No. 22-246

IN THE

Supreme Court of the United States

CENTRIPETAL NETWORKS, INC.,
Petitioner,

v.

CISCO SYSTEMS, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Although the petition lists only one question presented, it actually raises two:

1. Whether a judge "divests" a disqualifying "financial interest" under 28 U.S.C. § 455(f) merely by causing the interest to be owned through a "blind trust."

2. Whether this Court should reconsider the court of appeals' fact-specific application of the three-factor analysis of *Liljeberg* v. *Health Services Acquisition Corp.*, 486 U.S. 847 (1988), in determining, based on the unusual circumstances of this case, that decisions entered while the district judge was statutorily disqualified should be vacated.

CORPORATE DISCLOSURE STATEMENT

Respondent Cisco Systems, Inc. has no parent corporation. To the best of Cisco's knowledge and belief—and based on public filings with the Securities and Exchange Commission, as of October 26, 2022, no publicly held corporation owns 10% or more of Cisco's stock.

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INTRODUCTION

Centripetal's petition presents two issues: (1) a narrow question regarding the scope of 28 U.S.C. § 455(f) that no decision except the one below has addressed and (2) a challenge to the court of appeals' application of a well-settled test to the unusual facts of this case. While Centripetal now argues that the questions presented will provide guidance to other judges facing recusal issues, Pet. 32-33, it admitted the opposite below, telling the court of appeals that this case presents a unique fact pattern that has not arisen since Section 455(f)'s "enactment over three decades ago" and is "equally unlikely to arise even in another three decades," C.A. Dkt. 64 at 9.

Centripetal was right the first time. Research discloses no other case in which a judge decided that a

"blind trust" amounted to divestment under Section 455(f), nor does any well-reasoned authority support such a holding. To the contrary, as the Federal Circuit rightly noted, the "Judicial Conference's Committee on Codes of Conduct has ruled, well before the events of this case, that '[a] judge's use of a blind trust does not obviate the judge's recusal obligations.'" Pet.App.12. Accordingly, the facts presented here are specific to this case and, at best, extremely rare. No guidance from this Court is necessary.

In any event, Centripetal has not identified any issue worthy of certiorari. Centripetal does not assert any circuit split—and there is none—on the question whether holding stock in a "blind trust" constitutes "divest[ment]" under Section 455(f), nor is that issue even cleanly presented here. Regardless, the Federal Circuit correctly answered the question based on the statute's plain text, which Centripetal barely discusses. Centripetal's remarkable suggestion that the Federal Circuit erred by "myopically" focusing on the statutory language, instead of prioritizing the statute's purported "purposes," Pet. 2-3, runs contrary to decades of this Court's case law. Not only does "any case of statutory construction … begin[] with 'the language of the statute," but where (as here) "the statutory language provides a clear answer, it ends there as well." *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438 (1999).

Centripetal's remaining challenge—which is really a second question presented—urges the Court to reconsider the Federal Circuit's factbound application of the three *Liljeberg* factors in what Centripetal has repeatedly described as "the unique circumstances" of this case, C.A. Dkt. 64 at 10, 13, 14. This Court recognized in *Liljeberg* itself that the court of appeals is normally "in a better position to evaluate the signifi-

cance of a violation [of Section 455] than is this Court." 486 U.S. 847, 862 (1988). The Federal Circuit took that responsibility seriously, devoting nearly half of its opinion to a detailed analysis of the facts. Pet.App.17-28. There is no reason for this Court to second-guess that well-reasoned and reasonable conclusion, particularly given that it demonstrates to the public that "the Judiciary [is] tak[ing the issue of judicial ethics] seriously" and holding judges "to the highest standards." Roberts, C.J., *2021 Year-End Report on the Federal Judiciary* at 3-4 (2021).

Centripetal told the Federal Circuit that this case involved "a particularly unusual factual scenario." C.A. Dkt. 64 at 1. This Court should take Centripetal at its word and deny the petition.

STATEMENT

A. Initial Proceedings

Founded in 1984, respondent Cisco is a leading U.S. innovator in network technology and develops critical infrastructure that powers the modern Internet. Cisco designs, develops, and provides the technologies behind networking, communications, and information technology products and services that enable seamless communication among individuals, businesses, public institutions, government agencies, and service providers. Indeed, Cisco developed the three types of products at issue in this litigation (switches, routers, and firewalls) decades ago. Cisco C.A. Br. 5-6.

Petitioner Centripetal was founded in 2009 and originally was a Cisco customer. Pet.App.73; C.A.J.A.5805-5806; C.A.J.A.5934-5935(14:24-22:15). Centripetal initially sought investment from or partnership with Cisco, which—like every other company

Centripetal approached—chose not to invest in Centripetal's product. Its business failing to gain traction, Centripetal decided to sue for patent infringement instead.

In February 2018, Centripetal filed its complaint in the Eastern District of Virginia. Pet.App.2. The case was originally assigned to Judge Mark S. Davis. Pet.App.3. Eight months later, Judge Davis granted Centripetal's motion to transfer the case to Judge Henry Morgan. Pet.App.3. Judge Morgan stayed the case pending the Patent Office's resolution of Cisco's challenge to the validity of Centripetal's asserted patent claims, many of which were invalidated in those proceedings. Pet.App.3, 50.

Judge Morgan lifted the stay in September 2019. Pet.App.50. One month later, in October 2019, the judge's wife purchased 100 shares of Cisco stock on the advice of her financial advisor. Pet.App.3; *see also* C.A.J.A.18320-18321. Beginning in May 2020, Judge Morgan presided over a 22-day bench trial. Pet.App.3, 51. In late June 2020, Judge Morgan held a damages hearing, at which both parties were invited to present evidence. Pet.App.282. As of August 12, 2020, the judge had not issued any oral or written post-trial ruling on the merits.

B. The Judge Notifies The Parties Of His Wife's Stock Purchase And Proposes To Take No Action

On August 12, 2020, the judge notified the parties via email that, "while preparing his 2019 financial disclosure report to the judiciary the previous day, his judicial assistant had discovered that his wife owned 100 shares of Cisco stock." Pet.App.3. The email stated

that the judge (1) had already prepared a "'full draft'" of his opinion, (2) "'[v]irtually every issue was decided,'" and (3) the "'shares did not and could not have influenced his opinion on any issues in th[e] case.'" Pet.App.3.

As the Federal Circuit explained, it is "not a fair characterization of the facts" to say that the judge "'had decided the case' prior to learning of his wife's ownership of Cisco stock." Pet.App.21-22. To the contrary, the judge later made clear that, at the time he learned of the stock ownership, he had only drafted "'130-some pages'" of what was ultimately a 167-page opinion. Pet.App.5, 22. The judge also admitted at the time "that he had not 'decided 100 percent of'" the case when he learned of the stock ownership. Pet.App.5, 22

The judge's August 12 email did not propose to take any steps to address his wife's stock ownership beyond disclosing its existence to the parties. *See* C.A.J.A.18320; *see also* C.A.J.A.18581 (judge noting that he "did not invite any briefing" on the issue). Centripetal "quickly notified the Court that it had no objection." Pet.App.31-32; *see also* C.A.J.A18323. Nine days later, Cisco timely filed a motion requesting that the judge recuse himself under, *inter alia*, 28 U.S.C. § 455(b)(4). *See* Pet.App.5. Centripetal opposed the motion.

C. Proceedings Following Cisco's Recusal Motion

The judge held a hearing on Cisco's motion on September 9, 2020. Pet.App.32. At that hearing, the judge acknowledged that he previously told the parties that his ruling was "virtually" complete without telling either side which party he believed would prevail.

C.A.J.A.18580. The judge stated that "I just don't think it would be the proper thing to do to disclose what the opinion says." C.A.J.A.18581.

The judge also announced for the first time at the hearing that he intended to place the Cisco shares into what he called a "blind trust." Pet.App.32; C.A.J.A.18577. This trust was set up solely to hold the Cisco stock, and under the terms of the trust, the judge was to be notified when the trust assets had been completely disposed of or when their value fell below $1,000. Pet.App.5-6. There is no indication that the judge ever received such a notification. Pet.App.6.

Cisco immediately told the district court that a "blind trust" was not a sufficient response to the situation, and referred the court to Advisory Opinion No. 110 of the Committee on Codes of Conduct of the Judicial Conference of the United States (Aug. 2013). C.A.J.A.18583. Centripetal, for its part, urged the district court to do nothing further, arguing that (1) recusal under Section 455(b)(4) was unnecessary because (in Centripetal's view) the judge had decided "the issues in this case" before he knew of the stock ownership, and (2) the judge "acted exactly as Congress intended with Section 455(f)" by setting up the "blind trust." C.A.J.A.18586-18587.

In a written order dated October 2, 2020, the judge followed Centripetal's suggested course. First, the judge stated that Section 455(b)(4)'s automatic recusal requirement did "not apply because he had not discovered his wife's interest in Cisco until he had decided 'virtually' every issue and 'mostly drafted [the] opinion.'" Pet.App.6, 42-43. Second, the judge stated that, even if Section 455(b)(4) was applicable, the "blind

trust" constituted "divestiture" for purposes of Section 455(f). Pet.App.6, 43-48.

Three days later, on October 5, 2020, the judge issued his 167-page findings of fact and conclusions of law—37 pages longer than the 130-page draft he had referenced at the September 9 recusal hearing. Pet.App.6. The court also entered judgment against Cisco totaling over $2.75 billion. C.A.J.A.18380.

The judge then "continued to sit on post-trial motions that needed to be decided but had not even been briefed by the parties" prior to August 12. Pet.App.7, 22. Specifically, the judge rejected Cisco's post-trial motions "in a 49-page opinion … issued on March 17, 2021, while Judge Morgan knew his wife continued to hold stock in Cisco." Pet.App.22.

D. Court Of Appeals Proceedings

1. Cisco's appeal raised both "issues pertaining to the district court's infringement and damages findings" and the discrete question "[w]hether the district judge should have recused himself under §455(b)." Pet.App.7. Centripetal's responsive brief did not defend the judge's ruling (and its own prior argument, *see supra* p. 6) that Section 455(b)(4) was inapplicable. Instead, Centripetal contended only that the Section 455(f) safe harbor applied and that, at a minimum, any error in not recusing was harmless. *See* C.A. Dkt. 29 at 59-64.

Following oral argument, the Federal Circuit granted Centripetal's request for supplemental briefing on the recusal issue. Pet.App.7. Centripetal's supplemental brief repeatedly emphasized the unusual, unique, and fact-specific nature of the issue presented. *See generally* C.A. Dkt. 64.

The Federal Circuit reversed and remanded, unanimously holding both that (1) the judge's purported "blind trust" did not constitute divestment within the meaning of Section 455(f), and (2) the proper remedy was vacatur of the three rulings issued after the judge learned of the financial interest—the decision regarding recusal itself, the post-trial findings of fact and conclusions of law, and the opinion denying Cisco's post-judgment motions. Pet.App.28.

2. The Federal Circuit held first that "Judge Morgan was required to recuse under § 455(b)(4) absent divestiture under § 455(f)," noting that "Centripetal itself does not dispute" this view of the law. Pet.App.7; *see also* Pet.App.8 (Section 455(b)(4) is a "bright-line rule" requiring recusal to which Section 455(f) "stands as the only exception").[1]

The Federal Circuit next held that the judge's "blind trust" did not qualify as a "divest[ment]" of a "financial interest" within the meaning of Section 455(f). Pet.App.8-15. Centripetal "admit[ted] that there are no cases holding that placement of stock in a blind trust constitutes divestment" and cited "an unsupported assertion in a law review article" as its "only authority … for its argument." Pet.App.10.

The panel's "'starting point'" was accordingly "'the language of the statute.'" Pet.App.11. Because Section 455(f) "does not define 'divest,'" the panel "'look[ed] first to the word's ordinary meaning … at the time Congress enacted the statute.'" Pet.App.11. Reviewing three dictionaries from the time of the statute's enactment, the panel found that they all defined "divest"

[1] This case does not implicate 28 U.S.C. § 455(a), which mandates recusal when the judge's "impartiality might reasonably be questioned." Pet.App.7.

as "to 'dispossess or deprive.'" Pet.App.11. The panel also observed that the statute defines the "financial interest" that must be divested to mean "'*ownership* of a legal or equitable interest, however small.'" Pet.App.11 (citing 28 U.S.C. § 455(d)(4) (emphasis in original)).

Combining these two definitions, the court held that "it logically follows that to 'divest' oneself of 'ownership' of a legal or equitable interest is possible only if one is 'deprived or dispossess[ed]' of ownership—something that is only possible if the interest is sold or given away." Pet.App.11-12. This conclusion, the court noted, was supported by Section 455(b)(4)'s statement that recusal is required when the judge or his or her family member "*has* a financial interest" in a party, as the blind trust meant that the judge's wife "still *ha[d]* a financial interest" in Cisco—namely stock ownership—even though she did not directly control the stock. Pet.App.12. This reading also aligned with the view of the Committee on Codes of Conduct of the Judicial Conference of the United States, which stated—in the same opinion Cisco cited to the district court—that a "judge's use of a blind trust does not obviate the judge's recusal obligations," a view that was "entitled to … some weight" because "Congress enacted § 455(b) to match Canon 3C of the Code of Judicial Conduct." Pet.App.12-13; *see also Liljeberg* v. *Health Services Acquisition Corp.*, 486 U.S. 847, 858 n.7 (1988) (noting that Section 455 was "amended … to conform with the recently adopted ABA Code of Judicial Conduct, Canon 3C").

In addition to considering the statute's plain text, the court of appeals also concluded that "two central purposes of the statute … would be undermined by defining divestment to include placement of stock in a blind trust." Pet.App.13. First, 28 U.S.C. § 455(c) re-

quires a judge to "inform himself" about his financial interests and at least "make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children." Pet.App.14-15. A blind trust would "by definition" prevent judges from complying with that obligation, since it is "designed to shield [them] from such knowledge." Pet.App.15.

Second, unless the stock is sold immediately upon being placed in the blind trust (which did not happen here), the judge would continue to preside over the case "for which he knows he or his spouse has a beneficial interest in the outcome." Pet.App.13. Indeed, a comparable Executive Branch regulation requires recusal despite the use of a blind trust until the asset at issue is either "'disposed of or has a value of less than $1000,'" precisely because "'the interested party knows what assets he or she placed in the trust'" and "'the possibility still exists that the interested party could be influenced in the performance of official duties by those interests.'" Pet.App.14 (quoting 5 C.F.R. § 2634.403(a)(2)).

Finally, the panel rejected the judge's concern that selling the Cisco stock would create an "appearance of insider trading." Pet.App.15 n.9. Federal law permits such sales by a "'judicial officer[]'" "to comply with ethical obligations." Pet.App.15 n.9 (citing Pub. L. No. 112-105, 126 Stat. 291, 297-298 (2012)).

3. The Federal Circuit also rejected Centripetal's argument that the judge's rulings issued with knowledge of the financial interest should remain in place notwithstanding his obligation to recuse. Pet.App.16-28. The Federal Circuit applied the three-factor test that this Court articulated in *Liljeberg*, 486 U.S. at 864. *E.g.*, Pet.App.17.

As to the first *Liljeberg* factor—"the risk of injustice to the parties in the particular case," 486 U.S. at 864—the Federal Circuit held that Centripetal failed to show that any of the normal "circumstances in which courts have found" the first factor met "were present in this case," Pet.App.17. Specifically:

- The rulings at issue did not involve a pure question of law, but instead "resulted from a bench trial in which Judge Morgan exercised broad discretion in making findings of fact and credibility determinations," Pet.App.17-19;
- Cisco did not delay in raising its recusal motion, as it moved "just nine days after [the judge] disclosed his wife's ownership of Cisco stock," Pet.App.20;
- Comparatively little time had passed since the rulings in question and, in any event, a new district judge could potentially "resolve the case based on the transcript from the previous trial," Pet.App.20-21 & n.13; and
- Centripetal had failed to make "'a showing of special hardship by reason of [its] reliance on the original judgment,'" Pet.App.21.

The court of appeals also rejected Centripetal's novel arguments regarding "injustice" that lacked any support in "existing authorities." Pet.App.21-25. First, Centripetal's assertion that the judge had decided the case in full before learning of his wife's stock ownership was "not a fair characterization of the facts." Pet.App.21-22; *see also supra* pp. 5, 7. Second, the panel rejected Centripetal's assertion that Cisco suffered no prejudice because it had failed to show "actual bias," observing that (1) Section 455(b)(4) is triggered by "a

known financial interest" in a party, which "creates not only the appearance of impropriety but impropriety itself" and (2) requiring a showing of actual bias "would require the sort of line drawing that the statute was designed to avoid." Pet.App.23.[2] Third, the panel rejected Centripetal's reliance on "the time and cost of the litigation so far," noting Centripetal cited "no case where these considerations alone led to a finding of harmless error" and that the same basic argument could be made in every case involving Section 455(f). Pet.App.25.

Finally, the panel rejected Centripetal's argument that the judge's wife "owned stock in the losing party" and thus would be "adversely affected, not benefited by his decision," such that Cisco suffered no prejudice. Pet.App.24-25. Not only did "Congress … not make recusal obligations contingent on which party's stock was owned," but Centripetal's argument ignored the "substantial risk" that a judge "might bend over backwards to rule against the party" in which he or a family member owns stock in order to "*prove* that there is no bias." Pet.App.24-25 (emphasis added).

As to the second *Liljeberg* factor—"the risk that the denial of relief will produce injustice in other cases," 486 U.S. at 864—the Federal Circuit found that refusing to vacate would "suggest that sitting on a case in which the judge's family has a financial interest is not a serious issue," Pet.App.26. In contrast, vacating the judge's rulings after he learned of his wife's ownership of the stock would "signal to judges in other cases the

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[2] The Federal Circuit relatedly rejected Centripetal's "odd[]" claim that Cisco had admitted "Judge Morgan held no actual bias" by not separately appealing a claim under 28 U.S.C. § 455(a). Pet.App.23 n.15. "There was no such admission." Pet.App.23 n.15.

importance of complying strictly with the procedures spelled out in § 455(f)." Pet.App.26.

For the third *Liljeberg* factor—"the risk of undermining the public's confidence in the judicial process," 486 U.S. at 864—the Federal Circuit concluded that refusing to vacate would "strike at the heart of what [Section 455] was designed to protect," Pet.App.26-27. Put simply, "[i]t is seriously inimical to the credibility of the judiciary for a judge to preside over a case in which he has a known financial interest in one of the parties and for courts to allow those decisions to stand." Pet.App.27. The panel expressly rebuffed Centripetal's assertion that vacatur would undermine the public's "confidence in the finality of judgments," explaining that "[i]t simply cannot plausibly be argued that public confidence in the judiciary will be degraded by a decision that vacates a judge's rulings rendered while he had a known financial interest in one of the parties." Pet.App.27-28.

Centripetal did not petition for rehearing or rehearing en banc. The Federal Circuit issued its mandate, and the case has been reassigned to another district judge, who held a status conference on October 18, 2022, at the parties' joint request.

REASONS FOR DENYING THE PETITION

I. THE PETITION SEEKS REVIEW OF ISSUES THAT ARE SPLITLESS, FACTBOUND, EXTREMELY RARE, AND NOT CLEANLY PRESENTED

The petition asks this Court to review two questions that no circuit other than the Federal Circuit has addressed and that turn on the unusual facts of this case. Such petitions are "rarely granted," S. Ct. R. 10,

and Centripetal fails to show this case is the rare exception to that rule.

The Federal Circuit first considered whether, under the specific facts of this case, Judge Morgan's decision to place his wife's stock in a "blind trust" eliminated the need to recuse. *See supra* pp. 8-10. The panel next applied the proper three-factor test laid out in *Liljeberg* in assessing whether the judge's error was harmless. *See supra* pp. 10-13. The unanimous panel concluded that vacatur was necessary only after considering the specific circumstances of this "very unusual case," "where the judge discovers a clear disqualifying interest under §455(b)(4), recusal is required, there is a failure to divest, and the judge proceeds to rule on the case despite that clear obligation." Pet.App.28; *see also* Pet.App.26 (highlighting the "unique" "specific facts of this case").

Centripetal has not identified any split in authority. Indeed, Centripetal "admit[ted]" to the Federal Circuit that "there are no cases holding that placement of stock in a blind trust constitutes divestment." Pet.App.10; *see also* C.A. Dkt. 64 at 4 (Centripetal arguing that this case "involves the rare factual scenario invoking a recusal question of first impression"). While Centripetal now claims that the Federal Circuit's interpretation "[c]onflicts [w]ith [t]his Court's [c]aselaw," Pet. 17, the only decisions that it cites from this Court are (1) *Liljeberg* (which does not even mention Section 455(f), much less the word "divest") and (2) a handful of rulings that stand for the generic proposition that a court should consider "context" when interpreting a statute, Pet. 18, 21, 24. Centripetal does not even argue that this issue is subject to any ongoing percolation that might yield a circuit split—though even if it had, that

would be a basis to await further circuit decisions, rather than to grant the first petition to present the issue.

Centripetal's efforts to manufacture a split based on the Federal Circuit's fact-heavy *Liljeberg* analysis fare no better. Centripetal acknowledges that *Liljeberg* states the proper test and that the Federal Circuit articulated and applied it. Pet. 24-25. And Centripetal concedes that whether "a given §455 violation warrants vacatur" is a quintessential "case-by-case" decision that Congress "left … 'to the judiciary.'" Pet. 6-7. Indeed, while Centripetal (wrongly) argues that the Federal Circuit decision "conflicts with *Liljeberg* on every level," Centripetal principally distinguishes *Liljeberg* based on its facts. Pet. 25-26 (trying to distinguish *Liljeberg* because it "involved a judge who ruled in favor of a university where the judge sat as a trustee and failed to immediately disclose the conflict").

Centripetal tries to create a contrast with various decisions that (in Centripetal's view) better rooted their rulings in the specific facts of the case or paid "clos[er] attention to the prejudice" that vacatur would cause the party that won below. Pet. 27-29. That does not amount to a division in authority; Centripetal offers no basis to conclude that this case would have come out differently in any other circuit. Moreover, the Federal Circuit considered the facts of this case—and each of Centripetal's prejudice arguments—in painstaking detail. Pet.App.16-25.

Although Centripetal discusses cases it believes took a different approach, it does not mention that the Federal Circuit explained how this case differed in critical respects from those decisions. *See* Pet. 29 (citing *United States* v. *Cerceda*, 172 F.3d 806 (11th Cir. 1999) (en banc); *In re School Asbestos Litig.*, 977 F.2d 764 (3d

Cir. 1992); *Parker* v. *Connors Steel Co.*, 855 F.2d 1510 (11th Cir. 1988)); Pet. 30 (citing *In re Continental Airlines Corp.*, 901 F.2d 1259 (5th Cir. 1990); *Patterson* v. *Mobil Oil Corp.*, 335 F.3d 476, 485 (5th Cir. 2003)); *see also* Pet. 31 (citing *Parker*, *Cerceda*, and *Continental*). Most involved trial-court decisions on pure questions of law reviewed *de novo* on appeal (e.g., summary judgment rulings), such that the district court's ruling was ultimately of no moment. *See* Pet.App.17-18 & n.11. In contrast, the "rulings at issue in this case resulted from a bench trial in which Judge Morgan exercised broad discretion in making findings of fact and credibility determinations." Pet.App.18. Indeed, Centripetal "relie[d] heavily" upon the judge's "'broad discretion' in arguing for affirmance of the judgment." Pet.App.18. And *Cerceda* dealt with "multiple criminal defendants, it had been six years since one of the trials, and one of the key witnesses—who had been 84 years old and in poor health at the time of the first trial—would have been over 90 years old at the time of a new trial." Pet.App.20. By contrast, Centripetal has not made "any actual showing of staleness of evidence or fading of witness' memories in the time since the trial was held two years ago." Pet.App.20.[3]

Finally, Centripetal's assertions that it has presented issues of national importance that will affect many other cases and "rob[]" Section 455(f) "of most of its ameliorative force" (Pet. 32-34) cannot be taken seriously. Centripetal itself repeatedly told the Federal Circuit that the facts of this case are *sui generis*. *See*, *e.g.*, C.A. Dkt. 64 at 1 (a "unique quandary"); *id.* at 10

[3] Moreover, the en banc Eleventh Circuit in *Cerceda* was "equally divided" as to whether an ethical violation had even occurred. 172 F.3d at 811.

("unique circumstances of this case"); *id.* at 14 ("unique circumstances"); *see also id.* at 1 ("unusual factual scenario); *id.* at 11 ("unusual facts of this case"). Most notably, Centripetal admitted that "the blind trust question has not yet been litigated despite § 455(f)'s enactment over three decades ago" and "[t]he specific fact pattern here is equally unlikely to arise again even in another three decades." *Id.* at 9. If, contrary to Centripetal's repeated admissions, the issue ever recurs and produces a split of authority, the Court could consider the issue at that time.[4]

Nor is there any basis for Centripetal's complaint that recusal issues will somehow disproportionately harm "innovative start-ups." Pet. 33. Centripetal could have avoided this situation had it agreed with Cisco and encouraged the judge to comply with the statute by selling or giving away the stock or else recusing. Instead, Centripetal purported to waive an unwaivable conflict, 28 U.S.C. § 455(e), inviting and encouraging the statutory violation. *See supra* pp. 5-6.

Moreover, Centripetal is not an under-resourced "small inventor[]." Pet. 33. One of its co-founders told Congress that Centripetal invested $200 million into research and development. FIF Amicus Br. 2-3. And Centripetal's chief financial officer revealed at his deposition that Centripetal's litigation campaign has benefited from financing from an outside corporate entity, though he refused to identify the entity or the amount

[4] For the Federal Circuit's fact-specific decision to govern any future case, a future judge would have to (1) overlook a disqualifying interest until the advanced stages of a case; (2) discover the interest when an important decision was under submission but not yet issued; (3) refuse to sell or give away the asset and instead insist on continuing to own it, and it alone, through a "blind trust"; and (4) decide the case while the asset was still in the trust.

or terms of the financing. Dep. of Paul Barkworth at 44-46 (Dec. 11, 2019); *see* Bloomberg Law, *How Litigation Finance Works* (Feb. 24, 2020), tinyurl.com/4x3j38zf ("[L]itigation finance is when a third party invests in a lawsuit in exchange for a share of the profit."). That someone other than Centripetal is "putting up the cost of potentially expensive IP litigation in exchange for a cut of the potential award" undermines Centripetal's and its amici's repeated complaints of an uneven playing field. Davis, *Here's What Makes An IP Case Attractive To Litigation Funders*, Law360 (Oct. 14, 2022), https://tinyurl.com/3b84r5uz.

In any event, the specific facts of this case make it a poor vehicle for this Court's review. While the petition focuses on the legal ramifications of a "blind trust," this case does not involve a true blind trust. As the Federal Circuit explained (and Centripetal does not deny), the owner of a blind trust "places certain assets under the control of an independent trustee with the provision that the person is to have no knowledge of how those assets are managed." Pet.App.10; *accord* Pet. 9 n.1 (acknowledging that "[o]nce a blind trust is created, the transferor no longer knows whether the trustee has sold or retained the assets"). Here, by contrast, the Cisco stock was placed in an account by itself, just weeks before the judge issued his findings of fact and conclusions of law, and the trustee was instructed to inform the judge if the assets were sold or significantly decreased in value. *See supra* p. 6. Because no such notice was apparently received during the relevant period, the judge was aware that his wife continued to retain ownership of the shares when he issued his findings of fact and conclusions of law and, months later, denied Cisco's post-judgment motions. *See supra* pp. 6-7. Accordingly, even were the effect of a blind trust

under Section 455(f) somehow worthy of review, the Court should await a case where the judge was truly unaware of whether the disqualifying asset continued to be owned.[5]

Moreover, this Court's review of the Federal Circuit's interlocutory recusal ruling would likely not have any effect on the outcome. As Centripetal admits, the Federal Circuit did not address any of Cisco's arguments on the merits. Pet. 2. For the reasons Cisco pointed out in its Federal Circuit briefing, the district court's decisions on the merits were erroneous in numerous respects and required at minimum a vacatur and remand—a remand that would proceed before a new district judge in light of Judge Morgan's recent passing. Pet.App.29 & n.17. At any rate, this Court "generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction." *See Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (opinion of Scalia, J., respecting denial of certiorari).[6]

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[5] As amicus Eagle Forum acknowledges (at 5), "[w]hen a stock is in a [true] blind trust, the beneficiary has neither *knowledge* nor control of the holdings." (Emphasis added.) *See also* CFJ/CPR Amicus Br. 12 ("beneficiary has neither *knowledge* nor control of the trust's holdings" (emphasis added)). Here, the judge issued his findings of fact and presided for months over the briefing and decision of post-judgment motions, all with the knowledge of the ownership of Cisco stock.

[6] Amicus Fair Inventing Fund's assertion (at 8 n.4) that the Federal Circuit applied a "patent-specific rule[]" is unfounded. That the Federal Circuit happened to rule against a patent owner in this case was coincidental and irrelevant to its holding. *Cf.* USIJ Amicus Br. 15 (conceding that any effects that amicus believes the decision might have on "investors and entrepreneurs" are "[n]ot directly relevant to the issues in this case").

In sum, the petition's issues are splitless, factbound, extremely rare, unlikely to recur, not of national importance, interlocutory, and not squarely presented. The Court need go no further to deny the petition.

II. CENTRIPETAL HAS NOT SHOWN ANY ERROR IN THE FEDERAL CIRCUIT'S DECISION

In the interest of completeness, the balance of this brief explains why Centripetal has not shown any error in the Federal Circuit's analysis. Accordingly, even were the Court contemplating engaging in splitless and factbound error correction, there would be nothing to correct.

A. The Judge's Belated Decision To Place The Stock In A "Blind Trust" Was Not "Divest[ment]" Under Section 455(f)

"Statutory interpretation … begins with the text." *Ross* v. *Blake*, 578 U.S. 632, 638 (2016). And as the Federal Circuit explained, Section 455(f)'s plain text makes clear that placing stock in a purported "blind trust" does not amount to "divest[ing]" it. *See supra* pp. 8-10.

When Congress enacted Section 455(f) in 1988, the ordinary meaning of "divest" was to "dispossess or deprive" a person of something. Pet.App.11 (citing contemporary dictionary definitions). The question then becomes: "deprive of what"? Section 455(f) gives the answer: "of the interest that provides the grounds for the disqualification." 28 U.S.C. § 455(f). The same section makes clear that "the interest" that must be divested refers to "a financial interest in a party (other than an interest that could be substantially affected by the outcome)." *Id.* And Section 455's definitional sub-

section defines the term "financial interest": "*ownership* of a legal or equitable interest, however small." *Id.* § 455(d)(4) (emphasis added).

Accordingly, divestment under Section 455(f), by the statute's plain terms, requires that the judge (or his or her family member) be deprived or dispossessed of "ownership of" the disqualifying interest. Here, it is undisputed that even if the judge's wife did not have *control* over the stock while it was held in the supposed blind trust, she still had *ownership* of it. Centripetal certainly develops no argument to the contrary. As the Federal Circuit held, divestment requires that the stock be "sold or given away," Pet.App.11-12; neither happened.

Centripetal's primary argument is that this Court should not "myopically" consider the statutory language, but instead focus on what Centripetal believes the "purposes" of Section 455(f) are. *E.g.*, Pet. 2-3. But when "the language of the statute provides a clear answer," there is no need to consider anything else. *Hughes Aircraft Co* v. *Jacobson*, 525 U.S. 432, 438 (1999). This Court has accordingly rejected the invitation to "presume with petitioners that any result consistent with their account of the statute's overarching goal must be the law"; rather, the Court "presume[s] more modestly … 'that the legislature says what it means … and means … what it says.'" *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725 (2017).

Centripetal does not actually deny that "divest" means "deprive." It simply notes, quoting an online dictionary definition from this year, that one can divest of many things, such as "power, rights, and possessions," and then ventures that putting stock in a blind

trust deprives the owner of certain "rights and powers." Pet. 21 (quotation marks omitted). That argument might have been relevant if Section 455(f) were triggered by divestment of "rights and powers." But it isn't; it requires divestment of the otherwise disqualifying "financial interest," which—as explained above—the statute defines as "*ownership* of a legal or equitable interest, however small." 28 U.S.C. § 455(d)(4) (emphasis added).

While Centripetal chides the Federal Circuit for "breez[ing] past" other sources that Centripetal now calls "on-point," Pet. 22-23, it did not bring *any* of those sources to the Federal Circuit's attention—not in its principal brief, in its supplemental brief, or at oral argument. And for good reason. Not one of the documents cited involves the statutory provisions governing federal judges. Rather, those sources—which range from an unenacted piece of 2019 legislation to an amicus brief signed by a handful of former Executive Branch officials—deal largely with the special recusal issues surrounding the President and Vice President. *See* Pet. 22-23.[7]

Tellingly, Centripetal has no answer to the most analogous Executive Branch regulation, which the Federal Circuit discussed in detail. Pet.App.14. Interpreting a statute that also governs "financial interest[s]," 18 U.S.C. § 208(a), as well as "other Federal

[7] The only source Centripetal cites that does not focus solely on the President or Vice-President is a short, unsigned piece of commentary from the Congressional Research Service that questions whether a blind trust is an adequate method of divestiture. *See* CRS Reports & Analysis, Legal Sidebar: *Conflicts of Interest and the Presidency* (Oct. 14, 2016), https://bit.ly/3btjNXr ("[Q]uestions about [blind trust] arrangements remain: Could officials really forget what went into the trust?").

conflict of interest statutes and regulations," the Office of Government Ethics has provided that normal recusal rules apply even to assets in a "qualified blind trust" "until such time as [the owner] is notified by the independent trustee that such asset has been disposed of or has a value of less than $1,000." 5 C.F.R. § 2634.403(a)(2).

Nor does Centripetal address the only truly "on-point" authority in this case: the opinion of the Committee on Codes of Conduct of the Judicial Conference of the United States that a "judge's use of a blind trust does not obviate the judge's recusal obligations." Advisory Op. 110, Comm. on Codes of Conduct, Jud. Conf. of the U.S. (Aug. 2013), *cited in* Pet.App.12. As the Federal Circuit recognized but Centripetal ignores, the Committee's interpretation of the judicial ethics canons is particularly relevant here because—as this Court recognized—Congress drafted Section 455 to align with them. *See Liljeberg*, 486 U.S. at 858 n.7 (noting that Section 455 was "amended … to conform with the recently adopted ABA Code of Judicial Conduct, Canon 3C"); *see also* Pet.App.12-13 ("Congress enacted § 455(b) to match Canon 3C of the Code of Judicial Conduct.").

Given the failure of Centripetal's efforts to rewrite the statutory text, the Court need not dwell on Centripetal's atextual arguments regarding statutory purpose. But they fail too in any event.

Centripetal's primary objection is that the Federal Circuit's decision supposedly places judges in a difficult position—either recuse and let prior work on a case go to waste, or sell and create the perception of insider trading. Pet. 2, 3, 15, 16, 19, 20, 24, 34; *see also* USIJ

Amicus Br. 14. But that is a false dichotomy for several reasons.

First, Centripetal is simply wrong when it claims that a judge who qualifies for divestment under § 455(f) "will almost inevitably possess some arguably material non-public information about the parties." Pet. 19. A judge who discovers a conflict after resolving a complex motion to dismiss likely does not possess any material non-public information that would foreclose trading. As Centripetal acknowledges, the *potential* problem of insider trading will only occur in the rare scenario when a judge happens to discover a conflict "on the cusp of entering a decision that will impact the parties' stock prices." *Id.* That is the "particularly unusual factual scenario" here, C.A. Dkt. 64 at 1, but is hardly a recurring problem.

Second, there is another option beyond selling or recusing: a judge could "give[] away" the stock, e.g., to a charity. Pet.App.11-12. This approach could solve the problem where a judge truly views the financial interest as "trivial," Pet. 1—though that characterization here is Centripetal's, not the district judge's.

Third, even if the judge chose to sell the stock, it is pure speculation on Centripetal's part (at 15) that such a sale "will often" raise the appearance of insider trading. Centripetal cites no other case involving Section 455(f) where such a concern has been raised. That is likely because, as the Federal Circuit noted, selling stock in order to comply with "existing … ethical obligations governing … judicial officers" is *not* insider

trading. *See* Pet.App.15 n.9 (quoting Pub. L. No. 112-105, 126 Stat. 291, 298 (2012)).[8]

Fourth, it is far from clear that Section 455(f)'s safe harbor is even available if the judge truly possesses material non-public information that would affect the stock's value. Section 455(f) does not apply in situations where the financial interest "could be substantially affected by the outcome" of the court's ruling. In other words, judges who possess material non-public information that could "substantially affect[]" their asset likely cannot use Section 455(f) at all. While Cisco did not need to press that argument here, *see* Pet.App.9 n.5, that language makes clear that Congress intended Section 455(f) to be narrow in scope. That makes good sense, given that Section 455(f) is an exception to a situation that Congress concluded is sufficiently problematic to require automatic recusal—i.e., a judge or close family member owning a financial interest in a party. As this Court summarized in *Liljeberg*, Section 455(b)(4) is a "somewhat strict[] provision" that "requires disqualification no matter how insubstantial the financial interest and regardless of whether or not the interest actually creates an appearance of impropriety." 486 U.S. at 859 n.8.

In addition to overstating the difficulty of complying with the statute, Centripetal largely ignores the

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[8] Centripetal argues that such a sale could still create an *appearance* of impropriety. Pet. 20-21. But whether a judicial act creates the appearance of impropriety is judged from the perspective of a "reasonable person, knowing all the circumstances." *Liljeberg*, 486 U.S. at 860. It is difficult to imagine a reasonable person would conclude that a lawful action taken in order to comply with ethical obligations imposed by Congress put the impartiality of the judge into question. In any event, no such question is presented here.

statutory purposes that support the Federal Circuit's decision. Allowing a judge to comply with Section 455(f) by placing assets in a blind trust would conflict with Section 455(c)'s requirement that a "judge should inform himself about" his own financial interests and "make a reasonable effort to inform himself" about those of his spouse and minor children. Pet.App.15-16. Worse, unless the stock was immediately sold, the judge would *still know* of the continued ownership of the interest while continuing to preside over the case. Pet.App.13-14. Centripetal's only response to either point is that this Court should simply ignore the Section 455(c) argument because it is a "general obligation" that does not apply to the "specific problem addressed by §455(f)." Pet. 23-24. But Centripetal identifies nothing in the statute that permits a judge to disregard Section 455(c)'s mandate simply because it is inconvenient—particularly when a judge could comply with both provisions by selling the asset, giving it away, or recusing.

B. The Court Of Appeals Properly Applied The *Liljeberg* Factors To The Unusual Facts Of This Case

"In considering whether" to vacate a lower court decision because of judicial disqualification, this Court "do[es] well to keep in mind that in many cases … the Court of Appeals is in a better position to evaluate the significance of a violation than is this Court," and that the court of appeals' "judgment as to the proper remedy should … be afforded our due consideration." *Liljeberg*, 486 U.S. at 862. Here, as in *Liljeberg*, "[a] review of the facts demonstrates that the Court of Appeals' determination that [vacatur] is in order is well supported." *Id.*

a. As to the first *Liljeberg* factor—"the risk of injustice to the parties in the particular case," 486 U.S. at 864—this Court has considered whether "there is a greater risk of unfairness in upholding the judgment … than there is in allowing a new judge to take a fresh look at the issues," *id.* at 868-869. This includes considering whether the prevailing party below "has made a showing of special hardship by reason of their reliance on the original judgment" and whether the party seeking recusal unduly "delay[ed]" in seeking relief. *Id.* Here, the Federal Circuit rightly found that neither consideration was present—Centripetal did not identify any hardship special to this case, and Cisco sought recusal within nine days of learning of the conflict. Pet.App.19-21; *see also* Pet.App.47 (district judge agreeing that "nine days [was] a reasonable time within which Cisco may act"). The Federal Circuit also addressed—and refuted—every other fact-specific argument raised by Centripetal, including its conclusory assertion that the evidence in this case had gone stale and its suggestion, contradicted by the record, that the judge had fully decided the case before learning of his wife's stock purchase. Pet.App.18-25. Centripetal's quibbles with the Federal Circuit's fact-heavy analysis fall short.

First, Centripetal's argument mischaracterizes the record in certain key respects. For example, it contends that the judge "drafted the opinion and called for additional evidence on damages well before he learned about the stock." Pet. 29-30. Centripetal does not disclose that the Federal Circuit found this was "not a fair characterization of the facts," as the judge's merits opinion was far from complete, and the post-judgment motions had not even been filed and were not decided until months later. Pet.App.21-22; *see supra* pp. 5, 7.

Centripetal's related contention (at 8-9) that Cisco filed its recusal motion only after it was "aware" of the judge's "stated intention to rule for Centripetal" is also false. The judge did not reveal the outcome of the decision before the decision itself issued, long after Cisco moved for recusal. The judge himself made this clear at the hearing on the recusal motion, where he recognized that revealing the opinion's contents would be inappropriate. *See supra* pp. 5-6.

Second, Centripetal wrongly suggests that the Federal Circuit failed to take into account whether the judge or Centripetal had done anything "even arguably improper." Pet. 26; *see also* USIJ Amicus Br. 4; CFJ/CPR Amicus Br. 11. To the contrary, the Federal Circuit noted that the judge had continued to draft an additional 37 pages of his merits opinion and a 49-page post-judgment order even after learning of the stock ownership issue. Pet.App.22. In other words, whatever the judge had or had not decided regarding his *initial* merits decision before learning of his wife's stock ownership, the judge was undisputedly aware of the stock ownership during the six-month period while he was considering and deciding the parties' post-judgment briefing.

Moreover, Centripetal invited the judge's statutory violation. When the judge disclosed his stock ownership and indicated he did not intend to take any further steps, Centripetal immediately (and improperly) attempted to waive any objection. Pet.App.47; *see* 28 U.S.C. § 455(e) ("No … judge … shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b)."). And even after Cisco timely moved for recusal, Centripetal argued that Section 455(b)(4) did not apply at all—an argument that it has abandoned in this Court. *Com-*

pare Pet. 1 ("[A] judge with even a trivial financial interest in a party must recuse as a matter of course" unless Section 455(f) applies), *with* Pet.App.5 ("Centripetal opposed the Motion for Recusal on the grounds that §455(b)(4) was inapplicable[.]"). Finally, after the judge *sua sponte* announced that he believed that a "blind trust" solved the problem, Centripetal reassured him that he was "act[ing] exactly as Congress intended with Section 455(f)." C.A.J.A.18586-18587.

Had Centripetal acknowledged the statutory violation at any point—when the judge sent his August 12, 2020 email, when Cisco filed its recusal motion, or when the judge announced his "blind trust"—all of what followed could have been avoided. Instead, Centripetal encouraged the judge to violate Section 455. Having invited the error, Centripetal cannot claim a "special hardship" from its correction.

Third, Centripetal argues that the Federal Circuit did not consider the "costs" of "potentially redoing a trial" for a "small inventor" like Centripetal. Pet. 26-27. But the Federal Circuit did consider this argument and rightly rejected it—both because any party in Centripetal's situation would face significant costs on remand, and because Centripetal was unable to identify a single case crediting such an argument. Pet.App.24. This ruling was entirely in line with *Liljeberg*'s guidance that, to show prejudice, a party must identify "*special* hardship" arising from vacatur. 486 U.S. at 869 (emphasis added). Tellingly, all but one of the cases that Centripetal cites involved the run-of-the-mill harmless error test, not *Liljeberg*'s particular factors implementing Congress's special judicial ethics provisions in Section 455. *See* Pet. 27-28.

Centripetal's argument also misstates the facts. The Federal Circuit carefully did not *require* a new trial on remand, as it ordered vacatur of just three late-in-time decisions and instructed that the newly assigned district judge had the "ability to resolve the case based on the transcript from the previous trial." Pet.App.20-21 & n.13 (citing Fed. R. Civ. P. 63). Accordingly, further costs at the district court level may be quite limited. In any event, Centripetal may well not pay any out-of-pocket costs at all, given that it has obtained litigation financing. *See supra* pp. 17-18.

Fourth, Centripetal argues that Cisco was not prejudiced because Cisco "disclaimed any claim of bias, or even the appearance of bias, under §455(a)." Pet. 28 (emphasis omitted). To be clear, Cisco merely stated that it was not pursuing a challenge under *Section 455(a)*; Cisco did not concede that the judge's violation of Section *455(b)(4)* was not the result of actual bias and did not create the appearance of bias. Indeed, the Federal Circuit rejected Centripetal's argument. Pet.App.23 n.15 ("Centripetal oddly relies on Cisco's waiver of any violation under §455(a) as somehow an admission that Judge Morgan held no actual bias. There was no such admission.").

In any event, Centripetal does not cite a single decision requiring proof of "actual bias" as a condition for vacatur of a decision issued in violation of Section 455(b)(4). Its only authority is a Section 455(a) case—the type of case that the Federal Circuit rightly distinguished because, unlike Section 455(a), Section 455(b)(4) is triggered by "a known financial interest, which creates not only an appearance of impropriety but impropriety itself." *Compare* Pet.App.23 *with* Pet. 28. Indeed, it makes little sense to premise the remedy for a Section 455(b)(4) violation on a finding of actual

bias, which would "require the sort of line drawing that the statute was designed to avoid." Pet.App.23; *see also* Pet.App.23 n.16 (noting that Section 455(b)(4) was enacted precisely "because of the great difficulty in establishing actual prejudice in any particular case"). Notably, this Court in *Liljeberg* did not find actual bias, yet it nonetheless affirmed vacatur of the affected decisions. *See* 486 U.S. at 864-865 ("[W]e accept the District Court's finding that while this case was being tried Judge Collins did not have actual knowledge [of the conflict] … . The problem … is that people who have not served on the bench are often all too willing to indulge suspicions or doubts concerning the integrity of judges.").

Finally, Centripetal contends that Cisco cannot show any real prejudice because the judge "ruled *against* his supposed financial interest." Pet. 28; *see also* Pet. 4, 14, 15, 25; FIF Amicus Br. 8-9. Tellingly, nothing in Section 455(b)(4) makes "recusal obligations contingent on which party's stock was owned," and Centripetal identifies no case "suggesting that this is a relevant factor." Pet.App.25. Again, that is for good reason. A person in the judge's position would feel pressure to rule *against* the party in which he or she has an interest, just "to try to prove that there is no bias." Pet.App.25. Section 455(b)(4)'s bright line spares both judges from that temptation and parties and reviewing courts from having to try to detect it.

b. As to the second *Liljeberg* factor—"the risk that the denial of relief will produce injustice in other cases"—this Court asks whether vacatur will "encourag[e] a judge or litigant to more carefully examine possible grounds for disqualification and to promptly disclose them when discovered." 486 U.S. at 864, 868, *cited in* Pet.App.25. The Federal Circuit rightly explained that

vacating the decisions below "would signal to judges the importance of complying strictly with the procedures spelled out in § 455(f)," whereas not vacating "would suggest that sitting on a case in which the judge's family has a financial interest is not a serious issue." Pet.App.26.

Centripetal's primary response is that leaving the tainted rulings in place will not "be interpreted as a message of approval" since the Federal Circuit simultaneously made clear that a blind trust does not constitute divestiture under Section 455(f). Pet. 30. That argument would preclude vacatur in every case where an ethical violation has been found (perhaps short of a showing of actual bias, which as explained above is not the law). Regardless, Centripetal is wrong—declining to vacate would send the message that violations of Section 455(b)(4) are met with no real consequences.[9]

Centripetal also contends that the judge "took the late-discovered financial interest seriously and took prompt action designed to remedy it." Pet. 30. As with many of Centripetal's factual assertions, that is simply untrue. The judge initially denied that there was any problem at all, and proposed to do *nothing* other than disclose the stock ownership, C.A.J.A.18320—an unjustifiable approach that Centripetal heartily applauded. *See supra* p. 5. It was only after Cisco moved for recusal that the judge reluctantly took up the deficient "blind trust" approach. *See supra* pp. 5-6.

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[9] Centripetal's lone authority to the contrary was, as noted above, a summary judgment case reviewed *de novo*. Centripetal omits that the court also placed weight on the fact that "other cases appealed after a summary judgment ruling will receive fair, impartial treatment from this court." *Patterson*, 335 F.3d at 486.

c. As to the third *Liljeberg* factor—"the risk of undermining the public's confidence in the judicial process," 486 U.S. at 864—the Federal Circuit rightly concluded that "failure to vacate would strike at the heart of" Section 455's role in protecting the judiciary's credibility with the public, Pet.App.26-27. As the court explained, "[i]t simply cannot plausibly be argued that public confidence in the judiciary will be degraded by a decision that vacates a judge's rulings rendered while he had a known financial interest in one of the parties." Pet.App.27-28.

In response, Centripetal argues again that the judge acted reasonably. Pet. 31. That is wrong, for all the reasons discussed above. Most notably, the judge's choice to content himself with the "blind trust" approach is difficult to justify, given that Cisco pointed out that a blind trust was not a proper divestment and cited the Judicial Conference's on-point advisory opinion, which the judge did not even address in his recusal decision. That behavior is difficult to square with the expectation that "judges … [will] adhere to the highest standards" of ethical behavior and be "scrupulously attentive to both the letter and spirit" of such rules. Roberts, C.J., *2021 Year-End Report on the Federal Judiciary* at 3-4 (2021).

The Federal Circuit's application of the *Liljeberg* factors was accordingly correct in light of the highly unusual facts of this case. Further review is not warranted.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted.

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