Page's injuries, which are significant, were the direct result of a deeply cynical collusive scheme by high-ranking government officials, powerful politicians, and their captive media corporations to prevent the American people from choosing as their President a person from outside the traditional ruling class, and then, after the fact, to punish them for doing so. It is precisely the sort of case diversity jurisdiction was designed for.

The facts bear repeating.

The Respondents, working closely with some of the highest ranking political and career officials in the Obama White House and the Department of Justice,

developed and executed a plan during the 2016 Presidential campaign to distract the public from issues related to Hillary Clinton's use of a private email server, and to discredit then-candidate Donald Trump by tying him to Russia using the fake "Steele Dossier."[10] *See United States v. Michael A. Sussmann*, No.1:21-cr-00582, Doc. 1 (D.D.C. Sept. 16, 2021); *see also United States v. Igor Y. Danchenko*, No. 1:21-CR-245, Doc. 1 (E.D. Va. Nov. 3, 2021). The defamatory claims about Dr. Page and other unverified information from the Steele Dossier were used by the government as pretext for intelligence operations against President Trump, his campaign, and his advisors. According to the U.S. Department of Justice Office of the Inspector General, the Steele Dossier played "a central and essential role" in the FBI's decision making. Office of the Inspector General, U.S. Dep't of Justice, REVIEW OF FOUR FISA APPLICATIONS AND OTHER ASPECTS OF THE FBI'S CROSSFIRE HURRICANE INVESTIGATION at vi (2019). However, the FBI always knew that Dr. Page was working for the U.S. Central Intelligence

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[10] U.S. Senate Judiciary Cmte., "Chairman Graham Releases Information from DNI Ratcliffe on FBI's Handling of Crossfire Hurricane" (Sept. 29, 2020), https://www.judiciary.senate.gov/press/rep/releases/chairman-graham-releases-information-from-dni-ratcliffe-on-fbis-handling-of-crossfire-hurricane; *see also* Lee Smith, "Here Comes the Limited Hangout", TABLET (Dec. 2, 2021), https://www.tabletmag.com/sections/news/articles/limited-hangout-lee-smith; Matt Taibbi, "It's official: Russiagate is this generation's WMD", TK NEWS BY MATT TAIBBI (Mar. 23, 2019) https://taibbi.substack.com/p/russiagate-is-wmd-times-a-million.

Agency as an "operational contact" and not for the Russians. *Id.* at viii.

President Trump won the 2016 election despite Respondents' best efforts. But then Respondents and their political and media allies turned the Russia hoax into a weapon to cripple his Administration and nullify the legitimate electoral outcome.[11] In the process, they destroyed Dr. Page, a patriotic American citizen.

Driven by an unprincipled thirst for power, Respondents, and their political allies inside and outside of the government, have done Dr. Page and many others, including former President Trump, grave injustice. Even worse, they have seriously wounded public faith and confidence in our political,

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[11] *See generally* J. Peder Zane, "Investigative Issues: Russiagate, America's Greatest Scandal", REAL CLEAR POLITICS (Dec. 8, 2021), https://www.realclearinvestigations.com/articles/2021/12/08/investigative_issues_russiagate_americas_greatest_scandal_806971.html; Letter from Sen. Charles Grassley and Sen. Lindsey Graham to Susan Rice (Feb. 8, 2018), https://www.judiciary.senate.gov/imo/media/doc/2018-02-08%20CEG%20LG%20to%20Rice%20(Russia%20Investigation%20Email).pdf. Ironically, given the events described in the Sussman and Danchenko indictments, the Obama Administration and former Secretary of State Clinton generally downplayed the risk from Russia. *See, e.g., See* Jo Becker and Mike McIntire, "Cash Flowed to Clinton Foundation Amid Russia Uranium Deal", THE NEW YORK TIMES (April 23, 2015) https://www.nytimes.com/2015/04/24/us/cash-flowed-to-clinton-foundation-as-russians-pressed-for-control-of-uranium-company.html; Jillian Rayfield, "Obama: The 80's called, they want their foreign policy back" SALON (Oct. 23, 2012), https://www.salon.com/2012/10/23/obama_the_80s_called_they_want_their_foreign_policy_back/.

civil, and social institutions. Forty-five years ago, the anger, betrayal, and mistrust created by the abuse of power at the root of the Watergate scandal, the dishonesty of politicians and media corporations regarding the human consequences of the communist conquest of South Vietnam,[12] and the domestic surveillance programs exposed by the Church Commission,[13] deeply damaged America's body politic. So too, Respondents' reprehensible conduct likely will have destructive generational consequences.

The requirement of due process is not a fair-weather or timid assurance, it is ingrained in our national traditions and is designed to maintain them. *Joint Anti-Fascist Refugee Comm. v. McGrath,* 341 U.S. 123, 161-62 (1951) (Frankfurter, J., concurring). A fair tribunal is due process in the primary sense and a Constitutional first principle. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. *In re Murchison*, 349 U.S. 133, 136 (1955). Justice must

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[12] Max Hastings, VIETNAM: AN EPIC TRAGEDY, 1945-1975, William Collins (London, 2018); Annie Linskey, "From Saigon to Kabul: Biden's response to Vietnam echoes in his views of Afghanistan withdrawal", THE WASHINGTON POST (Aug. 15, 2021), https://www.msn.com/en-us/news/politics/from-saigon-to-kabul-biden-e2-80-99s-response-to-vietnam-echoes-in-his-views-of-afghanistan-withdrawal/ar-AANm2ud

[13] *See* Thomas Young, "40 years ago, Church Committee investigated Americans spying on Americans" BROOKINGS (May 6, 2015), https://www.brookings.edu/blog/brookings-now/2015/05/06/40-years-ago-church-committee-investigated-americans-spying-on-americans/

satisfy the appearance of justice. *Offutt v. United States*, 348 U.S. 11, 14 (1954); *Dodge*, 59 U.S. at 357; *Deveaux*, 9 U.S. at 87.

Citizens from across the ideological spectrum rely on the federal courts to protect their rights from those bent on suppressing lawful opposition or dissent. Whatever one's views of conservatives, Republicans, or President Trump, because of its origins and its parties, this case cries out for the impartiality, procedural protection, and institutional credibility of discovery and trial in a federal court. "The theory upon which [diversity] jurisdiction is conferred on the courts of the United States, in controversies between citizens of different States, has its foundation in the supposition that, possibly, the state tribunal might not be impartial between their own citizens and foreigners." *Pease,* 59 U.S. at 599. No state court system, especially not the Illinois state court system, has the institutional credibility to put to rest the troubling questions raised by this lawsuit.

Like every other citizen, Dr. Page has the right to fair treatment. Here, "fair treatment" means, at a minimum, that he should be allowed to pursue his claims in federal court before a "judiciary truly independent" that is "not subject to the fears or allurements of a limited tenure and by the very nature of their function detached from passing and partisan influences." *McGrath,* 341 U.S. at 163 (Frankfurter, J., concurring). Dr. Page should not be consigned to the Circuit Court for Cook County.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted.

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