No. 22-6557

In the Supreme Court of the United States

DIANA LOUISE HOUCK,

Petitioner,

v.

LIFESTORE BANK and
GRID FINANCIAL SERVICES, INC.,

Respondents.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Alan M. Ruley
Counsel of Record
Ryan M. Gaylord
BELL, DAVIS & PITT, P.A.
100 N. Cherry St. Suite 600
Winston-Salem, NC 27101
Telephone: (336) 722-3700
Facsimile: (336) 714-4101
aruley@belldavispitt.com
rgaylord@belldavispitt.com

Counsel for Respondent LifeStore Bank

COUNTERSTATEMENT OF QUESTION PRESENTED

I. Whether the U.S. Court of Appeals for the Fourth Circuit erred by granting Petitioner's request to exercise jurisdiction on cumulative finality grounds in its July 2015 Opinion;

II. Whether the U.S. District Court for the Western District of North Carolina properly entered judgment in a separate document for its February 2014 Order, pursuant to Fed. R. Civ. P. 58; and

III. Whether the Fourth Circuit correctly concluded that its July 2015 Opinion did not vacate the district court's February 2014 Order.

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On October 1, 2013, the U.S. District Court for the Western District of North Carolina dismissed Petitioner's claims against Substitute Trustee Services, Inc. ("***STS***"). *Houck v. LifeStore Bank*, 2013 WL 5476594 (W.D.N.C. Oct. 1, 2013) (No. 5:13-cv-66-DSC at Doc. No. 51); *see* App. 13a–18a.

On January 15, 2014, the district court dismissed some of Petitioner's claims against Grid Financial Services, Inc. ("***Grid***") and LifeStore Bank, F.S.A. ("***LifeStore***"), the Respondents to the instant petition for writ of certiorari. *Houck v. LifeStore Bank*, 2014 WL 197902 (W.D.N.C. Jan. 15, 2014) (No. 5:13-cv-66-DSC at Doc. No. 69); *see* App. 19a–26a.

On February 20, 2014, the district court dismissed Petitioner's remaining claims against Grid and LifeStore for lack of subject-matter jurisdiction. *Houck v. LifeStore Bank*, 2014 WL 690267 (W.D.N.C. Feb. 20, 2014) (No. 5:13-cv-66-DSC at Doc. Nos. 71–72); *see* App. 27–32a.

On August 27, 2014, the U.S. Court of Appeals for the Fourth Circuit dismissed Petitioner's appeal of the district court's October 1, 2013 Order as interlocutory. *Houck v. Substitute Tr. Servs., Inc.*, 582 F. App'x 230 (4th Cir. 2014) (No. 13-2326 at Doc. No. 32); *see* App. 33a–35a. On December 17, 2014, the Fourth Circuit granted a panel rehearing on this judgment. *Houck v. Substitute Tr. Servs., Inc.*, No. 13-2326 (4th Cir. Dec. 17, 2014) (Doc. No. 37); *see* App. 44a–45a.

On July 1, 2015, the Fourth Circuit reversed the district court's October 1, 2013 order dismissing STS. *Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473 (4th Cir. 2015) (No. 13-2326 at Doc. No. 68); *see* App. 46a–78a.

On March 8, 2021, the district court granted Petitioner a $260,175.27 judgment against STS. *Houck v. LifeStore Bank*, 2021 WL 970495 (W.D.N.C. Mar. 8, 2021) (No. 5:13-cv-66-DSC at Doc. No. 108); *see* App. 79a–82a.

On July 19, 2022, the Fourth Circuit dismissed Petitioner's appeal of the district court's February 20, 2014 Order. *Houck v. LifeStore Bank*, 41 F.4th 266 (4th Cir. 2022) (No. 21-1280 at Doc. No. 89); *see* App. 2a–11a. On August 17, 2022, the Fourth Circuit denied rehearing on this judgment. *Houck v. LifeStore Bank*, No. 21-1280 (4th Cir. Aug. 17, 2022) (Doc. No. 93); *see* App. 85a.

RELEVANT AUTHORITY

Statutory Provisions

"The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States, . . . except where a direct review may be had in the Supreme Court." 28 U.S.C. § 1291 (emphasis added).

"The Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for." 28 U.S.C. § 1292(e).

"The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and courts of appeals. . . . Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title." 28 U.S.C. § 2072(a), (c).

"[A]ny writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." 28 U.S.C. § 2101(c).

"[N]o appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree." 28 U.S.C. § 2107(a) (emphasis added).

Federal Rules of Appellate Procedure

"An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by Rule 4. . . . An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal." Fed. R. App. P. 3(a)(1), (2).

"In a civil case, . . . the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(A).

Federal Rules of Civil Procedure

"When an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b).

"Every judgment and amended judgment must be set out in a separate document." Fed. R. Civ. P. 58(a).

INTRODUCTION

In February 2014, the U.S. District Court for the Western District of North Carolina dismissed Petitioner's complaint in its entirety, including her claims against Respondents. Petitioner did not seek to appeal this judgment until 2021, and the U.S. Court of Appeals for the Fourth Circuit correctly dismissed this attempt as untimely and jurisdictionally barred. Petitioner now asks this Court to revive her claims against Respondents, nine years after they were dismissed. However, "[t]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement," *Bowles v. Russell*, 551 U.S. 205, 214 (2007), and Petitioner raises no legal or factual basis for this Court to ignore the constitutional and statutory framework of bright-line rules for the timely invocation of appellate jurisdiction.

Instead, Petitioner attempts to sidestep these procedural bars by challenging the Fourth Circuit's prior application of the cumulative finality doctrine to reach the merits of her claims against a different defendant. But Petitioner herself requested that the Fourth Circuit exercise jurisdiction on cumulative finality grounds in that case. Moreover, to the extent that Petitioner was "confused" by the jurisdictional basis for the Fourth Circuit's prior decision, she could have sought this Court's review of that issue—but she never did so. Thus, Petitioner's proposed question of cumulative finality is not properly before this Court.

Petitioner's remaining proposed questions—purportedly relating to the application of Fed. R. Civ. P. 58 and the jurisdictional effects of *vacatur*—are not presented by the facts of this case. The district court properly entered its judgment

on a separate document in February 2014, and that judgment was not disturbed by any subsequent decision from the district court or from the Fourth Circuit.

Accordingly, none of the three questions presented by Petitioner are appropriate for this Court's review. The petition for certiorari should be dismissed in its entirety.

STATEMENT OF THE CASE

In April 2013, Petitioner Diana L. Houck filed a complaint against Substitute Trustee Services, Inc. ("***STS***"), Grid Financial Services, Inc. ("***Grid***"), and LifeStore Bank, F.S.A. ("***LifeStore***"). *See Houck v. LifeStore Bank*, No. 5:13-cv-66-DSC (W.D.N.C. May 9, 2013) (Doc. Nos. 1, 7). In relevant part, Petitioner alleged that she borrowed money from a predecessor of LifeStore in 2004, that she refinanced the loan in 2007 with security from a deed of trust on real property, that she lost her job and fell behind on the loan payments, and that STS improperly foreclosed on her home in 2011. *See id.*

In October 2013, the U.S. District Court for the Western District of North Carolina dismissed Petitioner's claims against STS (the "***October 2013 Order***"). *Houck v. LifeStore Bank*, 2013 WL 5476594 (W.D.N.C. Oct. 1, 2013) (No. 5:13-cv-66-DSC at Doc. No. 51); *see* App. 13a–18a. Petitioner promptly filed a notice of appeal regarding the October 2013 Order. *See Houck v. LifeStore Bank*, No. 5:13-cv-66-DSC (W.D.N.C. Oct. 28, 2013) (Doc. No. 57).

In January 2014, the district court dismissed some of Petitioner's claims against Grid and LifeStore. *Houck v. LifeStore Bank*, 2014 WL 197902 (W.D.N.C.

Jan. 15, 2014) (No. 5:13-cv-66-DSC at Doc. No. 69); *see* App. 19a–26a. In February 2014, the district court dismissed Petitioner's remaining claims against Grid and LifeStore for lack of subject-matter jurisdiction (the "***February 2014 Order***"). *Houck v. LifeStore Bank*, 2014 WL 690267 (W.D.N.C. Feb. 20, 2014) (No. 5:13-cv-66-DSC at Doc. Nos. 71–72); *see* App. 27–32a. As every court to consider the matter has correctly concluded, the February 2014 Order constituted a final judgment disposing of the entire case. *See* App. 4a–5a, 54a–56a; *see also Houck v. LifeStore Bank*, No. 5:18-cv-22-MOC (Bankr. W.D.N.C. Feb. 5, 2018) (Doc. No. 1 at 17).

Petitioner promptly moved the district court to reconsider the February 2014 Order, pursuant to Fed. R. Civ. P. 60. *Houck v. LifeStore Bank*, No. 5:13-cv-66-DSC (W.D.N.C. Feb. 27, 2014) (Doc. No. 73). The district court denied Petitioner's motion on February 27, 2014. *Houck v. LifeStore Bank*, No. 5:13-cv-66-DSC (W.D.N.C. Feb. 27, 2014) (Doc. No. 73). Accordingly, the statutory 30-day limitations period for filing a notice of appeal commenced on February 27, 2014 and closed on March 31, 2014. *See* Fed. R. App. P. 4(a)(1)(A), 4(a)(4)(A), 26(a)(1)(C); *see also* 28 U.S.C. § 2107(a). Petitioner did not file any notice of appeal within this period, so the federal appellate courts' authority to exercise jurisdiction over the February 2014 Order expired on March 31, 2014.

Several months later, in August 2014, the U.S. Court of Appeals for the Fourth Circuit dismissed Petitioner's pending appeal of the October 2013 Order as interlocutory. *Houck v. Substitute Tr. Servs., Inc.*, 582 F. App'x 230 (4th Cir. 2014)

(No. 13-2326 at Doc. No. 32); *see* App. 33a–35a. In October 2014, Petitioner asked the Fourth Circuit to "clarify" its ruling, arguing that it could "determine that all claims against Life[S]tore were dismissed and take the appeal up for consideration since, in that case, any interlocutory defect would have been cured." App. 42a; *see generally Houck v. Substitute Tr. Servs., Inc.*, No. 13-2326 (4th Cir. Oct. 16, 2014) (Doc. No. 35).

In December 2014, the Fourth Circuit granted panel rehearing on these grounds. *Houck v. Substitute Tr. Servs., Inc.*, No. 13-2326 (4th Cir. Dec. 17, 2014) (Doc. No. 37); *see* App. 44a–45a. In July 2015, the Fourth Circuit concluded that it had jurisdiction over the appeal based on the district court's final judgment pursuant to the February 2014 Order, reversed the October 2013 Order, and remanded for further proceedings (the "***July 2015 Opinion***"). *Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473 (4th Cir. 2015) (No. 13-2326 at Doc. No. 68); *see* App. 46a–78a.

On remand, Petitioner proceeded against STS as the sole defendant. *See Houck v. LifeStore Bank*, No. 5:18-cv-22-MOC (Bankr. W.D.N.C. Feb. 5, 2018) (Doc. No. 1 at 17). In March 2021, after further factfinding and legal analysis in the bankruptcy court, the district court adopted the bankruptcy court's conclusions and granted Petitioner a $260,175.27 judgment against STS (the "***March 2021 Order***"). *Houck v. LifeStore Bank*, 2021 WL 970495 (W.D.N.C. Mar. 8, 2021) (No. 5:13-cv-66-DSC at Doc. No. 108); *see* App. 79a–82a.

Petitioner filed a timely notice of appeal challenging the March 2021 Order. *Houck v. LifeStore Bank*, No. 5:13-cv-66-DSC (W.D.N.C. Mar. 12, 2021) (Doc. No. 111). But on appeal, Petitioner did not contest her damages against STS or the district court's relevant conclusions in the March 2021 Order; instead, she asked the Fourth Circuit to reverse the February 2014 Order dismissing her claims against Grid and LifeStore. *See generally Houck v. LifeStore Bank*, No. 21-1280 (4th Cir. May 24, 2021) (Doc. No. 28). Because Petitioner had failed to note a timely appeal from the February 2014 Order, Grid and LifeStore moved the Fourth Circuit to dismiss Petitioner's new appeal for lack of jurisdiction. *Houck v. LifeStore Bank*, No. 21-1280 (4th Cir. June 7, 2021) (Doc. No. 31).

In July 2022, the Fourth Circuit ultimately agreed, concluding that it "lack[ed] jurisdiction because [Petitioner] failed to appeal the February 2014 judgment within 30 days of its entry," as required by 28 U.S.C. § 2107(a) and Fed. R. App. P. 4(a) (the "***July 2022 Opinion***"). App. 7a; *see generally* App. 2a–11a; *Houck v. LifeStore Bank*, 41 F.4th 266 (4th Cir. 2022) (No. 21-1280 at Doc. No. 89). The Fourth Circuit specifically concluded that it "did not, in the prior appeal, have jurisdiction to review the judgment dismissing LifeStore and Grid," App. 8a, and that its "application of the cumulative finality doctrine [ ] did not somehow open [its] appellate review to consideration of the judgment dismissing LifeStore and Grid," App. 11a.

In August 2022, Petitioner again requested that the Fourth Circuit grant rehearing on its July 2022 Opinion. *Houck v. LifeStore Bank*, No. 21-1280 (4th Cir.

Aug. 2, 2022) (Doc. No. 91). The Fourth Circuit denied the motion. *Houck v. LifeStore Bank*, No. 21-1280 (4th Cir. Aug. 17, 2022) (Doc. No. 93); *see* App. 85a.

In November 2022, this Court granted Petitioner's motion for an extension of time within which to file a petition for a writ of certiorari to January 14, 2023. *Houck v. LifeStore Bank*, No. 22-6557 (U.S. Nov. 10, 2022). On January 13, 2023, Petitioner timely filed the instant petition for writ of certiorari. *Houck v. LifeStore Bank*, No. 22-6557 (U.S. Jan. 13, 2023).

ARGUMENT

This Court should deny the petition for writ of certiorari in its entirety, because each of the three issues that it raises is not properly before this Court.

I. The Fourth Circuit's application of the cumulative finality doctrine in July 2015 is not appropriate for this Court's review.

In her primary argument for a writ of certiorari, Petitioner invites this Court to "establish bright line rules for cumulative finality." Pet. 19; *see generally* Pet. 9–21. Petitioner's argument appears to rest on three distinct grounds. First, she alleges that the Fourth Circuit improperly "found cumulative finality where the appellant had not requested it but had only filed for an interlocutory appeal." Pet. 8. Second, she argues that the Fourth Circuit improperly "chose to make the appeal final knowing that [Petitioner] had not appealed Grid and Life[S]tore and undertook no fairness analysis, as required by precedence [sic]." Pet. 10. Third, she raises a vaguely defined circuit split regarding the scope, legal basis, and specific application of the cumulative finality doctrine, among other issues. Pet. 19–21. Because these issues are not properly before this Court and are not presented by

the facts below, this Court should decline to grant certiorari on the cumulative finality question raised by Petitioner.

A. Petitioner's challenge to the July 2015 Opinion is untimely.

At the outset, Petitioner's first question presented is not properly before this Court. Petitioner's criticisms of the Fourth Circuit's application of cumulative finality unambiguously and exclusively relate to the July 2015 Opinion: "the Fourth Circuit, knowing the intent of [Petitioner], should [ ] have not found cumulative finality and sent the case back down." Pet. 13. So these arguments, even if meritorious, would not establish any reversible errors of fact or law in the Fourth Circuit's July 2022 Opinion.

The relevant federal statutory authority provides that any petition for writ of certiorari on a given "judgment or decree in a civil action" must be made "within ninety days after the entry of such judgment or decree." 28 U.S.C. § 2101(c). The Fourth Circuit invoked cumulative finality and ruled in Petitioner's favor in July 2015. *See Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473 (4th Cir. 2015) (No. 13-2326 at Doc. No. 68); *see* App. 46a–78a. Petitioner filed the instant petition for writ of certiorari on January 13, 2023. *See Houck v. LifeStore Bank*, No. 22-6557 (U.S. Jan. 13, 2023).

Although Petitioner obtained an extension of time to file a petition for writ of certiorari following the July 2022 Order, *see* App. 86a, this does not permit her to seek this Court's review of an appellate judgment that was entered nearly eight

years prior.[1] Accordingly, this Court lacks jurisdiction to consider Petitioner's untimely cumulative finality arguments.

B. Petitioner specifically requested that the Fourth Circuit exercise jurisdiction over her appeal of the October 2013 Order, on cumulative finality grounds.

Even if this Court were to conclude that Petitioner's cumulative finality arguments are properly before this Court with respect to the July 2022 Opinion, Petitioner's assertion that the Fourth Circuit improperly "found cumulative finality where the appellant had not requested it" is straightforwardly contradicted by the record. *See* Pet. 8.

Petitioner repeatedly alleges that she "neither wanted finality nor asked for it at a time when there was no finality." Pet. 9. For example, she claims that she "did not ask for, and certainly did not 'benefit' from, cumulative finality," and that "[n]o one asked [her] if she wanted cumulative finality; she would have rejected it." Pet. 13. As a result, in Petitioner's view, "[t]here was never any notice that cumulative finality was a consideration until after it was done." Pet. 14.

Of course, filing an interlocutory notice of appeal inherently presents a request for the court of appeals to exercise its jurisdiction, if possible, to review the challenged order. But Petitioner did more: in her October 2014 "Motion for

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[1] Respondent notes that this approach is consistent with Petitioner's litigation strategy throughout this case: Petitioner has repeatedly elected to proceed on her more advantageous claims rather than pursue appeals of adverse rulings, then attempted to obtain retroactive review of those rulings once their disadvantageous consequences became clear. The constitutional and statutory framework of bright-line rules for timeliness of appellate jurisdiction does not permit this approach.

Clarification," she specifically asked the Fourth Circuit to "determine that all claims against Life[S]tore were dismissed and take the appeal up for consideration since, in that case, any interlocutory defect would have been cured." App. 42a; *see generally Houck v. Substitute Tr. Servs., Inc.*, No. 13-2326 (4th Cir. Oct. 16, 2014) (Doc. No. 35).

Accordingly, Petitioner's statement that she "had not requested" cumulative finality in her appeal of the October 2013 Order is flatly false. Pet. 8. And as a result, the issue raised by Petitioner regarding whether the exercise of jurisdiction pursuant to the cumulative finality doctrine was "permissive" or "mandatory" is irrelevant to the facts of this case. *See* Pet. 9, 18. The Fourth Circuit cannot be sanctioned for "creat[ing] a forced appeal" that Petitioner unambiguously requested. Pet. 18.

Petitioner's factual errors are not limited to whether she had invoked cumulative finality in her prior appellate proceedings. Her assertions that the Fourth Circuit "vacate[d] the judgment so that the appeal was never ripe" and that her "ability to appeal ripened in 2021" are also incorrect, as set forth in Section I.C *infra*. Pet. 11, 13.

C. Petitioner's proposed cumulative finality question is not presented by the facts of this case.

Petitioner also argues that the Fourth Circuit requires a "fairness analysis" in support in cumulative finality and that this Court must resolve a vaguely defined circuit split regarding the scope, legal basis, and specific application of the cumulative finality doctrine. Pet. 12, 14, 17, 19–21 (citing *Equip. Fin. Grp., Inc. v.*

Traverse Computer Brokers, 973 F.2d 345, 348 (4th Cir. 1992); *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1 (1980); *FirsTier Mortg. Co. v. Invs. Mortg. Ins. Co.*, 498 U.S. 269 (1991)).

Even setting aside Petitioner's jurisdictional and factual errors, these arguments are irrelevant to the procedural history of this case. The Fourth Circuit's application of the cumulative finality doctrine in the July 2015 Opinion did not affect Petitioner's right to seek appellate review of the February 2014 Order, because at that point in time, the appeals period for the February 2014 Order had long since opened and closed.

Under a straightforward reading of 28 U.S.C. § 2107(a), when a final judgment resolving all claims as to all parties is first reached, "a civil litigant seeking review of a district court's final decision must file a notice of appeal 'within thirty days after the entry of such judgment, order or decree.'" *Hudson v. Pittsylvania Cty., Va.*, 774 F.3d 231, 235 (4th Cir. 2014) (citing § 2107(a)). After the conclusion of that period, the federal appellate courts lack jurisdiction to review any component of the judgment that was not already raised on appeal. Critically, the appeals window does not reopen.[2] The jurisdictional statute provides no basis to

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[2] This conclusion is consistent with the Fourth Circuit's holding that only "an interlocutory order from which no appeal lies is merged into the final judgment and open to review on appeal from that judgment." *Calderon v. GEICO Gen. Ins. Co.*, 809 F.3d 111, 120 (4th Cir. 2015) (emphasis added). The February 2014 Order dismissing Grid and LifeStore presented a final judgment that was eligible for immediate appeal, so it was not merged into the district court's subsequent final judgment in the March 2021 Order.

A final judgment begins the 30-day appeals period as to a particular party. Once that period concludes, the issuance of a subsequent final judgment against different parties does not

(cont.)

conclude that a subsequent judgment reaching a new conclusion as to one party confers jurisdiction for the appellate courts to reexamine all claims as to all prior parties, and Petitioner has provided no caselaw to support such an interpretation.

Accordingly, when Petitioner requested appellate review of the February 2014 Order in 2021, her appeal was plainly untimely, regardless of whether the Fourth Circuit had ultimately elected to exercise jurisdiction in its July 2015 Opinion. The February 2014 Order presented a final judgment, as every court to consider the matter has correctly concluded. *See* App. 4a–5a, 54a–56a; *see also Houck v. LifeStore Bank*, No. 5:18-cv-22-MOC (Bankr. W.D.N.C. Feb. 5, 2018) (Doc. No. 1 at 17). Thus, the statutory limitations period for filing a notice of appeal commenced on February 27, 2014—when the district court denied Petitioner's motion to reconsider pursuant to Fed. R. Civ. P. 60—and closed thirty days later, on March 31, 2014.

Despite the fact that the Fourth Circuit had not yet ruled on Petitioner's pending appeal of the October 2013 Order, she did not file a notice of appeal within 30 days of the district court's final judgment; instead, she elected to pursue her Fourth Circuit proceedings against STS as the sole appellee. Petitioner concedes that she "did not file a [ ] notice of appeal for Grid and LifeStore" regarding the February 2014 Order. Pet. 16.

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excuse a failure to timely file a notice of appeal within the prescribed time. Thus, Petitioner's assertion that the July 2015 Opinion "would have operated to allow the second appeal if the law had been followed" is incorrect. Pet. 17.

Therefore, the question of whether the Fourth Circuit properly exercised jurisdiction pursuant to the cumulative finality doctrine in its July 2015 Order is irrelevant. By the time the Fourth Circuit vacated the district court's judgment as to STS in 2015, the appeals period for the February 2014 Order had long since closed, and that order was statutorily barred from appellate jurisdiction regardless.[3] To decide otherwise would wholly undermine the finality of the district courts' holdings.[4] *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 227 (1995); *United States v. Oliver*, 878 F.3d 120, 125 (4th Cir. 2017).

In conclusion, the Fourth Circuit's application of the cumulative finality doctrine did not affect Petitioner's ability to appeal from the February 2014 Order in any way. *See* Pet. 11. To the contrary, Petitioner's right to appeal the February 2014 Order was "taken away" by her decision to not file a timely notice of appeal as to that order. *See id.* Therefore, the facts of this case do not present the questions of cumulative finality on which Petitioner seeks this Court's review.

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[3] To illustrate the necessity of this conclusion, one need only imagine a different outcome to Petitioner's prior appeal. If the Fourth Circuit had instead ruled against Petitioner in July 2015, it clearly would have been untimely for Petitioner to subsequently seek appellate review of the district court's dismissal of Grid and LifeStore in the February 2014 Order.

[4] After all, though "appellate jurisdiction is limited to final orders, this limitation goes to the timing, not the availability, of review." *W. Va. Coal Workers' Pneumoconiosis Fund v. Bell*, 781 F. App'x 214, 222 (4th Cir. 2019). Appellate review of the dismissal of Grid and LifeStore was available to Petitioner within 30 days of the district court's final judgment, as prescribed by statute. Petitioner simply chose not to file a notice of appeal within the required time.

D. Alternative jurisdictional grounds render Petitioner's proposed cumulative finality question further moot.

Finally, even if Petitioner's 2021 notice of appeal were considered timely as to the February 2014 Order, a multitude of alternative jurisdictional grounds would have prevented the Fourth Circuit from addressing her complaints, rendering her proposed questions of cumulative finality further moot. As the Fourth Circuit correctly noted, Petitioner settled her complaint with STS on remand, "ending her claims against that party," and the district court should have denied Petitioner's "effort to reopen a case that had been settled." App. 9a. The Fourth Circuit also rightly questioned whether it had jurisdiction to review the challenged order in light of the fact that "the March 8, 2021 judgment was in her favor." *Id.* (emphasis in original).

Furthermore, when she attempted to appeal the February 2014 Order, Petitioner incorrectly designated that she sought to appeal the March 2021 Order, rather than properly referencing the February 2014 Order. *See Houck v. LifeStore Bank*, No. 5:13-cv-66-DSC (W.D.N.C. Mar. 12, 2021) (Doc. No. 111). Therefore, the Fourth Circuit lacked jurisdiction over the appeal as to the dismissal of Grid and LifeStore pursuant to Fed. R. App. P. 3(c)(1)(B) and *Jackson v. Lightsey*, 775 F.3d 170, 176 (4th Cir. 2014). And alternatively, even if the July 1, 2015 Opinion had operated to reverse the February 2014 Order alongside the October 2013 Order, Petitioner proceeded against STS as the sole remaining defendant, and the district court never entered a new final judgment as to Grid and LifeStore, rendering the matter further jurisdictionally barred pursuant to

28 U.S.C. §§ 1291, 1292 and *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545–46 (1949).

In sum, these alternative jurisdictional hurdles to Petitioner's appeal of the February 2014 Order render Petitioner's proposed question of cumulative finality further moot.

II. Petitioner's challenge to the district court's application of Fed. R. Civ. P. 58 is not appropriate for this Court's review.

Next, Petitioner argues that "[t]his Court should enforce the requirement of a separate document judgment in this case" pursuant to Fed. R. Civ. P. 58. Pet. 24; *see generally* Pet. 22–24. Just as above, the facts of this case do not present the issue raised by Petitioner.

A. Petitioner misstates the facts regarding the district court's entry of the February 2014 Order.

As every court to consider the matter has correctly concluded, the February 2014 Order constituted a final judgment disposing of the entire case. *See* App. 4a–5a, 54a–56a; *see also Houck v. LifeStore Bank*, No. 5:18-cv-22-MOC (Bankr. W.D.N.C. Feb. 5, 2018) (Doc. No. 1 at 17). That judgment was set forth in a separate document as required by Fed. R. Civ. P. 58, which Petitioner has included in the appendix to her petition for certiorari. *See* App. 32a. Thus, it is incorrect for Petitioner to assert that "[t]o this day there is no final judgment" dismissing her claims against Grid and LifeStore." Pet. 22. To the extent that Petitioner argues that the July 2015 Opinion vacated the February 2014 Order, this is further incorrect for the reasons discussed in Section I.C *supra* and Section III *infra*.

B. Petitioner's assertion of equitable factors does not contravene the "jurisdictional requirement" of filing a timely notice of appeal.

Petitioner is also mistaken in suggesting that the validity of the district court's separate-document judgment involves an equitable analysis. *See* Pet. 13 (citing *Bankers Tr. Co. v. Mallis*, 435 U.S. 381, 386 (1978)). "The timely filing of a notice of appeal in a civil case is a jurisdictional requirement" that does not allow for such considerations. *Bowles v. Russell*, 551 U.S. 205, 214 (2007).

Accordingly, Petitioner was simply subjected to the same rules of procedure as every other federal civil litigant. Once the district court entered its final judgment, the statutory 30-day limitations period for filing a notice of appeal commenced. Petitioner certainly knew how to file an immediate notice of appeal at that time; after all, she had just done so with regards to the October 2013 Order. But instead, she elected to proceed on that appeal against STS as the sole appellee.

Petitioner correctly notes that she elected to "fil[e] only an interlocutory appeal on the STS dismissal only [sic]," and that "she is the master of her case." Pet. 10. Petitioner is entitled to her choice of litigation strategy, and this decision was successful: the Fourth Circuit's *vacatur* of the October 2013 Order opened the door for her lucrative judgment against STS on remand.

But Petitioner's assertion that she knew "since July 1, 2015, that she would eventually appeal Grid and Life[S]tore" reveals her intentions. Pet. 14. Petitioner now seeks to turn the clock back to 2014 and reverse her decision not to timely appeal the district court's dismissal of Grid and LifeStore, asking this Court to revive claims that have laid dormant for over eight years. This attempt to obtain a

second bite of the apple against long-dismissed parties reaches far beyond what the Constitution, the statutory framework, and this Court's own rules will allow.

III. Petitioner's challenge to the Fourth Circuit's application of *vacatur* is not appropriate for this Court's review.

Finally, Petitioner asks this Court to overrule the Fourth Circuit's conclusion that it lacked jurisdiction over her appeal of the February 2014 Order. *See* Pet. 24–28. Petitioner asserts that the July 2015 Opinion vacated the February 2014 Order, and that therefore "there could be no running of a statute from that date, because the judgment does not exist." Pet. 24. Once more, the facts of this case do not present the issue raised by Petitioner.

The February 2014 Order was not vacated by the Fourth Circuit's ruling against STS, as the bankruptcy court, the district court, and the Fourth Circuit have all correctly concluded. *See* App. 7a–11a, App. 79a–82a; *see also Houck v. LifeStore Bank*, No. 5:18-cv-22-MOC (Bankr. W.D.N.C. Feb. 5, 2018) (Doc. No. 1 at 17). Thus, it is flatly incorrect for Petitioner to assert that "[t]he Fourth Circuit simply vacated the only judgment in the case." Pet. 17. As the Fourth Circuit correctly concluded, *see* App. 7a–11a, its July 2015 Opinion lacked jurisdiction to vacate the district court's judgment as to Grid and LifeStore.

Accordingly, this Court's potential ruling on the legal question raised by Petitioner—whether a vacated judgment opens a new appeals period—would be an advisory opinion without application to the facts of this case. This Court should deny Petitioner's request to reverse the unanimous factual finding of the courts below.

CONCLUSION

For all of these reasons, the petition for writ of certiorari should be denied in its entirety.

Respectfully submitted this the 17th day of February, 2023.

Alan M. Ruley
Counsel of Record
Ryan M. Gaylord
BELL, DAVIS & PITT, P.A.
100 N. Cherry St. Suite 600
Winston-Salem, NC 27101
Telephone: (336) 722-3700
Facsimile: (336) 714-4101
aruley@belldavispitt.com
rgaylord@belldavispitt.com

Counsel for Respondent LifeStore Bank